

Town of Barnstable, MA  
Friday, September 16, 2022


## Chapter 240. Zoning

[HISTORY: Adopted by the Town of Barnstable 4-7-1987 STM by Art. 4; readopted 9-27-1990 by Order No. 90-65<sup>[1]</sup> (Art. III of Ch. III of the General Ordinances, as updated through 4-10-2003). Amendments noted where applicable.]

### GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.  
Affordable housing — See Ch. 9.  
Airport — See Ch. 13.  
Building construction — See Ch. 47.  
Comprehensive occupancy — See Ch. 59.  
Fees — See Ch. 76.  
Hazardous materials — See Chs. 108 and 381.  
Historic properties — See Ch. 112.  
Outdoor businesses — See Ch. 141.  
Signs — See Ch. 192.  
Tourist camps — 217.  
Wetlands protection — See Ch. 237.  
Food establishments — See Ch. 322.  
On-site sewage disposal systems — See Ch. 360.  
Wells — See Ch. 397.  
Marinas — See Ch. 405.  
Secondhand dealers and secondhand collectors — See Ch. 508.  
Subdivision Regulations — See Ch. 801.

### ATTACHMENTS

**Attachment 1 - Appendix** 

**Attachment 2 - Parking Diagrams** 

[1] *Editor's Note: The readoption of the Zoning Ordinance on 9-27-1990 was its conversion from bylaw adopted by the former Town Meeting to an ordinance adopted by the present Town Council. The amendment dates noted in the text of the chapter include amendments to the original bylaw.*

## Article I. Introduction

### § 240-1. Title.

This chapter shall be known and may be referred to as the "Zoning Ordinance of the Town of Barnstable, Massachusetts."

### § 240-2. Purpose.

The purpose of this chapter is to promote the health, safety, convenience, morals and general welfare of the inhabitants of the Town of Barnstable, to protect and conserve the value of the property within the Town, to increase the amenities of the Town, and to secure safety from seasonal or periodic flooding, fire, congestion or confusion, all in accord with the General Laws, Chapter 40A, as amended.

For this purpose, the height, number of stories, size of buildings and structures, size and width of lots, the percentage of lot 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 for trade, marine business, industry, agriculture, residence or other purposes are regulated within the Town of Barnstable as hereinafter provided.

### § 240-3. Interpretation.

The provisions of this chapter shall be held to be the minimum requirements for the promotion of the purposes herein stated, and shall be interpreted and applied in accordance with the following:

- A. Overlapping/contradictory regulations. Except as otherwise provided herein, this chapter shall not interfere with or annul any other ordinance, rule, regulation or permit, provided that, unless specifically excepted, where this chapter is more stringent, it shall control.
- B. Cumulative provisions. The provisions of this chapter shall be construed as a continuation thereof and not as new enactments.

### § 240-4. Severability.

The provisions of this chapter are severable. If any court of competent jurisdiction shall invalidate any provision herein, such invalidation shall not affect any other provisions of this chapter. If any court of competent jurisdiction shall invalidate the application of any provision of this chapter to a particular case, such invalidation shall not affect the application of said provision to any other case within the Town.

## Article II. General Provisions

### § 240-5. Establishment of districts.

[Amended 7-15-1999; 10-26-2000; 2-1-2001; 11-18-2004 by Order No. 2004-113; 1-20-2005 by Order No. 2005-038; 1-20-2005 by Order No. 2005-039; 7-14-2005 by Order No. 2005-100; 5-10-2007 by Order No. 2007-101; 2-28-2008 by Order No. 2008-077; 2-28-2008 by Order No. 2008-090; 4-3-2008 by Order No. 2008-091; 6-17-2010 by Order No. 2010-122; 10-7-2010 by Order No. 2010-159; 9-8-2011 by Order No. 2011-138; 2-6-2014 by Order No. 2014-050; 7-21-2016 by Order No. 2016-166; 4-27-2017 by Order No. 2017-100; 10-21-2021 by Order No. 2022-007]

In order to carry out the purpose of this chapter, the following districts are hereby established:

#### **Residential Districts**

RB	Residence B District
RC	Residence C District
RC-1	Residence C-1 District
RC-2	Residence C-2 District
RC-2C	Residence 2-C (Pond Village District)
RD	Residence D District
RD-1	Residence D-1 District
RF	Residence F District
RF-1	Residence F-1 District
RF-2	Residence F-2 District
RG	Residence G District

**Residential Districts**

RAH	Residence AH District
MAH	Multi-Family Affordable Housing MAH District

**Office Districts**

HO	Highway Office District
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**Commercial Districts**

B	Business District
BA	Business A District
MB-A1	Marine Business A1 District
MB-A2	Marine Business A2 District
MB-B	Marine Business B District
VB-A	Village Business A District
HB	Highway Business District
UB	Urban Business District
S&D	Service and Distribution District
SD-1	Service and Distribution District
MMV	Marston Mills Village District
WBVBD	West Barnstable Village Business District

**Hyannis Village Zoning Districts**

HVB	Hyannis Village Business District
MS	Medical Services District
SF	Single Family Residential District
OM	Office/Multi-Family Residential District
HD	Harbor District
HG	Hyannis Gateway District
TD	Transportation Hub District
GM	Gateway Medical District

**Industrial Districts**

IND LIMITED	Industrial Limited District
IND	Industrial District

**Overlay Districts**

GP	Groundwater Protection Overlay District
AP	Aquifer Protection Overlay District
WP	Well Protection Overlay District
	Shopping Center Redevelopment Overlay District
	Adult Use Overlay District
RPOD	Resource Protection Overlay District
DOD	Dock and Pier Overlay District
	Medical Services Overlay District
	Mixed-Use Subzone of the Medical Services Overlay District

**Overlay Districts**

FG-5	Former Grade 5 School Planned Unit Development Overlay District
SCCRC	Senior Continuing Care Overlay District
	Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District
	Medical Marijuana Overlay District
	Hyannis Parking Overlay District

**§ 240-6. Zoning Map.**

The Town of Barnstable is hereby divided into districts as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this chapter.

- A. Identification of Zoning Map. The official Zoning Map shall be identified by the title "ZONING MAP OF BARNSTABLE, MASS. DATED September 1, 1998", which is on file in the office of the Town Clerk as amended.
- B. Location of Zoning Map. The Official Zoning Map shall be on file with the Town Clerk.
- C. Zoning district boundaries.
  - (1) The scale of the Zoning Map and the figures entered thereon are to serve as guides in locating the zoning district boundaries shown on the Zoning Map.
  - (2) Where a street divides two zoning districts, the districts shall be deemed to abut each other.
  - (3) Where the boundary line between zoning districts divides any lot existing at the time such line is adopted, which has street frontage in the less restricted area, a use authorized on the less restricted portion of such lot may be extended into the more restricted portion for a distance of not more than 30 feet. This subsection shall not apply to the following districts: HO Highway Office District; Groundwater Protection Overlay Districts; Adult Use Overlay District; Shopping Center Redevelopment Overlay District; MA-2 Business District; OR Office Residential District; and O-1, O-2, O-3 Office Districts.  
[Amended 9-17-1998 by Order No. 99-012; 6-28-2001 by Order No. 2001-036; 7-19-2001 by Item Nos. 2001-37, 2001-038 and 2001-039]

**§ 240-7. Application of district regulations.**

Regulations within each district established herein shall be applied uniformly to each class or kind of structure or use.

- A. Conformance to use regulations. No building shall be erected or altered and no building or premises shall be used for any purpose except in conformity with all of the regulations herein specified for the district in which it is located.
- B. Conformance to bulk and yard regulations. No building shall be erected or altered to exceed the height or bulk, or to have narrower or smaller yards or other open spaces than herein required, or in any other manner contrary to the provisions of this chapter.
- C. Lot size requirements. Wetlands shall not be included in the lot area (square feet) requirement for zoning compliance.
- D. Lot shape factor/residential districts. To meet the minimum area requirements in residential districts, a lot must be a closed plot of land having a definite area and perimeter and having a shape factor not exceeding the numerical value of 22, except that a lot may have a shape factor

exceeding 22 if the proposed building site is located on a portion of a lot that itself meets the minimum lot area requirement and has a shape factor not exceeding 22, and such lots shall not be created to a depth greater than two lots from the principal way.

- E. Contiguous upland required. In addition to the requirements of Subsection **C** herein, all lots shall have 100% of the minimum required lot area as contiguous upland.
- F. Number of buildings allowed per lot.
  - (1) Residential districts: Unless otherwise specifically provided for herein, within residential districts, only one principal permitted building shall be located on a single lot.
  - (2) All other districts: In all other districts, any number of buildings may be located on a single lot; provided, however, that all regulations for the district in which such buildings are located are complied with, including percentage lot coverage if applicable.
- G. Setbacks from wetlands/great ponds. In addition to the setbacks established hereinafter, the following shall also apply:
  - (1) All construction, with the exception of elevated stairways, decks, driveways, fences and water-dependent structures such as piers and marina facilities, shall be set back a minimum of 35 feet from wetlands.
  - (2) All construction shall be set back a minimum of 50 feet from mean high water on any great pond, except that in residential districts, all buildings except boathouses shall be set back a minimum of 50 feet from mean high water on any great pond.
- H. In any residential district a one-family dwelling and its accessory buildings may be erected on any lot which complies with the applicable provisions of Chapter 40A of the General Laws.
- I. Gross floor area requirements. Gross floor area shall be used in all determinations related to this chapter.  
[Added 10-7-1993 by Order No. 94-016]

## § 240-8. Exempt uses.

[Amended 10-7-1999 by Order No. 99-160A]

- A. The following uses and structures are permitted in all zoning districts:
  - (1) Municipal and water supply uses.
  - (2) Municipal recreation use, including recreational activities conducted on Town-owned land under the terms of a lease approved by Town Council. In the case of such a lease, any improvements or changes to such Town-owned land shall be subject to the review of a committee of five residents appointed by the Town Manager or Town Council, at least two of whom shall be from the precinct in which the land is located.
  - (3) The use of land or structures exempt from the use provisions of this chapter pursuant to MGL Ch. 40A, § 3, and any other statute.
    - (a) Where such exempt uses are subject to reasonable regulation of bulk, density and parking regulations by MGL Ch. 40A, § 3, reasonable regulation shall be deemed to be: the bulk regulations of the zoning district, except that church steeples may be permitted up to 75 feet in height; Article **VI**, Off-Street Parking Regulations; and Article **IX**, Site Plan Review.
    - (b) Where the proposed use does not comply with Subsection **A(3)(a)** above, the Zoning Board of Appeals shall by a modification permit, modify the bulk regulations of the zoning district and/or the parking requirements of Article **VI**, Off-Street Parking Regulations,

where such regulation would substantially diminish or detract from the usefulness of a proposed development, or impair the character of the development so as to affect its intended use, provided that the modification of the bulk regulations and/or parking requirements will not create a public safety hazard along the adjacent roadways and will not create a nuisance to other, surrounding properties such that it will impair the use of these properties.

- (c) A modification permit shall be subject to the same procedural requirements as a special permit, except that approval of the modification permit shall require a majority of the members of the Board.
- (4) Agriculture, horticulture, viticulture, aquaculture and/or floriculture on a parcel of land five acres or less in size shall be permitted subject to the following requirements in residential districts:
  - (a) Seasonal garden stands for the sale of seasonal fruits, flowers and vegetables shall be permitted, only for the sale of produce grown on the premises.
  - (b) No person shall be employed on the premises.
  - (c) No more than one temporary, on-premises sign may be erected, not to exceed two square feet, to be removed during the off season.
- B. Any structure for agricultural, horticulture, viticulture, aquaculture and/or floriculture use shall conform to the setbacks of the zoning district, or a minimum of 25 feet, whichever is greater, except that the keeping of horses in a residential district shall be in compliance with the requirements of that zoning district.

## § 240-9. Temporary uses.

The following temporary uses are permitted in all zoning districts:

- A. Temporary occupancy of a trailer during construction of a permanent home; provided, however, a special permit is first obtained from the Zoning Board of Appeals.
- B. Temporary occupancy of a trailer for living purposes by nonpaying guests for a period not exceeding 20 days in any calendar year; provided, however, that the owner of land upon which the trailer is to be located first obtains a permit from the Building Commissioner.
- C. Temporary occupancy of a trailer as a construction office incidental to development of or construction on the premises on which the trailer is to be located; provided, however, that a permit is first obtained from the Building Commissioner.
- D. Tents.  
[Added 2-22-1996 by Order No. 95-194]
  - (1) Maintenance and occupancy of tents in an organized and supervised recreational camp subject to compliance with the rules of the Barnstable Board of Health; provided, however, that a special permit is first obtained from the Zoning Board of Appeals.
  - (2) A tent may be put in place on a lot used for residential purposes, for not more than 10 days, in connection with special family occasions or events, but not to be used for any commercial purposes.
  - (3) A tent may be put in place for not more than 10 days, not more than twice in any calendar year, in connection with a fund-raising or special event by a public institution or nonprofit agency.
  - (4) Subject to annual approval by the Building Commissioner, a tent may be erected and used as a temporary accessory structure to an existing permanent business. The tent shall conform to

all parking requirements and bulk or dimensional requirements of this chapter.  
[Amended 11-7-2019 by Order No. 2020-019]

## § 240-10. Prohibited uses.

The following uses are prohibited in all zoning districts:

- A. Any use which is injurious, noxious or offensive by reason of the emission of odor, fumes, dust, smoke, vibration, noise, lighting or other cause.
- B. A tent maintained or occupied for living or business purposes, except as permitted in § 240-9D above.  
[Amended 2-22-1996 by Order No. 95-194]
- C. A trailer parked, stored or occupied for living or business purposes, except as specifically provided for in § 240-9 herein.
- D. Hotels and motels in Precincts 1, 2, 4, 6, and 7 as existing on November 9, 1983, except in the IND Limited and IND Industrial Districts.
- E. All types of non-medical "marijuana establishments" as defined in M.G.L. c. 94G § 1, including marijuana product manufacturers, marijuana retailers or any other types of licensed related businesses except for licensed marijuana cultivators, research and independent testing laboratory facilities permitted as a conditional use in the MS Medical Services District and GM Gateway Medical District, subject to all the requirements of Article XII, § 240-122.1 herein.  
[Added 9-6-2018 by Order No. 2019-015]

## Article III. District Regulations

### § 240-11. RB, RD-1 and RF-2 Residential Districts.

- A. Principal permitted uses. The following uses are permitted in the RB, RD-1 and RF-2 Districts:
  - (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the RB, RD-1 and RF-2 Districts:
  - (1) Renting of rooms for not more than three nonfamily members by the family residing in a single-family dwelling.  
[Amended 11-7-1987 by Art. 12]
  - (2) Keeping, stabling and maintenance of horses subject to the following:
    - (a) Horses are not kept for economic gain.
    - (b) A minimum of 21,780 square feet of lot area is provided, except that an additional 10,890 square feet of lot area for each horse in excess of two shall be provided.
    - (c) All state and local health regulations are complied with.
    - (d) Adequate fencing is installed and maintained to contain the horses within the property, except that the use of barbed wire is prohibited.
    - (e) All structures, including riding rings and fences to contain horses, conform to 50% of the setback requirements of the district in which located.
    - (f) No temporary buildings, tents, trailers or packing crates are used.

- (g) The area is landscaped to harmonize with the character of the neighborhood.
  - (h) The land is maintained so as not to create a nuisance.
  - (i) No outside artificial lighting is used beyond that normally used in residential districts.
- C. Conditional uses. The following uses are permitted as conditional uses in the RB, RD-1 and RF-2 Districts, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § **240-125C** herein and the specific standards for such conditional uses as required in this section:
- (1) Renting of rooms to no more than six lodgers in one multiple-unit dwelling.
  - (2) Public or private regulation golf courses subject to the following:
    - (a) A minimum length of 1,000 yards is provided for a nine-hole course and 2,000 yards for an eighteen-hole course.
    - (b) No accessory buildings are located on the premises except those for storage of golf course maintenance equipment and materials, golf carts, a pro shop for the sale of golf related articles, rest rooms, shower facilities and locker rooms.
  - (3) Keeping, stabling and maintenance of horses in excess of the density provisions of Subsection **B(2)(b)** herein, either on the same or adjacent lot as the principal building to which such use is accessory.
  - (4) (Reserved)<sup>[1]</sup>
    - [1] *Editor's Note: Former Subsection C(4), regarding family apartments, was repealed 11-18-2004 by Order No. 2005-026. See now § 240-47.1.*
  - (5) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
  - (6) Bed-and-breakfast.
    - [Added 2-20-1997]
    - (a) Intent: It is the intent of this section to allow bed-and-breakfast operations in larger older homes to provide an adaptive reuse for these structures and, in so doing, encourage the maintenance and enhancement of older buildings which are part of the community character. This use will also create low-intensity accommodations for tourist and visitors and enhance the economic climate of the Town. By requiring that the operation is owner occupied and managed, the Town seeks to ensure that the use will be properly managed and well maintained.
    - (b) Bed-and-breakfast, subject to the following conditions:
      - [1] The bed-and-breakfast operation shall be located within an existing, owner-occupied single-family residential dwelling constructed prior to 1970 containing a minimum of four bedrooms as of December 1, 1996.
      - [2] No more than three bedrooms shall be rented for bed-and-breakfast to a total of six guests at any one time. For the purpose of this section, children under the age of 12 years shall not be considered in the total number of guests.
      - [3] No cooking facilities including but not limited to stoves, microwave ovens, toaster ovens and hot plates shall be available to guests, and no meals except breakfast shall be served to guests.
      - [4] The owner of the property shall be responsible for the operation of the property and shall be resident when the bed-and-breakfast is in operation. The owner shall file an affidavit with the Building Commissioner on an annual basis in the month of January stating that the property is the principal residence of the owner and that the owner is



resident all times that the bed-and-breakfast is being operated. If the affidavit is not filed, the operation shall cease forthwith and any special permit issued shall be considered null and void. The requirement for filing of an affidavit shall not apply to bed-and-breakfast operations legally established prior to October 1, 1996.

- [5] The single-family residence in which the bed-and-breakfast operation is located shall be maintained so that the appearance of the building and grounds remain that of a single-family residence.
- [6] If the property is not served by public water, the applicant shall provide evidence to the Zoning Board of Appeals that the proposed use will not have any detrimental impact on any private water supply on site or off site.
- [7] No parking shall be located in any required building yard setback, and parking areas shall be screened from adjoining residential properties by a fence or dense plantings, not less than five feet in height. Parking areas may be permitted in front of the house, not within the required building front yard setback, provided that the Zoning Board of Appeals finds that the spaces are designed and located in a manner which retains the residential character of the property. Grass overflow areas may be utilized for parking, provided these are maintained with a grass ground cover in good condition.
- [8] The special permit for the bed-and-breakfast conditional use operation shall be issued to the owner only and is not transferable to a subsequent property owner. This provision shall only apply to bed-and-breakfast conditional use operations established in residential districts.

D. Special permit uses. The following uses are permitted as special permit uses in the RB, RD-1 and RF-2 Districts, provided a special permit is first obtained from the Planning Board:

- (1) Open space residential developments subject to the provisions of § 240-17 herein.

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Yard Setbacks					Maximum Building Height (feet)
		Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Front (feet)	Side (feet)	Rear (feet)	
RB	43,560 <sup>2</sup>	20	100	20 <sup>3</sup>	10	10	30 <sup>1</sup>
RD-1	43,560 <sup>2</sup>	20	125	30 <sup>3</sup>	10	10	30 <sup>1</sup>
RF-2	43,560 <sup>2</sup>	20	150	30 <sup>3</sup>	15	15	30 <sup>1</sup>

NOTES:

- <sup>1</sup> Or 2 1/2 stories, whichever is lesser.
- <sup>2</sup> A minimum lot area of 87,120 square feet is required in RPOD Overlay District. [Added 10-26-2000]
- <sup>3</sup> One hundred feet along Routes 28 and 132.

## § 240-12. Pond Village (Barnstable) District of Critical Planning Concern (PVDCPC) R-2C

[Added 5-10-2007 by Order No. 2007-101]

A. Principal permitted uses. The following uses are permitted in the R-2C District:

- (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the R-2C District:
- (1) Family apartments. (See § 240-47.1.)
  - (2) Keeping, stabling and maintenance of horses subject to the provisions of § 240-11B(2).
  - (3) Home occupation. (See § 240-46).
  - (4) Renting of rooms to not more than three nonfamily members by the family residing in a single-family residence.
  - (5)
- C. Special permit uses. The following uses are permitted as special permit uses in the R-2C District, provided that a special permit is first obtained from the Board.
- (1) Keeping, stabling and maintenance of horses in excess of the density provisions of § 240-11B(2)(b) herein, either on the same lot or adjacent lot as the principal building to which such use is accessory.
  - (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy but only as an accessory use. (See § 240-44.1.)
- D. Open space residential developments. (See § 240-17.)
- (1) Bulk regulations:
    - (a) Minimum lot area, contiguous upland: 87,120 square feet.
    - (b) Minimum lot frontage: 20 feet.
    - (c) Minimum front yard setback: 30 feet.
    - (d) Minimum side and rear yard setback: 15 feet.
    - (e) Maximum building height:
      - [1] Maximum building height in feet: 30.
      - [2] Maximum building height in stories: 2 1/2.
  - (2) Grandfathering. Within the R-2C District, any lot that met the minimum lot area and minimum lot frontage requirements of the RF-1 or RF-2 Districts respectively, prior to the effective date of the Pond Village DCPC nomination of August 26, 2005, as specified in the Cape Cod Commission Acceptance Decision dated September 15, 2005, shall not be subject to R-2C minimum lot area.
- [1] *Editor's Note: Former § 240-12, RB-1 Residential District, as amended, was repealed 7-14-2005 by Order No. 2005-100.*

## § 240-13. RC, RD, RF-1 and RG Residential Districts.

- A. Principal permitted uses. The following uses are permitted in the RC, RD, RF-1 and RG Districts:
- (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the RC, RD, RF-1 and RG Districts:
- (1) Keeping, stabling and maintenance of horses subject to the provisions of § 240-11B(2) herein.

C. Conditional uses. The following uses are permitted as conditional uses in the RC, RD, RF-1 and RG Districts, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.
- (2) Keeping, stabling and maintenance of horses in excess of the density provisions of § 240-11B(2)(b) herein, either on the same or adjacent lot as the principal building to which such use is accessory.
- (3) (Reserved)<sup>[1]</sup>
  - [1] *Editor's Note: Former Subsection C(4), regarding family apartments, was repealed 11-18-2004 by Order No. 2005-026. See now § 240-47.1.*
- (4) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.

D. Special permit uses. The following uses are permitted as special permit uses in the RC, RD, RF-1 and RG Districts, provided a special permit is first obtained from the Planning Board:

- (1) Open space residential developments subject to the provisions of § 240-17 herein.

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)
				Front (feet)	Side (feet)	Rear (feet)	
RC	43,560 <sup>2</sup>	20	100	20 <sup>3</sup>	10	10	30 <sup>1</sup>
RD	43,560 <sup>2</sup>	20	125	30 <sup>3</sup>	15	15	30 <sup>1</sup>
RF-1	43,560 <sup>2</sup>	20	125	30 <sup>3</sup>	15	15	30 <sup>1</sup>
RG	65,000	20	200	30 <sup>3</sup>	15	15	30 <sup>1</sup>

NOTES:

- <sup>1</sup> Or 2 1/2 stories, whichever is lesser.
- <sup>2</sup> A minimum lot area of 87,120 square feet is required in RPOD Overlay District. [Added 10-26-2000]
- <sup>3</sup> One hundred feet along Routes 28 and 132.

## § 240-14. RC-1 and RF Residential Districts.

A. Principal permitted uses. The following uses are permitted in the RC-1 and RF Districts:

- (1) Single-family residential dwelling (detached).

B. Accessory uses. The following uses are permitted as accessory uses in the RC-1 and RF Districts:

- (1) Renting of rooms for not more than three nonfamily members by the family residing in a single-family dwelling. [Amended 11-7-1987 by Art. 12]
- (2) Keeping, stabling and maintenance of horses subject to the provisions of § 240-11B(2) herein.

C. Conditional uses. The following uses are permitted as conditional uses in the RC-1 and RF Districts, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § **240-125C** herein and subject to the specific standards for such conditional uses as required in this section:

[Amended 8-17-1995 by Order No. 95-195]

- (1) Home occupation, subject to all the provisions of § **240-46C**, Home occupation by special permit.
- (2) Renting of rooms to no more than six lodgers in one multiple-unit dwelling.
- (3) Public or private regulation golf courses subject to the provisions of § **240-11C(2)** herein.
- (4) Keeping, stabling and maintenance of horses in excess of the density provisions of § **240-11B(2)(b)** herein, either on the same or adjacent lot as the principal building to which such use is accessory.
- (5) (Reserved)<sup>[1]</sup>  
 [1] *Editor's Note: Former Subsection C(4), regarding family apartments, was repealed 11-18-2004 by Order No. 2005-026. See now § 240-47.1.*
- (6) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- (7) Bed-and-breakfast operation subject to the provisions of § **240-11C(6)**.  
 [Added 2-20-1997]

D. Special permit uses. The following uses are permitted as special permit uses in the RC-1 and RF Districts, provided a special permit is first obtained from the Planning Board:

- (1) Open space residential developments subject to the provisions of § **240-17** herein.
- (2) Private initiated affordable housing developments: A private-initiated affordable housing developments (PI-AHD) on seven acres or more, subject to the provisions of § **240-17.1** and in full compliance with the standards set forth therein.  
 Added 11-18-2004 by Order No. 2004-113]

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
				Front	Side	Rear	
				RC-1	43,560 <sup>2</sup>	125	
RF	43,560 <sup>2</sup>	150	—	30 <sup>3</sup>	15	15	30 <sup>1</sup>

<sup>1</sup> Or 2 1/2 stories, whichever is lesser.

<sup>2</sup> A minimum lot area of 87,120 square feet is required in RPOD Overlay District.  
 [Added 10-26-2000]

<sup>3</sup> One hundred feet along Routes 28 and 132.

## § 240-15. RC-2 Residential District.

A. Principal permitted uses. The following uses are permitted in the RC-2 District:

- (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the RC-2 District:
- (1) Keeping, stabling and maintenance of horses subject to the provisions of § **240-11B(2)** herein.
- C. Conditional uses. The following uses are permitted as conditional uses in the RC-2 District, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § **240-125C** herein and subject to the specific standards for such conditional uses as required in this section:
- (1) Nursing and/or retirement home, but not to include hospitals, sanatoriums, convalescent homes or detached infirmaries or clinics, subject to the following:
- The site for the home consists of a minimum of five acres.
  - The capacity-to-land ratio of the home does not exceed 10 beds per acre.
  - Off-street parking is provided in compliance with Article **VI** herein.
  - All buildings are located a minimum of 150 feet from existing public ways.
  - The applicant has received a certificate of need from the Massachusetts Division of Medical Care, Department of Public Health.
  - A perimeter survey has been submitted showing entire tract ownership, all abutting ownership and all existing ways and easements.
  - A topographic plan of the entire site has been submitted by a registered land surveyor showing elevation contours at five-foot intervals and showing all existing structures and vegetative cover masses, such plan to have been compiled by means of on-site survey or approved aerial photographic method.
  - A sketch plan of the proposed development has been submitted showing the density and location of structures, vehicular and pedestrian circulation, roadways and parking, proposed utilities and pertinent vegetation and soil and water conditions.
  - An architectural rendering or sketch has been submitted of any proposed structure.
- (2) Public or private regulation golf courses subject to the provisions of § **240-11C(2)** herein.
- (3) Keeping, stabling and maintenance of horses in excess of the density provisions of § **240-11B(2)(b)** herein, either on the same or adjacent lot as the principal building to which such use is accessory.
- (4) (Reserved)<sup>[1]</sup>
- [1] *Editor's Note: Former Subsection C(4), regarding family apartments, was repealed 11-18-2004 by Order No. 2005-026. See now § **240-47.1**.*
- (5) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- D. Special permit uses. The following uses are permitted as special permit uses in the RC-2 District, provided a special permit is first obtained from the Planning Board:
- (1) Open space residential developments subject to the provisions of § **240-17** herein.
- E. Bulk regulations.

#### Minimum Yard Setbacks

(feet)

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
				Front	Side	Rear	
RC-2	43,560 <sup>2</sup>	20	100	20 <sup>3</sup>	10	10	30 <sup>1</sup>

- <sup>1</sup> Or 2 1/2 stories, whichever is lesser.
- <sup>2</sup> A minimum lot area of 87,120 square feet is required in RPOD Overlay District.
- <sup>3</sup> One hundred feet along Routes 28 and 132. [Added 10-26-2000]

## § 240-16. RAH Residential District.

[Added 11-5-1988 by Art. 9]

A. Principal permitted uses. The following uses are permitted in the RAH District:

- (1) Single-family residential dwelling (detached).
- (2) Affordable single-family residential dwellings subject to the special bulk regulation contained herein. For the purpose of this section the term "affordable" shall mean dwellings sold or leased by a nonprofit corporation and/or governmental agency whose principal purpose is to provide housing to eligible tenants and/or buyers.

B. Conditional uses. The following uses are permitted as conditional uses in the RAH District, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § **240-125C** herein and subject to the specific standards for such conditional uses as required in this section:

- (1) (Reserved)<sup>[1]</sup>
  - [1] *Editor's Note: Former Subsection C(4), regarding family apartments, was repealed 11-18-2004 by Order No. 2005-026. See now § 240-47.1.*
- (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.

C. Special permit uses. The following uses are permitted as special permit uses in the RAH District, provided a special permit is first obtained from the Planning Board:

- (1) Open space residential developments subject to the provisions of § **240-17** herein.

D. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
				Front	Side	Rear	
RAH	43,560	125	—	30	15	15	30 <sup>1</sup>
RAH	10,000 <sup>2,3</sup>	20	75	30	15	15	30 <sup>1</sup>

- 1 Or 2 1/2 stories, whichever is lesser.
- 2 Provided that each dwelling is connected to the municipal sewage collection system when the site is located in a Groundwater Protection Overlay District.
- 3 As an alternative to individual lots, more than one single-family dwelling may be constructed on a lot, provided that the area of any such lot shall contain not less than 10,000 square feet of contiguous upland for each single-family dwelling constructed. When more than one single-family dwelling is constructed on a lot said dwelling shall be at least 30 feet apart.

## § 240-16.1. MAH Residential District.

[Added 2-28-2008 by Order No. 2008-077; amended 1-20-2011 by Order No. 2011-039]

- A. Purpose. The purpose of this section is to authorize by special permit privately initiated affordable housing by for-profit or not-for-profit organizations that:
  - (1) Provide for residential development in a manner that is consistent with existing neighborhood development in terms of density and housing types; and
  - (2) Authorize an increase in the permissible density of housing in a proposed development, provided that the applicant shall, as a condition for the grant of said special permit, provide housing for persons of low or moderate income.
- B. Principal permitted uses. The following uses are permitted in the MAH District:
  - (1) Single-family residential dwelling (detached).
- C. Special permit uses. For the purposes of this section, the Planning Board shall be the special permit granting authority. The following uses are permitted as conditional uses in the MAH District, provided that a special permit is first obtained from the Planning Board subject to the provisions of § 240-125C herein and subject to the specific standards for such special permit uses as required in this section:
  - (1) Multifamily affordable housing developments connected to the municipal sewage collection system.
- D. Bulk regulations.  
[Amended 11-2-2017 by Order No. 2018-027]

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height <sup>1</sup> (feet)
				Front	Side	Rear	
MAH	87,120	200	—	60	30	30	30

**NOTES:**

<sup>1</sup> Height shall be measured from the grade plane to the plate.

- E. Density requirements. The total number of residential units allowable within a Multifamily Affordable Housing Development (MAHD) shall not exceed 16 per acre of upland.  
[Amended 11-2-2017 by Ord. No. 2018-027]
- F. Affordable units. At least 18% of the dwelling units shall be affordable units, subject to the following conditions:  
[Amended 11-2-2017 by Order No. 2018-027; 2-4-2021 by Order No. 2021-059]
  - (1) All affordable units shall remain affordable, as defined herein, in perpetuity. A use restriction shall assure this condition. The use restriction shall be structured to survive any and all

foreclosures.

- (2) The continuing enforcement of the use restriction through subsequent resale of the affordable units shall be the subject of a monitoring agreement.
  - (3) The use restriction and the monitoring agreement shall be drafted in compliance with the Local Initiative Program (LIP), and guidelines promulgated thereunder. The use restriction and the monitoring agreement shall be subject to review and approval by the Planning Board and approved as to form by the Town Attorney's office prior to the issuance of any building permits for any dwelling unit.
  - (4) The affordable unit shall conform to all Department of Housing and Community Development (DHCD) standards that must be met to qualify these units for inclusion in the DHCD Subsidized Housing Inventory (SHI).
  - (5) A right of first refusal upon the transfer of such affordable units shall be granted to the Town or its designee for a period of not less than 120 days after notice thereof.
  - (6) Affordable units shall not be segregated within the MAHD. The affordable units shall satisfy the design and construction standards and guidelines of the Local Initiative Program with regard to distinguishability from market rate units. It is the intent of this section that the affordable units shall be eligible for inclusion in the DHCD Subsidized Housing Inventory as LIP units.
  - (7) Affordable units shall obtain occupancy permits issued at the rate of one affordable unit for every four market rate units.
  - (8) In computing the number of required affordable units, any fraction of a unit shall be rounded up, and the result of this computation shall be the number of affordable units required to be built within the MAHD. Affordable units shall only be located within any development permitted under this provision. This standard is not subject to variance.
  - (9) No occupancy permit shall be granted unless the affordable dwelling units have been approved by the DHCD as eligible for the DHCD Subsidized Housing Inventory under the Local Initiative Program (LIP) Guidelines.
- G. Decision. The Planning Board may grant a special permit for a MAHD where it makes the following findings:
- (1) The proposed MAHD complies with all applicable subdivision rules unless otherwise waived by the Board.
  - (2) The proposed MAHD complies with the Zoning Ordinance and the requirements of this section.
  - (3) The proposed MAHD provides affordable units consistent with the requirements set forth herein.
  - (4) The proposed MAHD does not cause substantial detriment to the neighborhood.
- H. Relation to other requirements. The submittals and special permit required herein shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Ordinance.
- I. Definitions. As used in this section, the following terms shall have the meanings indicated:

**AFFORDABLE UNIT**

A dwelling unit reserved in perpetuity for rental or ownership by a qualified affordable housing unit purchaser or tenant as defined herein and priced to conform with the standards of the Massachusetts Department of Housing and Community Development (DHCD) Local Initiative Program Guidelines, in order that such affordable units shall be included in the DHCD Subsidized Housing Inventory.



[Amended 2-4-2021 by Order No. 2021-059]

### **APPLICANT**

The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit for construction of a private-initiated affordable housing development (MAHD) hereunder. The applicant must own or be the beneficial owner of all the land included in the proposed MAHD, or have authority from the owner(s) to act for the owner(s) or hold an option or contract duly executed by the owner(s) and the applicant giving the latter the right to acquire the land to be included in the site.

### **MULTIFAMILY AFFORDABLE HOUSING DEVELOPMENT (MAHD)**

A development of multifamily residential dwelling(s), including required affordable units and permissible accessory structures, authorized by special permit from the Planning Board as set forth herein.<sup>[1]</sup>

### **QUALIFIED AFFORDABLE HOUSING UNIT PURCHASER OR TENANT**

An individual or household with total annual income that does not exceed the following percentages of the area median income for the Town of Barnstable, as determined annually by the United States Department of Housing and Urban Development:

[Added 2-4-2021 by Order No. 2021-059]

- (1) For the purchaser of a condominium unit: 50%.
- (2) For the tenant in a rental unit: 50%.

### **USE RESTRICTION**

A restriction ensuring the continued affordability of a dwelling unit. A use restriction is a deed restriction or other legally binding instrument in a form consistent with Department of Housing and Community Development (DHCD) Local Initiative Program (LIP) guidelines which runs with the land and is recorded with the relevant registry of deeds or land court registry district, and which effectively restricts the occupancy of a low- or moderate-income housing unit to income eligible households during the term of affordability. A use restriction shall contain terms and conditions for the resale of a homeownership unit, including definition of the maximum permissible resale price, and for the subsequent rental of a rental unit, including definition of the maximum permissible rent. A use restriction shall require that tenants of rental units and owners of homeownership units shall occupy the units as their principal residences.

- [1] *Editor's Note: The definition of "nursing or convalescent home," which immediately followed, was repealed 11-2-2017 by Order No. 2018-027.*

## **§ 240-17. Open space residential development.**

[Amended 11-7-1987 by Art. 4; 6-17-1999]

- A. Purpose. This section has been established to permit a variation in development styles with efficient provision of roads and utilities; and to provide for the public interest by the preservation of open space in perpetuity, for protection of both natural resources and visual character of the land.
- B. Application. An open space residential development is permitted in all residential districts by special permit from the Planning Board.
- C. Minimum area. A minimum area shall be required sufficient to accommodate no less than four dwelling units based on all the requirements of the zoning district in which the development is located.
- D. Permitted uses. The following uses are permitted in an open space residential development:

- (1) Detached single-family dwellings and permitted accessory uses, including a cluster unit wastewater treatment facility.
  - (2) Common open space, preserved as such in perpetuity.
  - (3) Recreational facilities and activities exclusively for use by residents of an open space residential development, as approved by the Planning Board.
- E. Density requirements. The total number of residential units allowable within an open space residential development shall not exceed the number of units that would be allowed in the zoning district in which the site is located. The total number of units allowed shall be determined by submission of a preliminary grid sketch plan in accordance with Subsection **M(1)** herein, showing the total number of developable lots which could be obtained by utilizing a conventional grid subdivision, in conformance with all the zoning district area requirements, and with legal access over the road providing frontage. Lots on the preliminary plan which are not practically buildable because of impediments to development, such as slope in excess of 15%, utility easements, impervious soils, high groundwater or the location of wetlands, shall not be countable towards the number of developable lots, except that this provision may be waived for a development which is 100% affordable. For the purposes of this section, "affordable" shall mean dwellings sold or leased by a nonprofit corporation and/or government agency whose principal purpose is to provide housing to eligible tenants and/or buyers. Such housing shall remain affordable in perpetuity.
- F. Bulk regulations. The Planning Board may grant a reduction of the bulk regulations, provided that in no instance shall any lot contain less 15,000 square feet or have less than 20 feet of frontage, a front yard setback of not less than 20 feet, and side and rear setbacks of not less than 12 feet. The minimum lot size may be further decreased by the Planning Board for a development which is 100% affordable, as defined in Subsection **C** above. No lot shall be panhandled more than two lots from a roadway, and panhandled lots shall only be permitted where the Planning Board finds that safe and adequate access is provided to the rear lot. As a condition of approval of the special permit, the developer shall submit evidence to the Planning Board of recorded easements, to assure access to joint driveways, where shown on the definitive subdivision plan.
- G. Soils. The nature of the soils and subsoils shall be suitable for the construction of roads and buildings. The Planning Board may require that soil borings or test pits be made on each lot as shown on the preliminary sketch plan, when borings required pursuant to the Subdivision Rules and Regulations,<sup>[1]</sup> or the USDA, Soil Conservation Service maps indicate soils which may not be suitable for development. Soil borings if required, shall indicate soil texture, percolation rates and depth to the ground water table at its maximum elevation, in order to determine the buildability of each lot. Maximum groundwater elevation shall be determined using data available from the US Geological Survey publication "Probable High Ground Water Levels on Cape Cod."  
<sup>[1]</sup> *Editor's Note: See Ch. 801, Subdivision Rules and Regulations.*
- H. Wastewater.
- (1) The development shall be connected to Town sewer, or shall comply with the provisions of 310 CMR 15.00, of the State Environmental Code (Title 5) and the on-site wastewater disposal regulations of the Board of Health.<sup>[2]</sup> No on-site sewage disposal leaching field systems shall be located within 150 feet from any wetland or surface water body, and where possible, located outside a riverfront area as defined according to 310 CMR 10.58, Riverfront Area. In no instance shall an open space residential development be approved which requires a variance to be granted from Title 5 of the State Environmental Code, or on-site sewage disposal regulations of the Board of Health with regard to depth to groundwater, distance to wetlands, buildings or public or private water supply wells. Such Board of Health variance shall render the special permit void as it pertains to the lot or lots affected.  
<sup>[2]</sup> *Editor's Note: See 360, On-Site Sewage Disposal Systems.*
  - (2) Based only upon recommendation by the Board of Health pursuant to MGL Ch. 41, § 81U, that lots in the development be connected to a clustered unit wastewater system, with or

without nutrient removal, the Planning Board shall incorporate such requirement into a decision of approval, as a condition of that approval.

- (3) The clustered unit wastewater system shall be located as far as possible from any sensitive environmental receptor, such as public or private wells, wetlands or water bodies, vernal pools, and rare and endangered species habitats.
  - (4) A clustered unit wastewater system location, design, maintenance, repair and operation is specifically subject to approval by the Board of Health as a condition of approval of the open space residential development.
  - (5) Where the common open space is to be owned by the homeowners, a clustered unit wastewater system shall be located on a common open space lot, shown on the definitive plan and labeled as such. Where the common open space is to be deeded to the Town or to a nonprofit corporation pursuant to Subsection **M(2)(b)** below, a clustered unit wastewater system shall be located upon a separate lot and owned by a corporation or trust, owned or to be owned, by the owners of lots or residential units within the development. Undivided interest in the wastewater treatment facility and the lot on which it is located shall pass with the conveyance of each building lot, or unit. The trust or corporation documents ensuring common ownership and management of the facility by the homeowners shall be submitted to the Planning Board with the definitive subdivision plan; and submitted to the Board of Health at the time of application of the definitive plan to the Planning Board.
  - (6) The homeowners corporation or trust shall be responsible for the operation, maintenance, repair and eventual replacement of the wastewater treatment facility, in accordance with all federal, state, Cape Cod Commission and Board of Health requirements, as a condition of approval of the open space residential development special permit.
- I. Water supply.
- (1) Public water supply shall ordinarily be required in open space residential developments, unless the applicant demonstrates that it cannot reasonably be made available to the site.
  - (2) In areas dependent upon private wells, a special permit for an open space residential development shall only be granted upon recommendation from the Board of Health, pursuant to MGL Ch. 41, § 81U, with the finding that contamination of private wells both on site and off site, will not occur, either because the development has been designed with sufficient distance between private wells, septic systems and drainage facilities, or because the applicant is providing an appropriately located clustered unit wastewater system.
  - (3) No variance shall be granted from Board of Health, well and on-site sewage disposal regulations, to waive the minimum separation distance between a public or private well and septic system, either on site or off site.
- J. Floodplains.
- (1) No developable lots or roads shall be located on barrier beaches and coastal dunes as defined by the Wetlands Policy Act, or within the FEMA V Zones.
  - (2) Filling, dredging and placement of utilities or structures within the one-hundred-year floodplain, as shown on the current National Flood Insurance Rate Maps, shall be avoided and development concentrated outside the A and B Flood Zones to the maximum extent feasible. If site conditions are such that compliance with this subsection would be impracticable, such activities may be allowed in conformity with § **240-34** herein.
- K. Preservation of site topographic features. The subdivision design shall preserve and enhance the natural topography of the land by locating roads and building sites in relationship to the existing topography so as to minimize the amount of land clearance, grading, and cuts and fills.
- L. Open space use, design and maintenance standards. Within an open space residential development, the balance of the area requirement for lot size shall be provided in common open

space, designated as an open space lot or lots on the subdivision plan. The common open space shall be used, designed, and maintained in accordance with the following standards:

- (1) As a condition of approval of the special permit, open space shall be retained as such, in perpetuity, and not built upon or developed, except as permitted by the Planning Board pursuant to Subsection L(5) below.
- (2) A minimum of 50% of the total upland area of the development shall be devoted to common open space, except that 60% shall be required where the minimum lot size of the zoning district exceeds one acre. Land set aside for roads, appurtenant drainage systems, and/or parking uses shall not be included in the percentage calculation of open space. The lot, or portion of an open space lot containing a clustered unit wastewater system, may be included in the open space minimum percentage requirement.
- (3) Open space land shall be designed as a large contiguous lot or lots. Strips or narrow parcels of common open space shall be permitted only when necessary for access or for walking trails, including linkages to adjacent trails. Open space shall be located so as to provide maximum protection to the environmental resources of the site and of adjacent lands. Priority natural resources areas are as follows and shall include but not be limited to the following areas:
  - (a) WP and GP Groundwater Protection Overlay Districts, as shown on the most current Groundwater Protection Overlay District Map, adopted as part of this chapter;
  - (b) Three-hundred-foot buffer zones to freshwater bodies and vernal pools; and two-hundred-foot riverfront buffer areas and vernal pools as defined according to 310 CMR 10.58;
  - (c) Critical and significant habitats as determined from the following sources: Cape Cod Critical Habitats Atlas, APCC, 1990; Cape Cod Wildlife Conservation Project, significant habitat maps, prepared by the Compact of Cape Cod Conservation Trusts Inc.; and any other town or county significant resource habitat maps;
  - (d) FEMA V, A and B Flood Zones as shown on the current National flood Insurance Rate Maps;
  - (e) Wetland and coastal habitats;
  - (f) Private supply wells;
  - (g) Adjacent open space; and historic structures and archeological sites.
- (4) Open space may also be used to provide a buffer from roadways, to protect steep slopes from development activities, and to preserve a scenic corridor along roadways. The Planning Board in approving an open space residential development shall take into consideration any report from the Planning Department, Conservation Department or Conservation Commission relative to the location and design of the open space lot or lots.
- (5) Common open space shall be maintained in an open and natural condition, without clearing, predominantly in its present condition, for the protection of natural habitats, except as permitted by the Planning Board as follows:
  - (a) Where the open space is to be owned by corporation or trust of homeowners, a maximum of 10% of the common open space may be developed for common recreational facilities. The location and type of recreational facilities shall be shown on the definitive open space subdivision plan. A minimum setback of 50 feet shall be provided between any common open space structure and adjacent lots.
  - (b) Naturally existing woods, fields, meadows and wetlands should be maintained and improved in accordance with good conservation practices. The Planning Board shall

require submission of a maintenance plan where improvements to, or on-going maintenance, would enhance the open space lot or lots.

- (c) Subject to approval of a management plan by the Planning Board, the following may be permitted: farming, agriculture, horticulture, silviculture, and the harvesting of crops, flowers and hay.
  - (d) The construction and maintenance of fences around the perimeter of the open space.
  - (e) The creation of unpaved walking paths, horseback riding trails or jogging paths for recreational use.
  - (f) The Planning Board may permit utility tie ins across open space, by an easement shown on the subdivision plan. Clearing should be no more than 10 feet in width, and the land promptly restored after installation. The Engineering Division of DPW shall be notified prior to the commencement of any clearance for utilities across open space.
- (6) In cases where the open space has been environmentally damaged prior to the completion of the development as a result of land clearance, grading, soil removal, excavation, harvesting of trees, refuse disposal, structures, or any other activity deemed inappropriate with the proposed uses of the common open space, the Planning Board may require the developer to restore or improve the condition and appearance of the common open space, and may require the posting of security, in a form and amount to be determined by the Planning Board, to ensure such restoration or improvement.

M. Common open space ownership and management.

- (1) The applicant for approval of an open space residential development special permit shall demonstrate to the Planning Board ownership and control of the open space. The Planning Board may require title insurance to the open space.
- (2) Upon approval by the Planning Board of the development concept, and subject to acceptance by the Town Council, the common open space shall be conveyed to and owned by one or more of the following entities:
  - (a) A nonprofit corporation, the principle purpose of which is the preservation of open space.
  - (b) A corporation or trust, owned or to be owned, by the owners of lots or residential units within the development. Undivided interest in the open space lot or lots shall pass with the conveyance of each building lot or unit.
  - (c) The Town for conservation purposes, or for a park in areas suitable for such purpose. No open space lot or lots shall be deeded to the Town without acceptance of the land by the Town Council and/or Town Manager, taking into consideration an advisory opinion of the Planning Board, Planning Department, Conservation Commission and/or Conservation Department, local or regional historic district and Historic Commission.
- (3) In those cases where the common open space is not conveyed to the Town, a restriction enforceable by the Town by Form 1A<sup>[3]</sup> shall be recorded, provided that such land shall be kept in open and in a natural state and not built upon for residential use or developed for accessory uses such as parking or roadways. The applicant shall provide an agreement empowering the Town to perform maintenance of the common open space in the event of failure to comply with the maintenance program, provided that, if the Town is required to perform any maintenance work, the owners of lots or units within the open space residential development shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid. Form 1A shall be fully executed and recorded with the development permits and approved subdivision plan.
 

[3] *Editor's Note: Form 1A can be found at the end of Chapter 801, Subdivision Rules and Regulations.*

- (4) In addition to the common open space required herein, the Planning Board may require that a developable lot or lots shall be set aside for the purpose of creating additional open space or recreational areas, pursuant to MGL Ch. 41, § 81U, for a period of not more than three years, during which time no clearing of the land or building shall be erected without approval of the Planning Board. Any such condition of approval shall be endorsed upon the definitive subdivision open space residential development plan.

N. Review procedures.

- (1) Prior to any application for an open space residential development, no land clearance, grading, cuts, fills, excavation, ditching, or utility installations shall occur, except for purposes of soil testing in accordance with all the requirements of the Subdivision Rules and Regulations,<sup>[4]</sup> on any part of the development site prior to development application submission and approval as provided for herein. Commencement of land clearance or grading of the land for the construction of access or development of lots prior to application may be grounds for denial of the special permit by the Planning Board.

[4] *Editor's Note: See Ch. 801, Subdivision Rules and Regulations.*

- (2) An application for an open space residential development special permit shall be submitted in conformity with the requirements and procedures for submission and review under the Subdivision Rules and Regulations of the Planning Board, and the following additional requirements in Subsection O below.

O. Preliminary plan requirements.

- (1) Applicants shall submit a preliminary plan to the Planning Board and the Board of Health prior to filing a formal special permit application, in order to obtain a consensus regarding the suitability of the open space residential development general design concepts, and to determine allowable density prior to submission of special permit application and definitive subdivision plan. In addition to the materials required for submission of a preliminary plan under the Subdivision Rules and Regulations, the preliminary materials shall include the following:
  - (a) Nine copies of a preliminary grid sketch plan, to demonstrate the number of buildable lots that can be obtained in conformance with the area requirements of the zoning district, and all the requirements of the Subdivision Rules and Regulations. Topographic information may be obtained from Information Technology, GIS unit.
  - (b) Two copies of the following maps for the development site as follows:
    - [1] USDA Natural Resources soil survey, maps and soil descriptions regarding the nature of the soils within the proposed development. The location of all test pit and soil logs shall be shown on the topographic plan, and soil log descriptions submitted to both the Planning Board and Engineering Division of DPW.
    - [2] Cape Cod Critical Habitats Atlas, APCC, 1990; Cape Cod Wildlife Conservation Project, significant habitat maps, prepared by the Compact of Cape Cod Conservation Trusts Inc.; and any other Town or county resource habitat maps; when these documents indicate critical or significant habitats on, or adjacent to the site.
  - (c) Nine copies of the proposed preliminary open space residential development plan showing the location and dimensions of all building lots, the location of open space lot or lots, the location and use of any common facilities or structures, including any proposed clustered unit wastewater system, and/or recreational facilities, the location of all ways and easements, private water supply wells within the site, and public and private water supply wells on adjacent properties, and such other improvements as may be proposed.
  - (d) A description of the proposed uses of the common open space and the preferred form of ownership and maintenance thereof.

(e) The Planning Board shall notify all abutters within 300 feet of the perimeter of the subdivision of the date, time and place that the preliminary plan will be considered, in order to receive input on the overall plan design, prior to application for the special permit and definitive plan approval.

(2) Within 45 days after the receipt of a complete preliminary plan application as specified herein, the Planning Board shall give its approval, with or without modifications, or shall disapprove the proposal stating its reasons. The Town Clerk shall be notified in writing of such action. Preliminary approval for an open space residential development shall be valid for a period of six months.

P. Definitive application.

(1) Applicants for a special permit for open space residential development shall, at the time of filing the application, submit a definitive subdivision open space residential development plan in conformity with § **240-17** herein, and the Subdivision Rules and Regulations of the Planning Board.<sup>[5]</sup> The plan shall be derived from the approved preliminary concept plan required above. In addition to the materials required for submission of a definitive subdivision plan, the applicant shall submit documents signed by all owners and applicants as follows: deed of open space lot or lots to the Town, to a corporation, trust of homeowners, or to a nonprofit conservation organization; the corporation or trust documents; and Form 1A where applicable.<sup>[6]</sup>

[5] *Editor's Note: See Ch. 801, Subdivision Rules and Regulations.*

[6] *Editor's Note: Form 1A is included at the end of Ch. 801, Subdivision Rules and Regulations.*

(2) The definitive development plan shall show the location of a cluster unit wastewater system or recreational facilities, if any.

(3) The definitive plan shall indicate the limit of clearing along roadways, within both building lots and the open space lot or lots, and around any commonly owned facilities.

(4) A maintenance plan for the open space lot or lots shall be submitted where required.

(5) A note shall appear on the plan to the effect that "No lot as shown on this plan and approved in accordance with the open space residential development provisions of the Zoning Ordinance of the Town of Barnstable shall be further divided."

(6) Upon receipt of an open space residential development application, the Planning Board shall proceed as with applications for special permits under MGL Ch. 40A. Hearings on an application for a special permit under this section shall be held simultaneously with definitive subdivision plan review hearings.

Q. Approved open space residential developments.

(1) Within 30 days of the Planning Board's endorsement of approval of the subdivision plan, the applicant shall record the plan, together with the following documents: the decision of the Planning Board; the deed of open space to the Town, or to a trust or corporation, or to a nonprofit conservation organization; Form 1A; the trust or corporation documents; as well as development agreements and covenants required under the Subdivision Rules and Regulations. Failure to comply with this provision shall result in the Planning Board approval being considered null and void. Upon application to the Planning Board, the Board may extend the thirty-day recordation period for good cause.

(2) Period of validity: The provisions of § **240-125C(3)** shall apply.  
[Amended 5-7-2009 by Order No. 2009-077]

(3) A request to modify the open space residential development subdivision plan requiring a change in the configuration of the open space, or the road right-of-way shall require a duly noticed public hearing and notification of all parties in interest, pursuant to MGL Ch. 40A, § 15. The Planning Board shall decide whether or not the addition of recreational facilities or a

change in location of such facilities shall constitute a modification of the approved plan. If lots have been conveyed out on an individual basis, the applicant for a modification of the special permit and/or installation of recreational facilities shall provide the Planning Board with evidence of the power to act upon the behalf of the corporation or trust of owners of the open space.

- R. An application for endorsement of approval-not-required plans to adjust lot lines between abutting lot owners, not involving open space lot lines or road right-of-way lines, shall not be considered a modification of the subdivision, or require notice to owners or abutters, provided that such plan and building locations comply with all the requirements of § 240-17 herein.

## § 240-17.1. Private-initiated affordable housing development.

[Added 11-18-2004 by Order No. 2004-114]

- A. Purpose. The purpose of this section is to authorize by special permit privately initiated affordable housing by for-profit or not-for-profit organizations that:
- (1) Provide for residential development in a manner that is consistent with existing neighborhood development in terms of density and housing types; and
  - (2) Authorize an increase in the permissible density of housing in a proposed development, provided that the applicant shall, as a condition for the grant of said special permit, provide housing for persons of low or moderate income.
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

### **AFFORDABLE UNIT**

A dwelling unit reserved in perpetuity for ownership by a household earning less than 80% of area median family income, and priced to conform with the standards of the Massachusetts Department of Housing and Community Development (DHCD) for ownership units set forth in 760 CMR 45.03(4), in order that such affordable units shall be included in the DHCD Subsidized Housing Inventory.

### **APPLICANT**

The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit for construction of a private-initiated affordable housing development (PI-AHD) hereunder. The applicant must own, or be the beneficial owner of, all the land included in the proposed PI-AHD, or have authority from the owner(s) to act for the owner(s) or hold an option or contract duly executed by the owner(s) and the applicant giving the latter the right to acquire the land to be included in the site.

### **BEDROOM**

A separate room within a dwelling unit intended for, or which customarily could be used for, sleeping.

### **PRIVATE INITIATED AFFORDABLE HOUSING DEVELOPMENT (PI-AHD)**

A development of single-family residential dwellings (detached), including required affordable units, and permissible accessory structures on seven acres or more authorized by special permit from the Planning Board as set forth herein.

- C. Application.
- (1) An application for a special permit for a PI-AHD shall be submitted to the Planning Board on forms furnished by the Planning Board, accompanied by the following:
    - (a) Information pertaining to any association which the applicant proposes to form for the private management of the PI-AHD.



- (b) Copies of all proposed documents as required for the subdivision, including architectural rendering and layouts of proposed homes to be built and landscaping plans.
  - (c) Copies of proposed deed restrictions and monitoring agreements, drafted consistent with all requirements of 760 CMR 45 Local Initiative Program (LIP), and guidelines promulgated thereunder assuring the affordable units remain affordable in perpetuity, and assuring the resale of affordable units at the restricted price, and providing a right of first refusal in favor of the Town.
- (2) Copies of the application and accompanying materials shall be transmitted forthwith to the Barnstable Housing Committee for review and comment. Said Committee shall have 45 days after receipt thereof to make written recommendations to the Planning Board. Failure to make such written recommendation shall be deemed a lack of opposition thereto.
- D. Standards. In order to be eligible for consideration for a special permit, the proposed PI-AHD shall meet all of the following standards:
- (1) Qualifying area. The site shall be located entirely within the RC-1 Zoning District and shall contain at least seven contiguous upland acres.
  - (2) Compliance with applicable regulations and standards. All plans and development shall comply with all applicable standards of the Planning Board's Subdivision Rules and Regulations, including such waivers as may be granted by the Planning Board.<sup>[1]</sup>  
 [1] *Editor's Note: See Ch. 801, Subdivision Regulations.*
  - (3) Wastewater. All dwellings within the PI-AHD shall be connected to the municipal wastewater treatment facility.
  - (4) Lot shape factor. The numerical lot shape factor as required in § 240-7D of the Zoning Ordinance shall not apply. However no panhandled lot shall be created to a depth greater than two lots from the principal way.
  - (5) Bulk regulations. For all lots and building within the PI-AHD, the following bulk regulations shall apply:

Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
			Front	Side	Rear	
10,000	50; 20 for a lot on the radius of a cul-de-sac	65 <sup>(1)</sup>	15 <sup>(3)</sup>	10 <sup>(4)</sup>	20 <sup>(4)</sup>	30 <sup>(5)</sup>

**Notes:**

- (1) The Planning Board may grant a waiver to the lot width requirement to individual lots located on the radius of a cul-de-sac, provided that the grant of the waiver will result in a proper alignment of the home to the street.
  - (2) Accessory structures that require a building permit shall be required to conform to all setback requirements.
  - (3) Accessory garages, whether attached or detached, shall require a minimum front yard setback of 20 feet.
  - (4) The Planning Board may require a planted buffer area within any required rear or side yard setback area.
  - (5) Or 2 1/2 stories, whichever is less.
- (6) Parking. A minimum of two on-site parking spaces per dwelling unit shall be provided. A one-car garage shall count as one parking space. A two-car garage shall count as two parking spaces.

- (7) Phasing. The applicant, as part of the application for subdivision approval, may propose a phasing plan identifying the number of building permits requested to be issued in each year of the phasing plan. The Planning Board, upon a finding of good cause, may vary the provisions of § 240-114A and B and § 240-115B(1) through (3) herein and allow for the allocation to the applicant of the number of building permits proposed in the phasing plan or any different number that the Planning Board deems appropriate, provided that, at the time of the granting of the special permit, the determined number of building permits are available and that no more than 1/4 of each year's allocation under § 240-114A and B shall be allocated to the applicant. Every permit allocated to the applicant by the Planning Board shall be included as part of the yearly building permit allocations under § 240-114A and B. There shall be no extension of a building permit granted under a phasing plan, and any unused and/or expired permits shall be credited back as part of the adjustments under § 240-114D for the next calendar year.
  - (8) Visitability. The Planning Board may require that some or all of the dwelling units provide access for visitors in accordance with the recommendations of the Barnstable Housing Committee.
- E. Affordable units. At least 20% of the dwelling units shall be affordable units, subject to the following conditions:
- (1) The affordable unit shall be affordable in perpetuity. A deed rider shall assure this condition. The deed rider shall be structured to survive any and all foreclosures.
  - (2) The continuing enforcement of the deed rider through subsequent resale of the affordable units shall be the subject of a monitoring agreement.
  - (3) The deed rider and the monitoring agreement shall be drafted in compliance with 760 CMR 45.00 Local Initiative Program (LIP) and guidelines promulgated thereunder. The deed rider and the monitoring agreement shall be subject to review and approval by the Planning Board and approved as to form by the Town Attorney's office prior to the issuance of a certificate of occupancy for any dwelling unit.
  - (4) The affordable unit shall conform to the standards of the Department of Housing and Community Development (DHCD) for inclusion in the DHCD Subsidized Housing Inventory.
  - (5) A right of first refusal upon the transfer of such affordable units shall be granted to the Town or its designee for a period not less than 120 days after notice thereof.
  - (6) The affordable units shall not be segregated within the PI-AHD. The affordable units shall satisfy the design and construction standards and guidelines of the Local Initiative Program, 760 CMR 45.00, with regard to distinguishability from market rate units. It is the intent of this section that the affordable units shall be eligible for inclusion in the DHCD Subsidized Housing Inventory as LIP units.
  - (7) The affordable units shall be constructed and occupancy permits issued at the rate of one affordable unit for every four market rate units.
  - (8) In computing the number of required affordable units, any fraction of a unit shall be rounded up, and the result shall be the number of affordable units to be built within the PI-AHD and not off site.
  - (9) No special permit shall be granted unless the affordable dwelling units have been approved by the DHCD as eligible for the Affordable Housing Inventory under 760 CMR 45.00, the LIP Program.
- F. Decision. The Planning Board may grant a special permit for a PI-AHD where it makes the following findings:
- (1) The proposed PI-AHD complies with all applicable Subdivision Rules and Regulations, the Zoning Ordinance and the requirements of this section except as they may be waived by the

Board;

- (2) The proposed PI-AHD provides affordable units consistent with the requirements set forth herein;
  - (3) The proposed PI-AHD does not cause substantial detriment to the neighborhood.
- G. Relation to other requirements. The submittals and special permit required herein shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Ordinance.

## § 240-18. (Reserved)

- [1] *Editor's Note: Former § 240-18, PR Professional Residential District, as amended, was repealed 7-14-2005 by Order No. 2005-100.*

## § 240-19. (Reserved)

- [1] *Editor's Note: Former § 240-19, OR Office Residential District, as amended, was repealed 7-14-2005 by Order No. 2005-100.*

## § 240-20. West Barnstable Village Business District.

- A. Purpose and intent. The purposes and intent of this section is to guide development and redevelopment in West Barnstable Village Business District so that it:
- (1) Promotes a location-appropriate scale and traditional mix of business, institutional and residential land uses that contribute to and respect the historic character and historic neighborhood development patterns.
  - (2) Acknowledges the historic context of the village and preserves or enhances historic buildings or other historic resources.
  - (3) Protects and preserves the historic and scenic streetscape.
  - (4) Provides a variety of functions that support residents' day-to-day use of the district.
  - (5) Supports and enhances the diverse local economy and retains established village goods and service offerings.
  - (6) Preserves and protects the traditional New England village character of West Barnstable through architectural design that replicates in scale and character the best examples of traditional neighborhood design from the historic towns and villages of Cape Cod and New England to enhance the aesthetic quality of Barnstable as a whole.
  - (7) Conforms with the Old Kings Highway Regional Historic District Act.
  - (8) Is consistent with the Barnstable Comprehensive Plan and the West Barnstable Village Plan.
- B. The following uses are permitted in the WBVBD, provided that no operation shall result in the treatment, generation, storage or disposal of hazardous materials, except as follows: household quantities; waste oil retention facilities for small-scale retailers of motor oil required and operated in compliance with MGL c. 21 § 52A; oil on site for heating of a structure or to supply an emergency generator.
- (1) Principal permitted uses.

- (a) Single-family residential dwelling. A single-family residential dwelling may be freestanding or attached to a building also used for nonresidential uses. More than one single-family residential dwelling per lot is permitted as long as there is a minimum of one acre per single-family dwelling, but in no case will more than one principal permitted single-family residential dwelling be contained in any one building.
  - (b) Small-scale retail store.
  - (c) Professional, business or medical office.
  - (d) Office of a bank, credit union, savings and loan or other financial institution.
- (2) Accessory uses. The following uses are permitted as accessory uses in the WBVBD:
- (a) Bed-and-breakfast operation within an owner-occupied single-family residential structure, subject to the provisions of § **240-11C(6)** except Subsection **C(6)(b)[1]** and **[2]**. No more than three total rooms shall be rented to not more than six total guests at any one time in the WBVBD. No special permit shall be required in the WBVBD. For the purposes of this section, children under the age of 12 years shall not be considered in the total number of guests.
  - (b) Automated banking facilities (ATM) shall be located within a principal building and shall not be accessed from the exterior of the building.
  - (c) Accessory apartments as provided for in the Town of Barnstable Code, Chapter **9**, Affordable Housing, Article **II**, Accessory Apartments and Apartment Units.
- (3) Special permit uses. The following uses are permitted, provided that a special permit is first obtained from the Special Permit Granting Authority (SPGA) subject to the provisions of § **240-125C** herein and subject to the specific standards for such uses as required in this section:
- (a) Artisans and craftspeople.
  - (b) Personal service business.
  - (c) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy subject to the provisions of § **240-44.1**.
- (4) Special permit performance standards. In addition to the standards for the grant of a special permit set forth in § **240-125C**, the grant of any special permit within the WBVBD requires findings to support that the development meets the following criteria:
- (a) Is compatible with and supports the purpose and intent of this section.
  - (b) Mitigates impacts to safety and congestion from development.
  - (c) Protects and preserves water supply for both drinking water and fire protection.
  - (d) Stormwater shall be contained on site and mitigated using best management practices.
  - (e) Manages waste, by-products and other debris that may be associated with artisan and craft use in a manner compatible with abutting or nearby residential uses.
  - (f) Does not generate noise, vibration, smoke, dust or other particulate matter, odors, heat, glare or intrude with similar nuisance on abutting or nearby residential uses.
  - (g) Storage of all raw material and finished product associated with artisan or craft use shall be stored within a duly permitted permanent structure. All outdoor storage associated with artisan or craft use is prohibited.
  - (h) Deliveries may take place not sooner than one hour before, or later than one hour after the permitted operating hours of a business.

- (i) Vehicles are prohibited from running motors, refrigeration units or other mechanical units outside of permitted hours of operation.

(5) Bulk regulations.

Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
			Front <sup>3</sup> (feet)	Side (feet)	Rear (feet)		
43,560	160	—	30	30	30	30 <sup>1</sup>	10 <sup>2</sup>

**NOTES:**

<sup>1</sup> Or two stories, whichever is lesser

<sup>2</sup> No more than 33% of the total upland area of any lot shall be made impervious by the installation of buildings, structures and paved surfaces.

<sup>3</sup> Front yard landscaped setback from the road lot line: 20 feet. Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

- (6) Nonconforming use limitations. Within the WBVBD the change of a nonconforming use to another nonconforming use is prohibited notwithstanding the provisions of § 240-94A. A nonconforming use shall only be permitted to change to a principal permitted use as of right or to a special permit use as provided for by the grant of a special permit pursuant to § 240-20B(3) and (4) herein.
- (7) Corporate branding. Buildings, colors, signage, architectural features, text, symbols, graphics, other attention-getting devices and landscape elements that are trademarked, branded or designed to identify with a particular formula business chain or corporation are prohibited. All structures and sites shall be designed to include architectural and design elements that are consistent with the WBVBD architectural composition, character, and historic context. Interior corporate branding elements shall not be visible to the street through windows, doors or by any other means. The Town will work with applicants to adapt critical functional features of prototype plans to their sites, but will not accept standard plans, building forms, elevations, materials, or colors that do not relate to the site, adjacent development or West Barnstable community character.
- (8) Site development standards. In addition to Article IX, Site Plan Review, and Article VI, Off-Street Parking, the following additional requirements shall apply within the WBVBD.
  - (a) Loading docks. Loading docks shall be screened from Meetinghouse Way (Route 149), Main Street (Route 6A), Lombard Avenue, Navigation Road, Packet Landing Road and Whitecap Lane with landscaping or fencing materials of an appropriate scale.
  - (b) To the greatest extent feasible, all new parking areas shall be located to the side and rear of the building. Parking is not permitted in the required front yard setback with the exception of parking required by ADA compliance as determined by the Building Commissioner.
  - (c) Curb cuts and driveways.

- [1] Shared driveways and parking area interconnections are strongly encouraged. No more than one curb cut on Meetinghouse Way (Route 149, Main Street (Route 6A), Lombard Avenue, Packet Landing Road, Navigation Road and Whitecap Lane shall be allowed for any lot. For traffic safety and to reduce traffic congestion, no new driveways shall be permitted on Route 149, Route 6A, Lombard Avenue and Whitecap Lane within 200 feet of any intersection.
- [2] Driveways shall not exceed the width required by site plan review.
- (d) Lighting. In no case shall exterior or outdoor lighting cause glare that impacts motorists, pedestrians or neighboring premises.
- [1] All exterior lighting shall use full cutoff light fixtures in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted.
- [2] Up-lighting is prohibited.
- (9) Definitions. The following terms are defined in the WBVBD and shall not be construed to apply to other regulations.

#### **ARTISAN OR CRAFTSPERSON USE**

A small-scale use that typically employs one or two people who practice craft or artisan activities. A key feature of works produced by artisans or craftspeople is the high degree of manual expertise involved. The use must be compatible with abutting and nearby residential and nonresidential uses. The following is included in the definition of "artisan or craftsperson use:"

##### **(a) ARTISAN OR CRAFTSPERSON**

A person using manual skills to produce, in limited quantities, ornamental or functional works in ceramic, glass, metal, paper, wood or textiles. Examples include, without limitation, the following: drawing, painting, sculpture, pottery, photography, graphic design, interior design, fashion design, jewelry making, wood turning, glass blowing, furniture making, small wooden boat building, upholstering and weaving.

#### **PERSONAL SERVICE**

Establishments engaged in the provision of services, but not goods, of a personal nature to individuals and households. Such establishments include barbershop, beauty salon, clothing repair or seamstress shop, shoe repair shop, florist and day spas. Personal service establishments that are not commonly found in rural village environments such as check cashing services, fortune tellers, psychics, palm readers and similar services, spas and hot tubs for rent, tanning, piercing and similar services are prohibited.

#### **SMALL-SCALE RETAIL STORE**

Small stores and businesses, including but not limited to, corner groceries, bookstore, galleries and other small retail uses typically found in small New England towns. Small-scale retail does not include retail or commercial buildings or storage designed to serve a large volume of customers, e.g. gasoline and oil filling stations, garages for automotive repair. Small-scale retail is subject to corporate branding limitations as described herein and shall not include drive-through window service.

- [1] *Editor's Note: Former § 240-20, O-1, O-2 and O-3 Office Districts, as amended, was repealed 7-14-2005 by Order No. 2005-100.*

## **§ 240-21. B, BA and UB Business Districts.**

[Amended 2-20-1997; 3-11-1999 by Order No. 99-056]

- A. Principal permitted uses. The following uses are permitted in the B, BA and UB Districts:

- (1) Retail and wholesale store/salesroom.
- (2) Retail trade service or shop.
- (3) Office and bank.
- (4) Restaurant and other food establishment.
- (5) Place of business of baker, barber, blacksmith, builder, carpenter, caterer, clothes cleaner or presser, confectioner, contractor, decorator, dressmaker, dyer, electrician, florist, furrier, hairdresser, hand laundry, manicurist, mason, milliner, news dealer, optician, painter, paper hanger, photographer, plumber, printer, publisher, roofer, shoemaker, shoe repairer, shoe shiner, tailor, tinsmith, telephone exchange, telegraph office, undertaker, upholsterer, wheelwright.
- (6) Gasoline and oil filling stations and garages.
- (7) Hotel/motel subject to the provisions of Subsection **F** herein, except that hotels/motels shall be prohibited in the BA District and prohibited in the Osterville UB District.
- (8) Any other ordinary business use of a similar nature.
- (9) Multifamily dwellings (apartments) subject to the provisions of Subsection **A(9)(a)** through **(i)** herein, except that multifamily dwellings shall be prohibited in the BA District.  
[Amended 7-14-2005 by Order No. 2005-100]
  - (a) The minimum lot area ratio shall be 5,000 square feet of lot area per each apartment unit for new multifamily structures and conversions of existing buildings.
  - (b) The maximum lot coverage shall be 20% of the gross upland area of the lot or combination of lots.
  - (c) The maximum height of a multifamily dwelling shall not exceed three stories or 35 feet, whichever is lesser.
  - (d) The minimum front yard setback shall be 50 feet or three times the building height, whichever is greater.
  - (e) The minimum side and rear yard setbacks shall be not less than the height of the building.
  - (f) A perimeter green space of not less than 20 feet in width shall be provided, such space to be planted and maintained as green area and to be broken only in a front yard by a driveway.
  - (g) Off-street parking shall be provided on site at a ratio of 1.5 spaces per each apartment unit and shall be located not less than 30 feet from the base of the multifamily dwelling and be easily accessible from a driveway on the site.
  - (h) No living units shall be constructed or used below ground level.
  - (i) The Zoning Board of Appeals may allow by special permit a maximum lot coverage of up to 50% of the gross area of the lot or combination of lots.
  - (j) Multifamily dwellings (apartments) for active adult or assisted living located in the IND District, where the project includes a total project land area of 24 acres or more and is subject to a Senior Continuing Care Retirement Community Overlay District (SCCRCOD) (§ **240-29**), the following regulations shall apply in lieu of all other bulk and dimensional, parking, landscaping, screening, and setbacks as may otherwise be applicable, and which shall apply to the entire project land area as if it were one lot, even though it may be composed of more than one lot, which lots may be separated by a street or way:  
[Added 5-19-2016 by Order No. 2016-146]

- [1] Minimum total project land area of 24 acres, including therein any streets or ways.
  - [2] Minimum project land area ratio shall be 3,000 square feet of project land area per each dwelling unit.
  - [3] Maximum building height shall be 60 feet/five stories.
  - [4] Minimum front yard setback: 30 feet.
  - [5] Landscape buffers (driveways, signage, lighting and walkways excepted):
    - [a] Front yard: 20 feet.
    - [b] Side and rear yard: 10 feet.
  - [6] Parking.
    - [a] For active adult dwelling units, off-street parking shall be provided at a ratio of 0.75 resident space per dwelling unit, 0.5 guest space per dwelling unit, and 0.75 employee space per five dwelling units;
    - [b] For assisted living dwelling units, off-street parking shall be provided at a ratio of 0.5 resident space per dwelling unit, 0.5 guest space per dwelling unit, and 0.75 employee space per five dwelling units.
  - [7] To the extent a project developed pursuant to this § **240-21A(9)(j)** is also subject to the Groundwater Protection Overlay District regulations set forth in § **240-35**, the lot coverage and site clearing requirements of such § **240-35** shall be calculated using the entire project land area as described in this section. All allowed impervious area may be located on an individual lot within the project land area, provided the impervious area requirements are met over the entire project land area.
- (10) Single-family residential structure (detached), except that single-family residential structures shall not be permitted in the B District.
- B. Accessory uses.
- (1) Bed-and-breakfast operation within an owner-occupied single-family residential structure, subject to the provisions of § **240-11C(6)** except Subsections **(b)[1]** and **[2]**. No more than six total rooms shall be rented to not more than 12 total guests at any one time, and no special permit shall be required. For the purposes of this section, children under the age of 12 years shall not be considered in the total number of guests. Bed-and-breakfast operations shall not be permitted in the B District.
- C. Conditional uses. The following uses are permitted as conditional uses in the B, BA and UB Districts, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § **240-125C** herein and the specific standards for such conditional uses as required in this section:
- (1) Storage yards for coal, oil, junk, lumber or any business requiring use of a railroad siding; such uses being provided for in the B District only.
  - (2) A building or place for recreation or amusement but not to include a use which is principally the operation of coin-operated amusement devices; such uses being provided for in the B District only.
  - (3) Any manufacturing use; such uses being provided for in the B District only.
  - (4) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
  - (5) Public or private regulation golf courses subject to the provisions of § **240-11C(2)** herein.



D. Special permit uses. (Reserved for future use.)

E. Bulk regulations.

Zoning Districts	Minimum Yard Setbacks						Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Front (feet)	Side (feet)	Rear (feet)		
B	—	20	—	20 <sup>1</sup>	—	—	30 <sup>3</sup>	—
BA	—	20	—	20	—	—	30 <sup>3</sup>	35
UB	—	20	—	20 <sup>2</sup>	0 <sup>2</sup>	0 <sup>2</sup>	30 <sup>3</sup>	35

NOTES:

- <sup>1</sup> One hundred feet along Routes 28 and 132.
- <sup>2</sup> Fifty feet when abutting a residentially zoned area.
- <sup>3</sup> Or two stories, whichever is lesser.

Front yard landscaped setback from the road lot line:

B Business District: 10 feet, except 50 feet along Attucks Lane Extension and Independence Drive.

BA District: 10 feet.

UB District: 10 feet.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein

F. Special hotel/motel provisions. In addition to the provisions of Subsection E, hotels and motels shall be developed only in conformance with the following:

- (1) The minimum lot area ratio shall be 2,500 square feet of lot area per each of the first 10 hotel/motel units, and an additional 250 square feet of lot area per each unit in excess of 10.
- (2) The minimum lot frontage shall be 125 feet.
- (3) The maximum lot coverage for all buildings shall not exceed 30% of the gross land area.
- (4) In addition to the parking requirements of § 240-54 herein, there shall be two additional off-street parking spaces provided per each 10 hotel/motel units or fraction thereof.
- (5) The minimum front yard setback shall be 30 feet.
- (6) The minimum total side yard setback shall be 30 feet; provided, however, that no allocation of such total results in a setback of less than 10 feet.
- (7) The minimum rear yard setback shall be 20 feet.
- (8) No other uses shall be permitted within the required yard setbacks, except driveways in a required front yard. All yard areas shall be appropriately landscaped and adequately maintained.
- (9) A site plan for each development or addition shall be submitted to the Building Commissioner along with the request for a building permit. The site plan shall include, but not be limited to,

all existing and proposed buildings, structures, parking, driveways, service areas and other open uses, all drainage facilities and all landscape features such as fences, walls, planting areas and walks on the site.

## § 240-22. (Reserved)

[1] *Editor's Note: Former § 240-22, BL-B Business District, as amended, was repealed 7-14-2005 by Order No. 2005-100.*

## § 240-23. MB-A1, MB-A2 and MB-B Business Districts.

- A. Principal permitted uses. The following uses are permitted in the MB-A1, MB-A2 and MB-B Districts:
- (1) Commercial marina to include the berthing, building, sale, rental, storage and repair of boats, including the storage of boats on racks within the MB-A1 and MB-A2 Business Districts, subject to the provisions of Subsection **A(6)** below, and the installation and maintenance of docks, piers, ramps, floats and moorings.
  - (2) Retail sale of marine fishing and boating supplies, marine electronics, marine motors and marine communication equipment.
  - (3) Retail sale of fishing bait, fish and shellfish, such uses being provided for in the MB-B District only.
  - (4) Commercial fishing, not including commercial canning or processing of fish; such use being provided for in the MB-B District only.
  - (5) Whale-watching facility, such use being provided for in the MB-B District only.
  - (6) Storage of boats on racks within the MB-A1 Business District subject to the following provisions:
    - (a) There shall be no more than 30 boats stored on racks for seasonal use (June 15 through Sept. 15);
    - (b) There shall be no launching or hauling of boats stored on racks for seasonal use before 8:00 a.m. or after 6:00 p.m.;
    - (c) There shall be unlimited year-round rack storage of boats that are not stored for seasonal use; and
    - (d) Any process by which seasonally used boats are launched and hauled, such as but not limited to by forklift or crane, shall be undertaken in a manner in which to minimize noise.
  - (7) Craft boat building, including the berthing, sale, rental, storage and repair of boats, including the storage of boats on racks within the MB-A1 and MB-A2 Business Districts, subject to the provisions of Subsection **A(6)** and the installation and maintenance of docks, piers, ramps, floats, and moorings.  
[Added 6-1-2017 by Order No. 2017-102]
- B. Accessory uses. The following uses are permitted as accessory uses to principal permitted use, Subsection **A(1)**, Commercial marina, above.
- (1) Retail sale of fuel to marine vessels only.
  - (2) Not more than one apartment for occupancy by the marina owner or by staff employed at the marina.

C. Conditional uses. The following uses are permitted as conditional uses in the MB-A1 and MB-A2 and MB-B Districts, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Restaurant, such use being provided for in the MB-B District only.
- (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.

D. Special permit uses.

- (1) In the MB-A1 and MB-A2 Districts only, the retail sale of marine-related equipment, sporting-goods-type clothing, marine-related decorative goods and furnishings, as an accessory use to principal permitted use, Subsection A(1) above only

E. The following use limitations shall apply within the MB-B only:

[Added 3-18-2010 by Order No. 2010-068<sup>[1]</sup>]

- (1) Use limitations: A permitted retail establishment, lodging establishment, restaurant, or take-out food establishment shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized ("formula") array of services and/or merchandise, trademark, logo, service mark, symbol, decor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than eight other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.
- (2) Corporate branding prohibition: Buildings, colors, signage, architectural features, text, symbols, graphics, other attention-getting devices and landscape elements that are trademarked, branded or designed to identify with a particular formula business chain or corporation are prohibited. Interior corporate branding elements shall not be visible to the street through windows, doors or any other means.

[Amended 9-8-2011 by Order No. 2011-138]

[1] *Editor's Note: This order also redesignated former Subsection E as Subsection G.*

F. (Reserved)

G. Bulk regulations.

[Amended 3-11-1999 by Order No. 99-058; 7-19-2001 by Order No. 2001-099; 6-1-2017 by Order No. 2017-102]

Zoning District	Minimum Lot Area (square feet)	Minimum Yard Setbacks (feet)					Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
		Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Front	Side	Rear		
MB-A1	10,000	20	—	—	—	—	30 <sup>1</sup>	—
MB-A2								
MB-B	7,500	20	75	10	30 <sup>2</sup>	30	30 <sup>1</sup>	—

<sup>1</sup> Or two stories, whichever is lesser

<sup>2</sup> The minimum total side yard setback shall be 30 feet, provided that no allocation of such total results in a setback of less than 10 feet, except abutting a residential district, where a minimum of 20 feet is required.

NOTE:

- A. Front yard landscaped setback from the road lot line:

MB-A1 and MB-A2 Business District: 10 feet.

MB-B Business District: 10 feet.

- B. Side/rear yard landscaped setback from residential lot lines:  
 MB-A1 Business District: 50 feet.
- C. Existing trees and shrubs shall be retained within the road right-of-way and within the required landscaped setbacks and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscape areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

## § 240-24. VB-A Business District.

[Amended 11-7-1987 by Art. 5; 10-4-1990 by Order No. 90-68; 2-20-1997; 1-7-1999; 3-11-1999 by Order No. 99-058]

- A. Principal permitted uses. The following uses are permitted in Subsections (1) through (5) below in the VB-A:  
 [Amended 9-8-2011 by Order No. 2011-138]
- (1) Single-family residential dwelling (detached).
  - (2) Retail store.
  - (3) Professional or business office.
  - (4) Branch office of a bank, credit union, or savings and loan institution.
  - (5) Personal service business.
- B. Accessory uses. The following uses are permitted as accessory uses in the VB-A District:
- (1) Apartments, provided they are:
    - (a) Accessory to uses listed in Subsection **A(2)** through **(5)** herein; and
    - (b) Located above the first floor only; and
    - (c) Comply with the standards of § 240-19A(10)(a) through (h) herein.
  - (2) Bed-and-breakfast operation within an owner-occupied single-family residential structure, subject to the provisions of § **240-11C(6)** except Subsections **(b)[1]** and **[2]**. No more than six total rooms shall be rented to no more than 12 total guests at any one time in the VB-A Business District. No special permit shall be required in the VB-A Business District. For the purposes of this section, children under the age of 12 years shall not be considered in the total number of guests.  
 [Amended 9-8-2011 by Order No. 2011-138]
- C. Conditional uses. The following uses are permitted as conditional uses in the VB-A District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § **240-125C** herein and subject to the specific standards for such conditional uses as required in this section:
- (1) Restaurant or other food-service establishment, but not including drive-in restaurants.
  - (2) Gasoline and oil filling stations subject to the following:

- (a) There shall be no sale of vehicles on the same premises; and
  - (b) There shall be no storage of vehicles on the premises.
- (3) Auto service and repair shops subject to the following:
- (a) Such use shall be limited to two service/repair bays; and
  - (b) There shall be no sale of vehicles on the same premises; and
  - (c) Any outside storage of vehicles shall be screened from view to a height of six feet; and
  - (d) Any stored vehicles shall bear a current vehicle registration.
- (4) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, subject to the following:
- (a) Such use remains accessory to a principal use permitted in Subsection **A** herein; and
  - (b) A building permit shall be obtained prior to commencement of construction of such use.
- (5) Place of business of blacksmith, decorator, upholsterer or undertaker.
- (6) Telephone exchange.
- (7) Place of business of building trades subject to the following:
- (a) Not more than three full-time employees shall be on the premises at any time; and
  - (b) Any outside parking of commercial vehicles or equipment shall be screened from view to a height of six feet; and
  - (c) Any outside storage of materials or supplies shall be screened from view to a height of six feet, and shall be stored to a height not exceeding six feet.
- (8) Light manufacturing uses subject to the following:
- (a) The building housing such use shall not exceed 2,000 square feet of gross floor area; and
  - (b) The screening standards of Subsection **C(7)(b)** and **(c)** herein.
- (9) Storage yard for coal, oil, lumber, or other business dependent on using a railroad siding subject to the following:
- (a) The screening standards of Subsection **C(7)(b)** and **(c)** herein.
- D. (Reserved)<sup>[1]</sup>
- [1] *Editor's Note: Former Subsection D, Conditional uses, was repealed 9-8-2011 by Order No. 2011-138.*
- E. The following use limitations shall apply within the Barnstable Village VB-A only:  
[Added 3-18-2010 by Order No. 2010-068]
- (1) Use limitations: A permitted retail establishment, lodging establishment, restaurant, or take-out food establishment shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized ("formula") array of services and/or merchandise, trademark, logo, service mark, symbol, decor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than eight other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.
  - (2) Corporate branding prohibition: Buildings, colors, signage, architectural features, text, symbols, graphics, other attention-getting devices and landscape elements that are

trademarked, branded or designed to identify with a particular formula business chain or corporation are prohibited. Interior corporate branding elements shall not be visible to the street through windows, doors or any other means.  
 [Amended 9-8-2011 by Order No. 2011-138]

F. Bulk regulations.  
 [Amended 9-8-2011 by Order No. 2011-138]

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front (feet)	Side (feet)	Rear (feet)		
VB-A	10,000	20	100	10	30 <sup>2</sup>	20	30 <sup>1</sup>	25

NOTES:

- <sup>1</sup> Or two stories, whichever is lesser
- <sup>2</sup> The minimum total side yard setback shall be 30 feet, provided that no allocation of such total results in a setback of less than the 10 feet, except abutting a residential district, where a minimum of 20 feet is required.
- <sup>3</sup> No more than 33% of the total upland area of any lot shall be made impervious by the installation of buildings, structures and paved surfaces.

Front yard landscaped setback from the road lot line:

VB-A 10 feet.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

## § 240-24.1. Hyannis Village Zoning Districts.

[Added 7-14-2005 by Order No. 2005-100]

[1] *Editor's Note: The specific regulations for the Hyannis Village Zoning District are found in §§ 240-24.1.1 through 240-24.1.12.*

### § 240-24.1.1. Title.

[Added 7-14-2005 by Order No. 2005-100]

These districts shall be known as the "Hyannis Village Zoning Districts."

### § 240-24.1.2. General provisions.

[Added 7-14-2005 by Order No. 2005-100]

- A. Effective date: This section shall become effective upon the adoption of a Design and Infrastructure Plan by the Barnstable Planning Board, as set forth in § 240-24.1.11 below. The foregoing shall be adopted not later than October 15, 2005.

- B. Conflicts. Unless otherwise stated, the requirements of the Barnstable Zoning Ordinance shall apply to uses within the Hyannis Village Zoning Districts. In the event of a conflict, these regulations shall apply.
- C. Nonconforming uses. The change of a nonconforming use to another nonconforming use is prohibited in the Hyannis Village Zoning Districts.
- D. Site plan review. All development within the Hyannis Village Zoning Districts, with the exception of single-family residences, shall comply with the provisions of Article IX, § 240-103, Site development standards, and with the Design and Infrastructure Plan. Refer to § 240-24.1.10 and individual district regulations below for additional site plan review standards.
- E. Special permit granting authority and special permit criteria.
  - (1) Within the Hyannis Village Zoning Districts, the Planning Board shall be the special permit granting authority. The Planning Board shall follow the criteria and procedures set forth in § 240-125C of the Barnstable Zoning Ordinance when acting on a special permit application. In addition to the criteria set forth in § 240-125, the Planning Board shall find that the issuance of the special permit is consistent with the Design and Infrastructure Plan, including the payment of applicable impact fees, and that the development meets one or more of the following criteria:
    - (a) The development provides for or supports mixed use development where appropriate;
    - (b) The development maintains or improves pedestrian access and outdoor public spaces;
    - (c) The development contributes to the historic and maritime character of the Hyannis Village area;
    - (d) The development eliminates or minimizes curb cuts and driveways on Route 28 and Barnstable Road;
    - (e) The development provides or preserves views from public ways and spaces to the waterfront and provides or preserves public access to the waterfront;
    - (f) The development provides for or contributes to alternative transportation or travel demand management; and/or
    - (g) The development provides workforce housing where appropriate and provides an appropriate mix of affordability levels.
  - (2) Refer to individual district regulations below for additional special permit criteria.
- F. Dimensional relief. Within the Hyannis Village Zoning Districts, the SPGA may provide relief from minimum lot area, minimum lot frontage, maximum building setback, minimum yard setbacks, floor area ratio limits, facade length requirements, ground floor window requirements, and through lot requirements, when such relief is necessary to ensure that a proposed development is consistent with zoning, the Design and Infrastructure Plan and/or the special permit criteria set forth above.
- G. Building expansion/repair on nonconforming lot. The expansion, repair, alteration or replacement of any legally conforming building or structure in existence as of July 14, 2005, proposed to be expanded within the setbacks established herein shall not require a variance or special permit solely on the basis that the lot is rendered dimensionally nonconforming by the minimum lot area or minimum lot frontage and/or maximum building facade length provisions established in this section.
- H. Building expansion/repair exceeding lot coverage. The expansion, repair, alteration or replacement of any legally conforming building or structure in existence as of July 14, 2005, proposed to be expanded in a manner that increases lot coverage in excess of the maximum lot coverage provisions established herein shall require a special permit.

- I. Transitional exemptions. This section shall not apply to any development application that has received site plan approval or a special permit prior to July 14, 2005, provided that said site plan approval and/or special permit has been exercised within one year.
- J. Zoning district boundaries. The provisions of Barnstable Zoning Ordinance § **240-6C(3)** do not apply within the Hyannis Village Zoning Districts.
- K. Related ordinances. The following list of related ordinances is provided to assist the reader. Applicants must review all Barnstable ordinances, rules, regulations and guidelines for additional requirements that may relate to a particular permit application.
  - (1) For additional information regarding the requirements of the Barnstable Inclusionary Housing Ordinance, see Chapter **9** of the Barnstable Town Code.
  - (2) For additional information regarding site plan review requirements, see §§ **240-98** through **240-105**, inclusive, of the Barnstable Zoning Ordinance.
  - (3) For additional information regarding special permit requirements, see § **240-125C** of the Barnstable Zoning Ordinance.
  - (4) For additional information regarding growth management requirements, see §§ **240-110** through **240-122**, inclusive, of the Barnstable Zoning Ordinance.
  - (5) For additional information regarding parking requirements, see off-street parking regulations, at §§ **240-48** through **240-58**, inclusive, of the Barnstable Zoning Ordinance.
  - (6) For additional information regarding signage requirements, see Sign Regulations, at §§ **240-59** through **240-89**, inclusive, of the Barnstable Zoning Ordinance.
  - (7) For additional information regarding historic and design review, see Ch. **112**, Historic Properties, of the Barnstable Town Code.
- L. Definitions specific to the Hyannis Village Zoning Districts are contained below at § **240-24.1.12**.

### § 240-24.1.3. HVB Hyannis Village Business District.

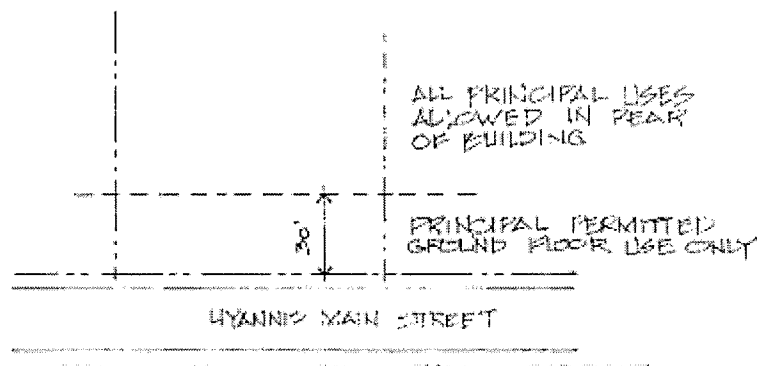
[Added 7-14-2005 by Order No. 2005-100]

- A. Permitted uses. The following principal and accessory uses are permitted in the HVB District. Uses not expressly allowed are prohibited.
  - (1) Permitted principal uses.
    - (a) \*Business and professional offices.
    - (b) Banks.
    - (c) Retail uses.
    - (d) Personal services establishments.
    - (e) Packaging and delivery services.
    - (f) \*Research and development facilities.
    - (g) Publishing and printing establishments.
    - (h) Restaurants.
    - (i) \*Health clubs.
    - (j) Movie theaters.



- (k) Artist's lofts.
- (l) Art galleries.
- (m) Museums.
- (n) Performing arts facilities.
- (o) \*Educational institutions.
- (p) Bed-and-breakfasts.
- (q) \*Fraternal or social organizations.
- (r) Hotels.
- (s) Motels.
- (t) Conference centers.
- (u) Recreational establishments.
- (v) Mixed use development consistent with ground floor limitations established by an asterisk (\*) and with building footprint not exceeding 20,000 square feet and totaling not more than 60,000 square feet.
- (w) \*Apartments and multifamily housing, not including mixed use development, totaling not more than 12 dwelling units per acre

\* Ground floor limitations: For lots abutting Hyannis Main Street and located between Sea Street and Barnstable Road/Ocean Street, uses denoted by an asterisk (\*) are allowed above the ground floor only, with the exception that uses denoted by an asterisk may occur on the first floor in the rear portion of such a building only when, at a minimum, the first 30 feet of ground floor building space fronting on Hyannis Main Street is occupied by a permitted principal ground floor use. (See diagram below). In this case a Hyannis Main Street entrance to the use or uses at the rear of the building is allowed.



1. GROUND FLOOR REQUIREMENTS; HYANNIS MAIN STREET BETWEEN SEA STREET AND BARNSTABLE RD./OCEAN ST.

(2) Permitted accessory uses.

- (a) Entertainment and/or dancing is permitted:  
[Amended 6-1-2006 by Order No. 2006-136]

[1] As an accessory use to a full-service food service establishment, subject to the following:

- [a] Food is served to customers at tables by waitpersons;
- [b] Bar seats and bar places do not exceed 20% of restaurant seats; and
- [c] Any dance floor area shall not exceed 500 square feet, or 10% of the floor area of the restaurant, whichever is less.

[2] As an accessory use to a preexisting smoking bar that has received a variance from the Barnstable Board of Health, subject to the following:

- [a] The establishment holds a valid Board of Health variance issued under the provisions of the Barnstable Code, § 371-18; and
- [b] Any dance floor area shall not exceed 500 square feet, or 10% of the floor area of the smoking bar.

- (b) Repair services.
- (c) Automated banking facilities (ATM).

B. Special permits.

- (1) Parking facilities.
- (2) Permitted principal uses as follows, provided, however, that a special permit shall not be required when the applicant has obtained a development of regional impact approval, exemption or hardship exemption from the Cape Cod Commission:
  - (a) Nonresidential development with a total floor area greater than 10,000 square feet.
  - (b) Mixed use development with a building footprint greater than 20,000 square feet or a total building square footage greater than 60,0000 square feet.
- (3) Multifamily housing, not including mixed use development, consistent with the ground floor limitations established above, and proposing 13 or more dwelling units per acre and not more than 16 dwelling units per acre.

C. Dimensional, bulk and other requirements.

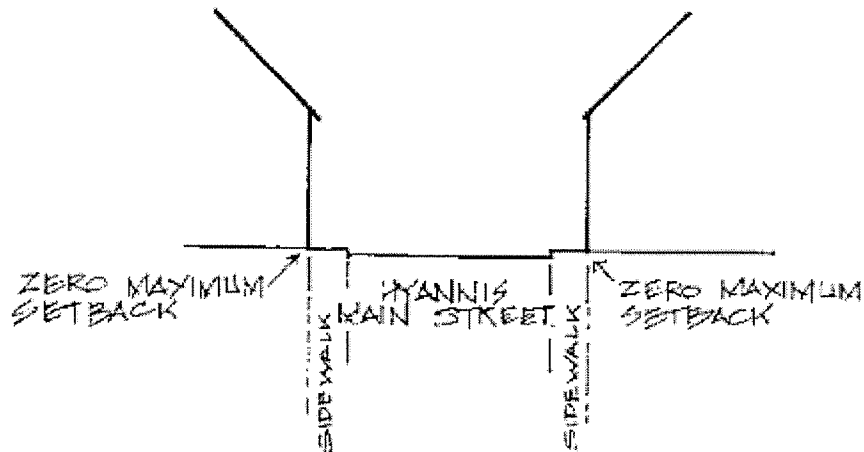
Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height <sup>1</sup>		Maximum Lot Coverage <sup>2</sup>	FAR <sup>3</sup>
			Front (feet)	Rear (feet)	Side (feet)	Feet	Stories		
Hyannis Village	5,000	10	4	—	—	42	3	100%	3.0

NOTES:

- <sup>1</sup> See additional height regulations in Subsection (2) below.
- <sup>2</sup> Maximum lot coverage pertains to building footprint only.
- <sup>3</sup> Applies to mixed use development only.
- <sup>4</sup> See also setbacks in Subsection (1) below.

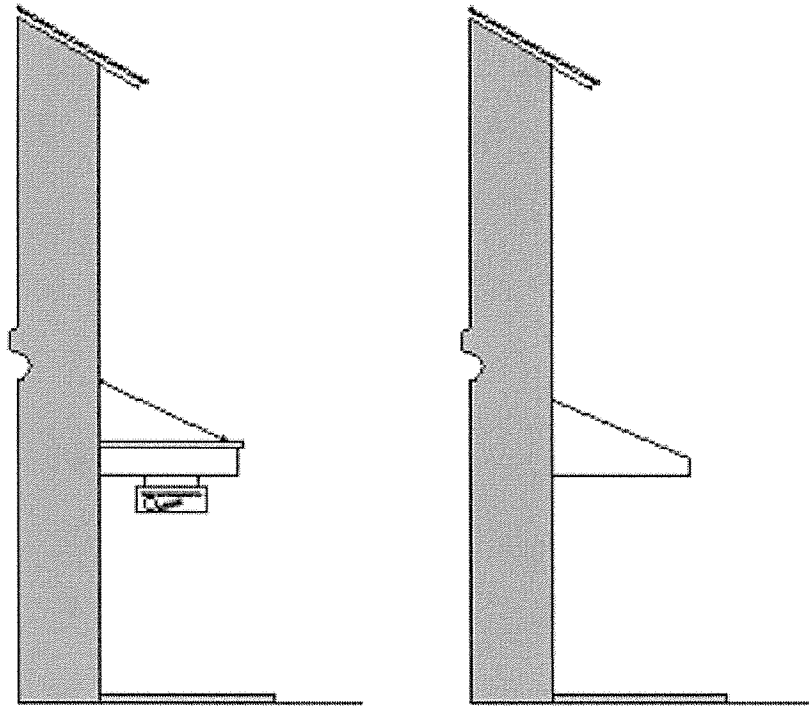
- (1) Setbacks.
  - (a) Maximum building setback.

- [1] The maximum building setback from the street line shall be zero feet for the front and street side facade so that the building visually reinforces the building facade line of the street. (See Diagram No. 2 below.).

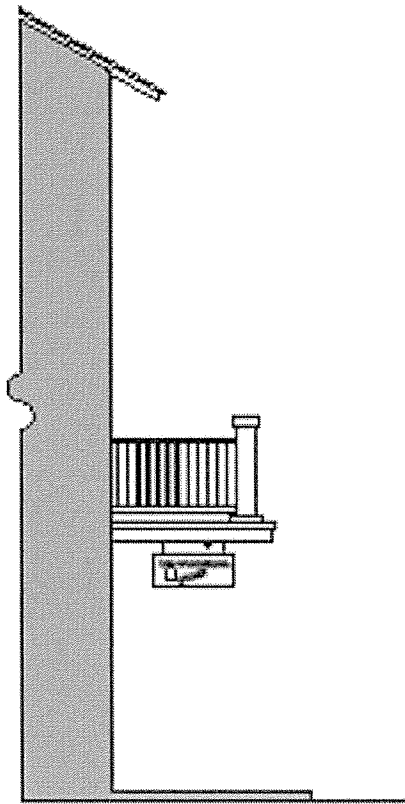


## 2. MAXIMUM BUILDING SETBACK "ZERO LOT LINE"

- [2] Existing buildings within the HVB District not currently located at the zero maximum building setback may be altered, expanded, replaced or redeveloped so long as the maximum building setback is equal to the setback of the buildings(s) in existence upon the adoption of this section or 20 feet, whichever is less, and provided that the area between the building setback and the street line shall provide permanent public plazas, sidewalk cafes, public spaces or amenities and/or landscaping.
- [3] The SPGA may vary the maximum building setback for the building facade, or any portion thereof, and may allow buildings to be set back from the front and/or street side property line where it would result in better alignment of buildings, improved design of the building facade, or where necessary to accommodate shop entrances, arcades, plazas, sidewalk cafes, permanent public spaces, pocket parks, or landscaping required pursuant to the provisions of this section or as allowed by permit, and so long as such increase in building setback will not create significant interruption of the alignment of any sidewalk constructed on public or private property or will not otherwise interfere with pedestrian access.
- (b) Awnings, marquees and balconies. The SPGA may provide relief from the zero front yard setback for awnings, marquees and balconies. These building structures are allowed to protrude up to five feet past the property line into the public right-of-way. All awnings, marquees and open air balconies shall require a license from the Town Manager consistent with Barnstable General Ordinances, Part 1, Chapter 121, § 121-6J.



**Awnings and Marquees**

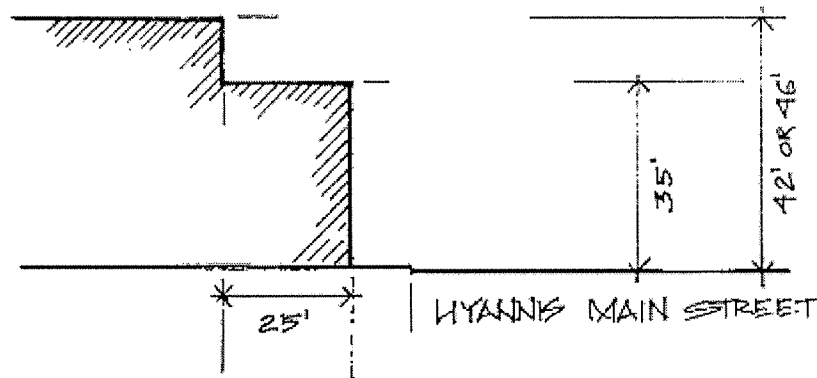


**Open Air Balconies**

(2) Height.

(a) Maximum building height.

- [1] The maximum height of buildings or structures, other than accessory rooftop equipment discussed below or special architectural features, is 42 feet or three stories not to exceed 46 feet.
- [2] Maximum height may be increased to 46 feet or three stories when the roof pitch is in the range of six in 12.
- [3] In order to reduce shadows on Hyannis Main Street, for lots located on the southerly edge of the layout of Hyannis Main Street between Barnstable Road/Ocean Street and Sea Street, the maximum building height within 25 feet of the layout of Hyannis Main Street shall not exceed 35 feet unless a special permit is obtained from the SPGA. (See Diagram No. 3 below.)



3. MAXIMUM BUILDING HEIGHT SOUTH SIDE OF MAIN STREET BETWEEN SEA ST. AND BARNSTABLE RD. / OCEAN ST.

- (b) Height of rooftop equipment. Accessory rooftop equipment may extend to 46 feet {or to 50 feet when the building height is allowed at 46 feet under Subsection [(2)(a)[2] above}, provided that it is set back from the exterior wall(s) by at least 10 feet, and is enclosed or screened with materials compatible with the building, and the headhouse and screening are not visible from the ground. Accessory equipment shall not exceed 20% of the roof area. Eight-foot tall roof headhouse structures shall be set back from the exterior wall(s) by at least 10 feet, and shall not exceed 20% of the roof area.
- (3) Facade length. Buildings or portions of a building with a mass over 50 feet wide must divide their elevations into smaller parts. A pronounced change in massing, pronounced changes in wall planes and introducing significant variations in the cornice/roofline are all possible methods to accomplish the desired divisions of elevations into smaller parts.
- (4) Roof pitch. Flat roofs shall not extend for more than 50 linear feet, unless otherwise permitted by special permit.
- (5) Building entrances and alleyways.
  - (a) For lots which have at least 10 feet of frontage on Hyannis Main Street, development and redevelopment shall include building facades that front on and have a principal pedestrian entrance on Hyannis Main Street.
  - (b) The construction of any new buildings shall provide for the creation of pedestrian alleyways, where appropriate, in order to allow for passageways to parking at the rear of the lots and adjoining streets.
- (6) Ground floor windows.

- (a) All new nonresidential development shall provide ground floor windows along street facades, including windows that allow views into working areas or lobbies, pedestrian entrances, or display windows. Required windows shall have a sill no more than four feet above grade. Where interior floor levels prohibit such placement, the sill may be raised to no more than two feet above the finished floor level, up to a maximum sill height of six feet above grade.
  - (b) Windows that block two-way visibility, such as darkly tinted and mirrored windows, are prohibited as ground floor windows along street facades.
  - (c) Any wall which is within 30 feet of the street shall contain at least 20% of the ground floor wall area facing the street in display areas, windows, or doorways. Blank walls, including walls that do not include display areas, windows, architectural features, and/or doorways, are prohibited.
- (7) Through lots.
- (a) Through lots defined. A "through lot" shall be a lot with a lot line of at least 10 feet on Hyannis Main Street that also abuts on another public street or way (the "alternative street or way"), but shall not include a corner lot. A through lot with at least 10 feet of property line abutting Hyannis Main Street is presumed to have frontage on Hyannis Main Street.
  - (b) For through lots, the lot shall provide vehicular access off of the alternative street or way unless otherwise permitted by special permit.
- (8) Curb cuts and driveways.
- (a) New curb cuts on Hyannis Main Street shall only be allowed where the curb cut leads to parking for at least 21 vehicles. No more than one curb cut on Hyannis Main Street shall be allowed for any lot. For traffic safety and to maintain traffic flow, no new driveways shall be permitted on Hyannis Main Street within 200 feet of any intersection.
  - (b) Driveways shall not occupy more than 25% of the frontage of any parcel, except for lots less than 40 feet wide.
- D. Site development standards. In addition to the site development standards set forth in § **240-24.1.10** below, the following requirements shall apply.
- (1) Loading docks. Loading docks shall not be visible from Main Street.
  - (2) Parking spaces, computation.
    - (a) The parking standards contained within the Schedule of Off-Street Parking Requirement, § **240-56** of the Barnstable Zoning Ordinance, shall establish the minimum parking requirements, with the following exceptions:
      - [1] The use of shared parking for different uses having different peak hours of demand will be considered in evaluating compliance with § **240-56**. A signed lease agreement between relevant parties sharing parking must be provided as part of the site plan approval or special permit process.
      - [2] A permitted use can be changed to another permitted use, and any permitted principal or accessory use can be intensified, without increasing the required off-street parking requirements of § **240-56**, Schedule of Off-Street Parking Requirements, provided that as of July 14, 2005:
        - [a] There is no increase in gross square footage of the building; and
        - [b] There is no reduction in existing parking spaces required pursuant to § **240-56**; and

- [c] There is no added outdoor use requiring the provision of parking according to Section 204-56, except that no parking spaces shall be required for outdoor dining on both public and private property; and
  - [d] Parking space requirements for residential dwelling units shall be one parking space per bedroom for one- and two-bedroom units or a total of two parking spaces for units with two or more bedrooms.
- (3) Parking spaces shall be provided for new and/or expanded building area, and for new and/or expanded outdoor uses, as follows:
- (a) Fifty percent of the spaces required under § 240-56 for all uses other than office uses and residential dwelling units.
  - (b) Parking space requirements for residential dwelling units shall be one parking space per bedroom for one- and two-bedroom units or a total of two parking spaces for units with two or more bedrooms.
- (4) The SPGA may, by special permit, further reduce the parking required as follows:
- (a) Off-site parking. Parking requirements may be satisfied if an off-street municipal parking lot of 20 spaces or more exists within 500 feet of the proposed use and provided that a fee is paid which would be set aside for the creation of future municipal parking facilities to service the district, consistent with a schedule of fees, if any, to be adopted in the Design and Infrastructure Plan. Off-site parking may also be provided on a private parking lot with sufficient parking spaces within 300 feet of the proposed use, provided that a lease agreement is presented as part of the site plan approval or special permit process and provided that a fee is paid which would be set aside for the creation of future municipal parking facilities to service the district, consistent with a schedule of fees, if any, to be adopted in the Design and Infrastructure Plan. In no case shall leased parking be allowed on land that is residentially zoned for, or in residential use as, a single-family or a two-family dwelling.
  - (b) The SPGA may reduce the on-site and off-street parking requirement for all uses except office uses and residential uses, based upon a consideration of:
    - [1] Availability of shared parking.
    - [2] Other factors supporting the reduction in the number of required parking spaces.
- (5) Landscaping.
- (a) Front yard landscape is not required if front setback is zero. When the front setback is greater than zero, those portions of the front yard not occupied by pedestrian amenities and public spaces shall be landscaped.
  - (b) Street trees are required consistent with § 240-24.1.10 below if front setback is greater than zero feet.
- (6) Exterior lighting shall comply with the requirements in § 240-24.1.11.  
[Amended 11-7-2019 by Order No. 2020-021]

## § 240-24.1.4. MS Medical Services District.

[Added 7-14-2005 by Order No. 2005-100]

- A. Permitted uses. The following principal and accessory uses are permitted in the MS District. Uses not expressly allowed are prohibited.
- (1) Permitted principal uses.

- (a) Single-family dwellings.
  - (b) Two-family dwellings.
  - (c) Business and professional offices.
  - (d) Nursing homes.
  - (e) Medical/dental clinics.
  - (f) Hospitals (nonveterinarian).
  - (g) Bed-and-breakfasts.
  - (h) Multifamily housing totaling not more than six dwelling units per acre or 12 bedrooms per acre.
  - (i) Mixed-use development.
- (2) Permitted accessory uses.
- (a) Family apartments.
  - (b) The following uses shall only be permitted as ancillary operations to a hospital, nursing home, or other medical-oriented facility:
    - [1] Personal services, such as barber or beauty shops.
    - [2] Banking services.
    - [3] Restaurants.
    - [4] Pharmacies.

**B. Special permits.**

- (1) Permitted principal uses as follows, provided, however, that a special permit shall not be required when the applicant has obtained a development of regional impact approval, exemption or hardship exemption from the Cape Cod Commission:
  - (a) Nonresidential development, including nursing homes, with a total floor area greater than 10,000 square feet.
  - (b) Mixed use developments with a total floor area greater than 20,000 square feet or greater than 10,000 square feet of commercial space.
- (2) Multifamily housing proposing to create seven or more dwelling units per acre or 13 or more bedrooms per acre and including at least 25% of workforce housing and totaling not more than 12 units per acre. Multifamily housing in the MS District is not required to provide inclusionary housing pursuant to Chapter 9 of the Barnstable Code.
- (3) Registered recreational marijuana cultivators, research facilities and independent testing laboratories, subject to compliance with the provisions of Article XII herein.  
 [Added 9-6-2018 by Order No. 2019-015]

**C. Dimensional, bulk and other requirements. (NOTE: For hospital uses: the maximum building height provisions set forth in the table below may be extended to no more than 85 feet or a maximum of six stories not to exceed 85 feet; and, the maximum lot coverage requirements set forth below shall not apply.)**

	Minimum Yard Setbacks	Maximum Building Height <sup>1</sup>	



Zoning District	Minimum Lot Area	Minimum Lot Frontage	Minimum Yard Setbacks			Maximum Building Height <sup>1</sup>		Maximum Lot Coverage <sup>2</sup>	FAR <sup>3</sup>
	(square feet)	(feet)	Front (feet)	Rear (feet)	Side (feet)	Feet	Stories <sup>1</sup>		
Medical Services	10,000	50	20 <sup>2</sup>	10 <sup>2</sup>	10 <sup>2</sup>	38	3	80%	—

## NOTES:

- <sup>1</sup> The third story can only occur within habitable attic space.
- <sup>2</sup> See also setbacks in Subsection **C(1)** below.

## (1) Setbacks.

- (a) The front yard landscaped setback shall be 10 feet.
- (b) The SPGA may reduce to zero the rear and side setbacks for buildings to accommodate shared access driveways or parking lots that service buildings located on two or more adjoining lots.

## (2) Site access/curb cuts.

- (a) Driveways on Route 28 shall be minimized. Access shall not be located on Route 28 where safe vehicular and pedestrian access can be provided on an alternative roadway, or via a shared driveway, or via a driveway interconnection. On Route 28, new vehicular access, new development, redevelopment and changes in use that increase vehicle trips per day and/or increase peak hour roadway use shall be by special permit.
- (b) Applicants seeking a new curb cut on Route 28 shall consult the Town Director/Superintendent of Public Works regarding access on state highway roadways prior to seeking a curb-cut permit from the Massachusetts Highway Department, and work with the Town and other authorizing agencies, such as the MHD, to agree on an overall access plan for the site prior to site approval. The applicant shall provide proof of consultation with the listed entities and other necessary parties.
- (c) All driveways and changes to driveways on Route 28 shall:
- [1] Provide the minimum number of driveways for the size and type of land use proposed;
  - [2] Provide shared access with adjacent development where feasible; and
  - [3] Provide a driveway interconnection between adjacent parcels to avoid short trips and conflicts on the main road.

D. Site development standards. In addition to the site development standards set forth in § 240-24.1.10 below, the following requirement shall apply:

- (1) Landscaping for multifamily housing. A perimeter green space of not less than 10 feet in width shall be provided, such space to be planted and maintained as green area and to be broken only in a front yard by a driveway and/or entry walk.

## § 240-24.1.5. SF Single Family Residential District.

[Added 7-14-2005 by Order No. 2005-100]

- A. Permitted uses. The following principal and accessory uses are permitted in the SF District. Uses not expressly allowed are prohibited.
  - (1) Permitted principal uses.
    - (a) Single-family dwellings (detached).
    - (b) Bed-and-breakfasts.
    - (c) Artists lofts.
    - (d) For those lots with frontage on South Street and/or High School Road, professional offices.
    - (e) Renting of rooms for not more than three nonfamily members by the family residing in a single-family dwelling.  
[Added 6-1-2006 by Order No. 2006-136]
  - (2) Permitted accessory uses.
    - (a) Family apartments.
- B. Dimensional, bulk and other requirements.

Zoning District	Minimum Lot Area <sup>1</sup> (square feet)	Minimum Lot Frontage <sup>1</sup> (feet)	Minimum Lot Width <sup>2</sup> (feet)	Minimum Yard Setbacks			Maximum Building Height <sup>1</sup>		Maximum Lot Coverage <sup>2</sup>	FAR <sup>3</sup>
				Front (feet)	Rear (feet)	Side (feet)	Feet	Stories <sup>1</sup>		
Single Family Residential	20,000	20	100	20 <sup>3</sup>	10 <sup>3</sup>	10 <sup>3</sup>	38	3	—	—

NOTES:

- <sup>1</sup> The minimum lot area shall be reduced to 10,000 square feet and/or the minimum lot frontage shall be reduced to 50 feet if an existing nonresidential use, in existence as of the effective date of this section, is changed to a single-family residential use.
- <sup>2</sup> Lot width at front building setback
- <sup>3</sup> See also setbacks in Subsection C(1) and corner lot setback in Subsection C(2) below.
- <sup>4</sup> The third story in a single-family or two-family dwelling can only occur within habitable attic space.

- (1) Setbacks. A perimeter green space of not less than 10 feet in width shall be provided, such space to be planted and maintained as green area and to be broken only in a front yard by a driveway.
- (2) Corner lot setback. Corner lots shall comply with the provisions of § 240-41 of the Barnstable Zoning Ordinance.

- C. Site development standard. Single-family dwellings are encouraged to comply with the provisions of Article IX, § 240-103, Site development standards. Single-family dwellings are not required to comply with § 240-24.1.10 below, and they are not required to obtain site plan approval. Single-family dwellings shall comply with the following requirements:
  - (1) Parking and signage. All development within the SF District shall comply with applicable parking and signage requirements contained in Article VI, §§ 240-48 through 240-58, and Article VII, §§ 240-59 through 240-89, inclusive, of the Barnstable Zoning Ordinance.

- (2) Lighting. Reflectors and shielding shall provide total cutoff of all light at the property lines of the parcel to be developed.
- (3) Fences. No fence shall exceed a height of 6 1/2 feet (eight feet when abutting a nonresidential district) unless a special permit is obtained from the SPGA.

## § 240-24.1.6. OM Office/Multifamily Residential District.

[Added 7-14-2005 by Order No. 2005-100]

A. Permitted uses. The following principal and accessory uses are permitted in the OM District. Uses not expressly allowed are prohibited.

(1) Permitted principal uses.

- (a) Business and professional offices.
- (b) Personal services establishments.
- (c) Repair services.
- (d) Publishing and printing establishments.
- (e) Packaging and delivery services.
- (f) Artist's lofts.
- (g) Restaurants.
- (h) Multifamily housing, including but not limited to townhouses, totaling not more than 12 dwelling units, or 24 bedrooms per acre.
- (i) Mixed-use development.
- (j) Office, dental or medical.  
[Added 3-18-2010 by Order No. 2010-069]

(2) Permitted accessory uses.

- (a) Health clubs.
- (b) Retail uses directly related to a principal permitted use that does not exceed 1,500 square feet.

B. Special permits.

- (1) Permitted principal uses as follows; provided, however, that a special permit shall not be required when the applicant has obtained a development of regional impact approval, exemption or hardship exemption from the Cape Cod Commission.
  - (a) Nonresidential development with a total floor area greater than 10,000 square feet;
  - (b) Mixed use developments with a total floor area greater than 20,000 square feet or greater than 10,000 square feet of commercial space.
- (2) Multifamily housing, including at least 25% workforce housing and totaling not more than 16 dwelling units or 32 bedrooms per acre.

C. Dimensional, bulk and other requirements.

Minimum Yard Setbacks	Maximum Building Height <sup>1</sup>
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Zoning District	Minimum Lot	Minimum Lot	Minimum Yard			Maximum		Maximum Lot Coverage <sup>2</sup>	FAR <sup>3</sup>
	Area	Frontage	Setbacks			Building Height <sup>1</sup>			
	(square feet)	(feet)	(feet)	(feet)	(feet)	Feet	Stories <sup>2</sup>		
Zoning District	Minimum Lot Area	Minimum Lot Frontage	Front	Rear	Side			Maximum Lot Coverage <sup>2</sup>	FAR <sup>3</sup>
Office/ Multifamily Residential	20,000	50	20 <sup>1</sup>	10 <sup>1</sup>	10 <sup>1</sup>	40	3	80%	1.0

NOTES:

<sup>1</sup> See also setbacks in Subsection C(1) below.

(1) Setbacks.

- (a) The front yard landscaped setback shall be 10 feet, with the exception of townhouse development.
- (b) The SPGA may reduce to zero the rear and side setbacks for buildings to accommodate shared access driveways or parking lots that service buildings located on two or more adjoining lots.
- (c) For townhouses, buildings shall be set back zero to 15 feet from the frontage line. Buildings at street intersections shall be set back at least six feet but not more than 15 feet from the frontage line and side street lines. Setback requirements shall apply to the enclosed portion of the buildings only. That area between the building setback (including decks and unenclosed structures) and the street line shall be landscaped.
- (d) For townhouses with direct vehicular access from the street, garage and carport entrances shall not be closer to the street property line than any other portion of the front facade of the building.

D. Site development standards. For additional site plan review and special permit standards see § 240-24.1.10 below.

### § 240-24.1.7. HD Harbor District.

[Added 7-14-2005 by Order No. 2005-100]

A. Permitted uses. The following principal and accessory uses are permitted in the HD District. Uses not expressly allowed are prohibited.

(1) Permitted principal uses.

- (a) Marinas.
- (b) Building, sale, rental, storage and repair of boats.
- (c) Retail sale of marine fishing and boating supplies.
- (d) Retail sale of fishing bait, fish and shellfish.
- (e) Commercial fishing, not including canning or processing of fish.
- (f) Charter fishing and marine sightseeing and excursion facilities.
- (g) Museums.

- (h) Performing arts facilities.
  - (i) Restaurants.
  - (j) Hotels.
  - (k) Motels.
  - (l) Conference centers.
  - (m) Bed-and-breakfasts.
  - (n) Artist's lofts.
  - (o) Mixed-use development with all residential units located above the ground floor only.
- (2) Permitted accessory uses.
- (a) Offices to be used for ancillary activities which are directly related to a principal permitted use in the district.
  - (b) Accessory retail uses that do not exceed 1,500 square feet and which are directly related to a principal permitted use in the district.
  - (c) Health club not exceeding 1,500 square feet and which is directly related to a principal permitted use in the district.
- B. Special permits.
- (1) Permitted principal uses as follows, provided, however, that a special permit shall not be required when the applicant has obtained a development of regional impact approval, exemption or hardship exemption from the Cape Cod Commission:
    - (a) Nonresidential development with a total floor area greater than 10,000 square feet;
    - (b) Mixed use developments with a total floor area greater than 20,000 square feet or greater than 10,000 square feet of commercial space.
  - (2) Multifamily residential development totaling not more than seven units per acre.

C. Dimensional, bulk and other requirements.

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height <sup>1</sup>		Maximum Lot Coverage <sup>1</sup>	FAR
			Front	Rear	Side	Feet	Stories		
			(feet)	(feet)	(feet)				
Harbor District	20,000	20	20 <sup>2</sup>	10 <sup>2</sup>	10 <sup>2</sup>	35	2.5 <sup>3</sup>	70%	—

NOTES:

- <sup>1</sup> See additional dimensional regulations for marine uses in Subsection C(1) below.
- <sup>2</sup> See also setbacks in Subsection C(2) below.
- <sup>3</sup> The half story can only occur within habitable attic space.

- (1) Special dimensional regulations for marine uses. In order to support water-dependent uses on the harbor, for buildings and structures used as a marina and/or used in the building, sale, rental, storage and/or repair of boats, so long as such buildings or structures exist as of the

date of the adoption of this section, the following dimensional regulations shall apply: maximum building height 45 feet, maximum lot coverage 90%.

(2) Setbacks. The front yard landscaped setback shall be 10 feet.

D. Site development standards. For additional site plan review and special permit standards, see § 240-24.1.10 below.

## § 240-24.1.8. HG Hyannis Gateway District.

[Added 7-14-2005 by Order No. 2005-100]

A. Permitted uses. The following principal and accessory uses are permitted in the HG District. Uses not expressly allowed are prohibited.

(1) Permitted principal uses.

(a) Business and professional offices.

(b) Banks.

(c) Restaurants.

(d) Business support services not exceeding 5,000 square feet.

(e) Dental and medical clinics, including a change of use, that do not increase the number of vehicle trips per day and do not increase peak hour vehicle trips per day.

(f) Retail uses that do not increase the number of vehicle trips per day and do not increase peak hour vehicle trips per day.

(g) Mixed-use development.

(h) Multifamily housing totaling not more than four dwelling units per acre, or eight bedrooms per acre.

(2) Permitted accessory uses.

(a) Accessory retail uses that do not exceed 1,500 square feet and which are directly related to a principal permitted use in the district.

(b) Personal services establishments.

(c) Automated banking facilities (ATM).

B. Special permits.

(1) Permitted principal uses as follows, provided, however, that a special permit shall not be required when the applicant has obtained a development of regional impact approval, exemption or hardship exemption from the Cape Cod Commission:

(a) Nonresidential development with a total floor area greater than 10,000 square feet.

(b) Mixed use developments with a total floor area greater than 20,000 square feet or greater than 10,000 square feet of commercial space.

(2) Multifamily housing, including workforce housing totaling not more than 16 dwelling units or 32 bedrooms per acre, that includes at least 25% of workforce housing dwelling units.

(3) Retail uses and dental and medical clinics that increase the number of vehicle trips per day and/or increase peak hour vehicle trips per day.

C. Dimensional, bulk and other requirements.

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height <sup>1</sup>		Maximum Lot Coverage <sup>2</sup>	FAR <sup>3</sup>
			Front (feet)	Rear (feet)	Side (feet)	Feet	Stories		
Hyannis Gateway	40,000	50	30 <sup>3</sup>	15	20	40	3	80%	0.8

NOTES:

- <sup>1</sup> Floor area ratio = gross building square footage divided by the lot area.
- <sup>2</sup> The third story can only occur within habitable attic space.
- <sup>3</sup> See also setbacks in Subsection C(1) below.

(1) Setback. Front yard landscape setback on Route 28 is 60 feet. For lots with less than 20,000 square feet of lot area, front yard landscape setback shall be at least 10 feet.

(2) Site access/curb cuts.

(a) Driveways on Route 28 and Barnstable Road shall be minimized. Access shall not be located on Route 28 or Barnstable Road where safe vehicular and pedestrian access can be provided on an alternative roadway, or via a shared driveway, or via a driveway interconnection. On Route 28, new vehicular access, and changes in use that increase vehicle trips per day and/or peak hour roadway use for an existing driveway or curb cut, shall be by special permit.

(b) Applicants seeking a new curb cut on Route 28 shall consult the Town Director of Public Works regarding access on state highway roadways prior to seeking a curb cut permit from the Massachusetts Highway Department, and work with the Town and other authorizing agencies such as the MHD to agree on an overall access plan for the site prior to site approval. The applicant shall provide proof of consultation with the listed entities and other necessary parties.

(c) All driveways and changes to driveways shall:

- [1] Provide the minimum number of driveways for the size and type of land use proposed.
- [2] Provide shared access with adjacent development where feasible.
- [3] Provide a driveway interconnection between adjacent parcels to avoid short trips and conflicts on the main road.

(d) Parking at the front of the lot is strongly discouraged. When parking is allowed on the front of the lot, where feasible, it shall be limited to a single row of vehicles and associated turning space. Also within the HG District, to the extent feasible, existing parking located on the front of the lot shall be removed and relocated to the rear and/or side of buildings, consistent with this section.

(e) Transit improvement incentives. For redevelopment, the SPGA may provide relief from required parking where the applicant:

- [1] Permanently eliminates and/or significantly reduces the width of existing curb cuts in a manner that improves the through flow of traffic on Barnstable Road and/or Route 28; and/or
- [2] Provides a perpetual agreement for one or more driveway interconnections that will alleviate traffic on Barnstable Road and/or Route 28.

D. Site development standards. In addition to the site development standards set forth in § 240-24.1.10 below, the following requirements shall apply.

- (1) Landscaping. All site plan and special permit applications shall include a landscaping plan which shall be signed and stamped by a Massachusetts certified landscape architect.

### § 240-24.1.9. Transportation Hub District.

[Added 7-14-2005 by Order No. 2005-100]

A. Permitted uses. The following principal and accessory uses are permitted in the TD District. Uses not expressly allowed are prohibited.

(1) Permitted principal uses.

- (a) Restaurants.
- (b) Tourist information service.
- (c) Parking facilities outside of the WP Overlay District.
- (d) Bicycle rental services (nonmotorized vehicles only).
- (e) Shuttle services.
- (f) Alternative transportation facilities.
- (g) Car rental services outside of the WP Overlay District.
- (h) Automated banking facilities (ATM).

(2) Permitted accessory uses. Accessory retail uses that do not exceed 1,500 square feet and which are directly related to a principal permitted use in the TD District.

B. Special permits.

- (1) Parking facilities within the WP Overlay District.
- (2) Public transportation maintenance facilities.
- (3) Car rental services within the WP Overlay District.
- (4) Permitted principal uses as follows, provided, however, that a special permit shall not be required when the applicant has obtained a development of regional impact approval, exemption or hardship exemption from the Cape Cod Commission:
  - (a) Nonresidential development with a total floor area greater than 10,000 square feet.

C. Dimensional, bulk and other requirements.

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height		Maximum Lot Coverage <sup>1</sup>	FAR
			Front	Rear	Side	Feet	Stories <sup>2</sup>		
			(feet)	(feet)	(feet)				
Transportation Hub	30,000	100	20 <sup>3</sup>	10 <sup>3</sup>	10 <sup>3</sup>	40	3	25%	—

NOTES:



## NOTES:

- <sup>1</sup> Maximum lot coverage pertains to building footprint only, with the exception of parking facilities which are permitted a maximum lot coverage of 65%.
- <sup>2</sup> The third story can only occur within habitable attic space.
- <sup>3</sup> See also setbacks in Subsection C(1) below.

## (1) Setbacks.

- (a) Front setback on Route 28 is 50 feet.
- (b) The SPGA may reduce to zero the rear and side setbacks for buildings to accommodate shared access driveways or parking lots that service buildings located on two or more adjoining lots.

## (2) Site access/curb cuts.

- (a) Driveways on Route 28 shall be minimized. Access shall not be located on Route 28 where safe vehicular and pedestrian access can be provided on an alternative roadway, via a shared driveway, or via a driveway interconnection. On Route 28, new vehicular access, and changes in use that increase vehicle trips per day and/or peak hour roadway use for an existing driveway or curb cut, shall be by special permit.
- (b) Upon the redevelopment, expansion, alteration or change of use of any lot with a lot line on Engine House Road, the new, expanded, altered or changed use shall provide vehicular access solely on Engine House Road.
- (c) Applicants seeking a new curb cut on Route 28 shall consult the Town Director of Public Works regarding access on state highway roadways prior to seeking a curb cut permit from the Massachusetts Highway Department, and work with the Town and other authorizing agencies such as the MHD to agree on an overall access plan for the site prior to site approval. The applicant shall provide proof of consultation with the listed entities and other necessary parties.
- (d) Parking at the front of the lot is strongly discouraged. When parking is allowed on the front of the lot, where feasible, it shall be limited to a single row of vehicles and associated turning space. Also within the TD District, to the extent feasible, for redevelopment, existing parking located on the front of the lot shall be removed and relocated to the rear and/or side of buildings, consistent with this section.
- (e) All driveways and changes to driveways shall:
  - [1] Provide the minimum number of driveways for the size and type of land use proposed;
  - [2] Provide shared access with adjacent development where feasible;
  - [3] Provide a driveway interconnection between adjacent parcels to avoid short trips and conflicts on the main road.
- (f) Transit improvement incentives. For redevelopment, the SPGA may provide relief from required parking where the applicant:
  - [1] Permanently eliminates and/or significantly reduces the width of existing curb cuts in a manner that improves the through flow of traffic on Barnstable Road and/or Route 28; and/or
  - [2] Provides a perpetual agreement for one or more driveway interconnections that will alleviate traffic on Barnstable Road and/or Route 28.

D. Site development standards. In addition to the site development standards set forth in § 240-24.1.10 below, the following requirements shall apply.

- (1) Special permit criteria. In determining whether to grant a special permit within the WP Overlay District, the SPGA shall consider the criteria set forth in § 240-24.1.2, General provisions, Subsection E, above, in addition to the following factors:
  - (a) The nature and extent of the risk of contamination to the proposed well that will result from the grant of the special permit;
  - (b) The nature and degree to which the proposal eliminates existing threats to the public water supply, including on-site and off-site mitigation;
  - (c) The overall effectiveness of existing land uses and/or protective measures on the public water supply well; and
  - (d) Whether granting the special permit will accommodate an overriding community interest.

## § 240-24.1.9.1. GM Gateway Medical District.

[Added 4-27-2017 by Order No. 2017-100]

- A. Permitted uses. The following principal and accessory uses are permitted in the GM District. Uses not expressly allowed are prohibited.
  - (1) Permitted principal uses.
    - (a) Business and professional offices.
    - (b) Banks.
    - (c) Restaurants.
    - (d) Business support services.
    - (e) Dental and medical clinics.
    - (f) Retail uses.
    - (g) Personal services.
    - (h) Mixed-use development.
    - (i) Multifamily housing totaling not more than six dwelling units per acre or 12 bedrooms per acre.
  - (2) Permitted accessory uses.
    - (a) Automated banking facilities (ATM).
- B. Special permits.
  - (1) Permitted principal uses as follows:
    - (a) Nonresidential development with a total floor area greater than 10,000 square feet.
    - (b) Mixed-use developments with a total floor area greater than 20,000 square feet or greater than 10,000 square feet of commercial space.
    - (c) Multifamily housing proposing to create seven or more dwelling units per acre or 13 or more bedrooms per acre and including at least 25% of workforce housing and totaling not more than 12 units per acre. Multifamily housing in the GM District is not required to provide inclusionary housing pursuant to Chapter 9 of the Barnstable Code.
  - (2) Registered recreational marijuana cultivators, research facilities and independent testing laboratories, subject to compliance with the provisions of Article XII herein.

[Added 9-6-2018 by Order No. 2019-015]

C. Dimensional, bulk and other requirements.

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height		Maximum Lot Coverage	FAR
			Front (feet)	Rear (feet)	Side (feet)	Feet	Stories		
Gateway Medical Services	10,000	50	20 <sup>1</sup>	10	20	38	3	80%	-

NOTES:

<sup>1</sup> See also setbacks in Subsection C(1) below.

- (1) Setbacks. Front yard landscape setback on Route 28 is 60 feet. For lots with less than 10,000 square feet of lot area, front yard landscape setback on Route 28 shall be 10 feet.
- (2) Site access/curb cuts.
  - (a) Driveways on Route 28 shall be minimized. Access shall not be located on Route 28 where safe vehicular and pedestrian access can be provided on an alternative roadway, or via a shared driveway, or via a driveway interconnection.
  - (b) Applicants seeking a new curb cut on Route 28 shall consult the Town Director of Public Works regarding access prior to seeking an application for a permit to access a state highway from the Massachusetts Department of Transportation, and work with the Town and other authorizing agencies such as MassDOT on a site access plan prior to site plan approval. The applicant shall provide proof of consultation with the listed entities and other necessary parties.
  - (c) All driveways and changes to driveways shall:
    - [1] Provide the minimum number of driveways for the size and type of land use proposed.
    - [2] Provide shared access with adjacent development where feasible.
    - [3] Provide a driveway interconnection between adjacent parcels to avoid short trips and conflicts on the main road where feasible.
  - (d) Parking at the front of the lot is strongly discouraged. When parking is allowed on the front of the lot, where feasible, it shall be limited to a single row of vehicles and associated turning space. To the extent feasible, existing parking located on the front of the lot shall be removed and relocated to the rear and/or side of buildings, consistent with this section.
  - (e) The SPGA may provide relief from required parking where the applicant:
    - [1] Permanently eliminates and/or significantly reduces the width of existing curb cuts in a manner that improves the through flow of traffic on Route 28; and/or
    - [2] Provides an agreement for one or more driveway interconnections that will alleviate traffic on Route 28.
    - [3] Has the availability of shared parking.

D. Site development standards. Site development standards set forth in § 240-24.1.10 shall apply.

- (1) Landscaping for multifamily housing. A perimeter green space of not less than 10 feet in width shall be provided, such space to be planted and maintained as green area and to be broken only in a front yard by a driveway and/or entry walk.

## § 240-24.1.10. Hyannis Parking Overlay District (HPOD).

[Added 7-21-2016 by Order No. 2016-166<sup>[1]</sup>]

- A. Purposes and intent. This section allows as-of-right permitting for land located south of Main Street in Hyannis, which land has some legal pre-existing nonconforming status or was licensed as of May 1, 2014, as an open air parking lot involving the temporary storage of vehicles. The scope of such uses would otherwise have to be clarified through a quasi-judicial or regulatory process. The purpose of this section is to:
  - (1) Clarify this land use and create as of right permitting for land now used as open air parking lots and located south of Main Street in Hyannis;
  - (2) Protect the safety of the users of the lot and the general public through site development standards providing constant access for emergency responders;
  - (3) Ensure safe access to structures for emergency responders;
  - (4) Protect adjacent property from nuisances which may result from the operation of cars and parking off streets;
  - (5) Enhance and protect the visual quality of the Hyannis harbor area;
  - (6) Reduce congestion on lot access streets which also serve residential areas; and
  - (7) Contribute to traffic safety by ensuring orderly access to and egress from such lots.
- B. Relationship to underlying districts and regulations.
  - (1) The Hyannis Parking Overlay District (HPOD) shall overlay all underlying districts so that any parcel of land lying in the HPOD shall also lie in the zoning district or districts in which it is otherwise classified by this chapter.
  - (2) All regulations of the underlying zoning district(s) shall apply within the HPOD to the extent that they are not inconsistent with the specific provisions of this § **240-24.1.10**. To the extent the provisions of this § **240-24.1.10** are in conflict with or are inconsistent with other provisions of this chapter, the provisions of this § **240-24.1.10** shall govern and prevail even if such other provisions are more restrictive than those set forth in this section **240-24.1.10**.

### C. Definitions.

As used in this section, the following terms shall have the meanings indicated:

#### **AISLE**

That portion of the commercial surface parking lot circulation area providing safe and constant access for emergency responders and access to parking spaces for lot patrons. Aisle area is calculated exclusive of any other area on the lot, such as driveway, parking stalls, and attendant areas.

#### **COMMERCIAL SURFACE PARKING LOT**

The commercial parking of vehicles where parking is a principal use on the property. Commercial surface parking lots shall not include structures, fully or partially enclosed, that accommodate vehicle parking spaces. Noncommercial trucks, vans and other vehicles not exceeding 7.5 feet may use a commercial surface parking lot.

#### **EMERGENCY ACCESS AISLES AND FIRE LANES**

Aisles, unobstructed at all times, for the safe and immediate access of emergency response vehicles. At no time shall any portion of a designated emergency access aisle be used for parking or storing vehicles for any length of time no matter how short.

### **KIOSK**

A structure, which may be temporary or seasonal, located on the commercial surface parking lot from which parking transactions are conducted.

### **PARKING ATTENDANT**

An employee of the commercial surface parking lot available to customers to park and retrieve vehicles within the licensed lot.

### **REMOTE PARKING SITES**

Sites accommodating excess parking for HPOD parking lots that are located in another area of Hyannis where such parking use is allowed. Such remote parking lots shall be permitted and licensed only in connection with the HPOD parking lot.

### **SECOND PRINCIPAL USE**

A second principal use, lawfully permitted and established at the time of the adoption of this section, may share a parcel with a commercial surface parking lot.

### **STACKED PARKING**

Parking of vehicles in a line or stack that may be up to three vehicles deep at a commercial surface parking lot. The lot operator shall have an attendant present to move vehicles out of the stack at all times that the lot is open for vehicle pickup by vehicle owners.

#### **D. Permitted uses.**

##### **(1) Principal uses.**

Commercial surface parking lot

#### **E. Site development standards.**

##### **(1) Access management.**

- (a) Entrance and exit driveways shall be a minimum of 14 feet wide for one-way use only and a minimum of 20 feet wide for two-way use and shall be delineated.
- (b) Driveways shall be located so as to minimize conflict with traffic on public streets and where good visibility and sight distances are available to observe approaching pedestrian and vehicular traffic.

##### **(2) Parking spaces.**

###### **(a) Computation.**

- [1] Within the property boundaries the number of parking spaces is limited only by the required dimensions for parking spaces, aisles, emergency access aisles, and fire lanes.
- [2] Where another principal use, lawfully permitted and established at the time of the adoption of this section, is located on the same parcel as the commercial surface parking lot, the number of parking spaces required to support that use shall be deducted from the number of spaces for the commercial surface parking lot use; provided that the number of commercial surface parking spaces shall not exceed the number determined as of the effective date of this section, even if any other principal use is subsequently discontinued.

- [3] Where another principal use not located on the same parcel as the commercial surface parking lot uses some of the lot's spaces as shared parking for the off lot use, those spaces shall be deducted from the zoning and licensing number of spaces for the commercial surface parking lot; provided that the number of commercial surface parking spaces shall not exceed the number determined as of the effective date of this section, even if any shared parking use is subsequently discontinued.
  - [4] Up to 10% of parking spaces may be designed for and allocated to compact spaces.
  - [5] Parking facilities shall provide specially designated parking spaces according to 521 CMR, the Architectural Access Board.
- (b) Dimensions.
- [1] Noncompact spaces: nine feet by 18 feet.
  - [2] Compact spaces: six feet by 14 feet.
- (c) Demarcation.
- [1] The lot owner shall submit to the Building Commissioner a plan of the commercial surface parking lot drawn and stamped by a registered professional land surveyor, known as the "record parking plan." Any changes to the lot boundaries or internal configuration shall require that a new record parking plan be prepared and filed in the same manner. All property lines and emergency access aisles and fire lanes shall be marked as shown on the record parking plan. In addition to showing the number of spaces that can be accommodated according to the dimensions herein, such plan shall depict demarcations for emergency access aisles through a method permanently affixed to the ground and approved by the Building Commissioner and Fire Safety Official.
  - [2] Wheel stops and/or striping shall be installed and maintained to mark each permitted parking space. Stacked parking spaces shall be marked using ground-mounted delineators or other demarcation.
  - [3] Property boundaries for properties abutting other separately owned properties shall be marked with fencing or other means as may be approved by the Building Commissioner.
- (3) Stacked parking.
- (a) Stacked parking in compliance with this section may be permitted subject to the approval of the Building Commissioner and the Fire Safety Official.
  - (b) Lots using stacked parking configurations shall have a full-time attendant supervising the lot and to enable owner access to vehicles at all times.
- (4) Aisle width.
- (a) Unless otherwise provided for in this section, parking lots shall be designed so that each motor vehicle is able to proceed to and from the parking space provided without requiring the moving of any other motor vehicle.
  - (b) All angle parking shall have one-way circulation with an aisle width of at least 14 feet.
  - (c) Fire lanes and emergency access aisles shall be provided as required by the Building Commissioner and the Fire Safety Official.
- (5) Lot circulation.

- (a) Dead-end aisles, including but not limited to emergency access aisles, and fire lanes are prohibited.
- (6) Landscaping and fencing.
  - (a) Parking lots shall install perimeter landscaping area along street frontages.
  - (b) Fencing other than split-rail fencing is prohibited.
- (7) Lighting. Lighting shall not cause glare for motorists, pedestrians or neighboring premises. Full cut-off light fixtures shall be used in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted.
- (8) Signage. Signage provisions rely on the requirements of the underlying zoning district or on rights that may be vested in the property as determined by the Building Commissioner.
- (9) Accessory structures.
  - (a) Parking lot kiosk. A kiosk for parking lot attendants and/or business needs may be allowed. Kiosks are typically located at the main entrance(s) to or exit(s) from the lot. Each kiosk shall not exceed 150 square feet in gross floor area and shall be located so as not to interfere with fire lanes, emergency access aisles, or site circulation. Kiosks shall include temporary sanitary facilities for employees. In no case shall the temporary sanitary facility be visible from any public way. Such structures shall be subject to applicable code or other permitting requirements and shall not host other principal or accessory uses such as retail without the required approvals.
  - (b) Trash receptacles. All lots shall provide accommodations for client and employee trash. Trash receptacles and/or dumpsters shall be located near each parking lot kiosk as may be required by the Building Commissioner and the Fire Safety Official. In no case shall the receptacles be visible from any public way.

[1] *Editor's Note: This order also provided for the renumbering of former §§ 240-24.1.10 through 240-24.1.12 as §§ **240-24.1.11** through **240-24.1.13**, respectively.*

## § 240-24.1.11. Site development standards.

[Added 7-14-2005 by Order No. 2005-100]

- A. Application. Unless otherwise stated herein, the following additional site development standards shall apply within the Hyannis Village Zoning Districts, with the exception of Zone 3, the Single Family Residential District.
  - (1) Utilities and services.
    - (a) Mechanical equipment, whether ground level or rooftop shall be screened from view of adjacent properties and public rights-of-way and designed to be an integral part of the building.
    - (b) Trash containers shall be fully screened on three sides with solid walls a minimum of six feet high with a solid front gate, six feet high, which shall be kept closed. Trash compacters shall be enclosed to minimize noise.
  - (2) Stormwater. Rain gardens, as defined in § **240-24.1.12** below, are encouraged.
  - (3) Drive-through windows. Drive-through windows are prohibited within the Hyannis Village Zoning Districts, with the exception that banks allowed as a principal permitted use may construct and operate a drive-through window upon the issuance of a special permit.
  - (4) Off-street parking requirements. All new, expanded or intensified uses shall provide adequate off-street parking. No uses shall be intensified, except for single-family detached dwellings,

without providing adequate parking as provided herein.

- (a) Parking spaces, computation. See § **240-24.1.3** above for additional parking regulations applicable to the HVB District.
- [1] Unless otherwise specified, all development shall comply with the parking requirements contained in Article **VI**, § **240-56**, Schedule of Off-Street Parking Requirements, of the Barnstable Zoning Ordinance. The SPGA may by special permit reduce the on-site and off-street parking requirements consistent with these regulations.
  - [2] For multifamily housing, off-street parking shall be provided on-site at a ratio of 1 1/2 spaces per each dwelling unit and shall be located not less than 30 feet from the base of the multifamily dwelling and be easily accessible from a driveway on the site.
  - [3] Existing parking spaces may be counted to meet the minimum off-street parking requirements for an intensified use only if it can be demonstrated that they are not used as of right by existing uses and are exclusively available as of right for said proposed intensification.
  - [4] Circumstances warranting reduction of requirements. The SPGA may reduce or waive required on-site parking if lesser off-street parking is shown to be adequate given such special circumstances as:
    - [a] Use of a common parking area by different uses having different peak hours of demand and where the applicant provides a lease agreement between the necessary parties.
    - [b] Age or other characteristics of occupants which reduce auto usage.
    - [c] Characteristics of use invalidating normal methods of calculating parking demand.
    - [d] Supplementary parking provided off premises.
- (b) Location of off-street parking spaces.
- [1] All required off-street parking spaces shall be located on the same lot as the use for which such spaces are required, except that the SPGA may reduce or waive on-site parking required by the Zoning Ordinance for new development located within 500 feet of leased parking, provided that a lease agreement is presented as part of the site plan approval or special permit process and provided that a fee is paid which would be set aside for the creation of future municipal parking facilities to service the district, consistent with a schedule of fees, if any, to be adopted in the Design and Infrastructure Plan. In no case shall leased parking be allowed on land that is residentially zoned for, or in residential use as, a single-family or a two-family dwelling.
- (c) Parking design standards.
- [1] Parking areas shall be located to the rear of a building unless such location would have an adverse environmental impact, or is infeasible due to configuration of the site. To the extent that parking cannot be located to the rear of a building, it shall be located to the side of a building to the extent possible.
  - [2] Each off-street parking space shall have a minimum dimension of nine feet by 20 feet, excluding the driveway, and consistent with the dimensional parking requirements set forth in § **240-104**, Minimum parking lot design standards, of the Barnstable Zoning Ordinance.
  - [3] Maneuvering space shall be provided so that vehicles need not back onto a public way.



- [4] Lighting shall not cause glare for motorists, pedestrians or neighboring premises. Full cut-off light fixtures shall be used in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted.
  - [5] Drainage facilities for each parking area shall be designed and constructed to contain stormwater runoff on the premises.
- (d) Parking lot landscaping.
- [1] Trees. One three-inch minimum caliper low-water-use, low-maintenance tree must be provided for every five parking spaces and must be located within 50 feet of the parking lot. Trees shall be maintained and irrigated as necessary and planted within at least 50 square feet of permeable area. Existing trees located in the interior of lots shall be credited towards this requirement.
  - [2] Five or more spaces: A six-foot landscape buffer must be provided between property lines and parking spaces. The landscape buffer must screen parking with a dense hedge providing year-round screening or a fence must be constructed with no more than 50% open space between the panels. Hedges and fences may be subject to other regulation.
  - [3] Ten or more spaces: A six-foot landscape buffer must be provided between a building and a surface area parking lot or drive except at entrances, building loading, and utility locations.
  - [4] Twenty-one or more spaces: at least 10% of the interior parking lot must be landscaped. Planting along the perimeter shall not be considered as part of the 10%. Interior planting beds are ideally continuous to allow for maximum plant bed size and are constructed as rain gardens to control stormwater. No landscaped island shall be less than six feet wide, except that in parking lots with 51 or more parking spaces where the minimum island width shall be 10 feet.
  - [5] Plant materials shall be low-water-use and low-maintenance and be of a sufficient size to create an attractive appearance. A list of recommended plant materials shall be included in the Design and Infrastructure Plan and can be obtained from the Planning Department. Brick or stone mulch shall not be used in place of plant material in landscaped islands. Where mulch is used, it shall not be placed in such a manner that it will wash into catch basins or drainage pipes in the lot or in adjacent roadways.
- (e) Landscaping of pre-existing parking lots.
- [1] Upon the expansion of an existing parking lot containing 21 or more parking spaces and/or an alteration of a structure, or a change or extension of a use which increases the parking requirements by five or more spaces according to the standards of §§ 240-48 through 240-58, Schedule of Off-street Parking Requirements, the entire existing parking lot shall be brought into compliance with this section.
- (5) Landscaping.
- (a) Existing significant trees and shrubs shall be maintained to the maximum extent possible.
  - (b) The front yard landscaped setback from the road lot line shall be 10 feet, unless otherwise specified.
  - (c) Within the HD, MS, SF, HG and TD Districts, landscaped setback from all residential property lines shall be 20 feet.
  - (d) In addition to natural vegetation that is retained, the front yard landscaped setback shall be landscaped with a combination of indigenous grasses, trees and shrubs commonly found on Cape Cod.

- (e) All developments must be adequately landscaped with low water use plants and provide habitat value whenever possible. No plantings shall obscure site entrance and exit drives and road intersections. Planting areas should serve as stormwater treatment areas often referred to as "rain gardens." As such they should be designed in a way that they are slightly depressed below adjacent parking or sidewalk grades with run-off directed to these areas. Plantings, while encouraging drought resistance, should be capable of withstanding seasonally wet conditions.
  - (f) Street trees. One deciduous tree with a three-inch minimum caliper is required to be planted within the front setback for every 30 feet of frontage of property if the front setback is greater than zero feet. Trees in paved areas shall have a minimum of 25 square feet of permeable area for growth. Trees in islands shall have a minimum of 50 square feet of permeable area for growth. All landscaped areas shall be continuously maintained, irrigated, and fertilized. Plant materials shall be organically maintained to the maximum extent possible.
  - (g) No occupancy certificate shall be issued until the landscape plan has been implemented according to an approved site plan, except the Building Commissioner may issue an occupancy certificate prior to installation of landscape materials, provided that the applicant posts security with the Town for 150% of the estimated cost of installation of the plant materials.
- (6) Signage. All development shall comply with the applicable signage requirements contained in Article VII, Sign Regulations, at §§ 240-59 through 240-89, inclusive, of the Barnstable Zoning Ordinance. Internally illuminated signs are prohibited in the Hyannis Village Zoning Districts.
- (7) Exterior lighting.  
[Amended 11-7-2019 by Order No. 2020-021]
- (a) Any outdoor lighting shall be directed on site only.
  - (b) Light fixtures shall have a total cutoff of all light at less than 90° and a beam cutoff of less than 75°. Attached building or wall pack lighting should be screened by the building's architectural features or contain a forty-five-degree cutoff shield.
  - (c) For commercial or mixed use developments, trespass of light at the property boundary shall not exceed 0.1 footcandle. Where commercial or mixed use developments abut a residential district, trespass of light at that boundary shall not exceed 0.05 footcandle. For developments that are exclusively residential, trespass of light at property boundaries shall not exceed 0.05 footcandle. At driveways, lighting may be up to 0.5 footcandle at the property line adjacent to a roadway. Electric service for lighting on posts or poles shall be placed underground.
  - (d) In no case shall exterior or outdoor lighting cause glare that impacts motorists, pedestrians or neighboring premises.
- (8) Fences. No fence shall exceed a height of 6 1/2 feet (eight feet when abutting a nonresidential district) from the grade plane unless a special permit is obtained from the SPGA.

## § 240-24.1.12. Design and infrastructure plan.

[Added 7-14-2005 by Order No. 2005-100]

- A. The Planning Board shall establish a Design and Infrastructure Plan (DIP) which shall be adopted after public hearing. The DIP shall establish building and site design standards for all development and shall require, at a minimum:
  - (1) Consistency with the historic and maritime character of the area;

- (2) Creation of livable neighborhoods for year-round residents;
  - (3) Creating housing opportunities for persons and households of all income levels;
  - (4) Creation of opportunities for pedestrian access and public spaces;
  - (5) Preservation of views and public access to the waterfront;
  - (6) Creation of opportunities for eliminating curb cuts and for creating driveway interconnections, shared driveways, public transit, alternative transportation and/or travel demand management; and
  - (7) Creation of opportunities to foster history, culture and the arts.
- B. Design review. The DIP shall establish guidelines regarding the appropriateness of the scale, placement, materials, design and detail of buildings, landscapes and settings, and signage. The DIP shall identify buildings and areas of the landscape that are of particular cultural, historical and/or architectural significance and shall establish guidelines for their preservation. The Hyannis Main Street Waterfront Historic District Commission shall implement design review within the Hyannis Village Zoning Districts.
- C. Infrastructure. The Downtown Hyannis area is the transportation, health care, and commercial hub of Cape Cod. In recognition of this and local growth initiatives for the Downtown Hyannis area, the DIP shall identify the infrastructure and services necessary to support new development and redevelopment, the method or methods of providing such services, and the time schedule for providing those services. Without limitation, the DIP may establish standards related to the following:
- (1) The Design and Infrastructure Plan shall establish a process for permit applicants to challenge ITE assumptions regarding trip generation (vehicle trips per day). Based upon generally accepted engineering, legal and planning standards, the Design and Infrastructure Plan may modify the definition of peak hour roadway use for specific roadways in the Hyannis Village Zoning Districts and may establish base line traffic counts for existing land uses.
  - (2) The Barnstable Town Council may establish a fee schedule to be included in the DIP, which fee schedule shall establish the fair share contribution of new development and redevelopment. In such case, the DIP shall establish the costs of providing services to new development and redevelopment using generally accepted legal, accounting, and planning principles. In the event the Barnstable Town Council adopts such a fee schedule, it shall be included in the DIP as a severable provision.
  - (3) The DIP shall identify prior Town actions and future opportunities to offset increased development in the Hyannis Village Zoning Districts.
  - (4) The DIP shall identify opportunities to benefit residents and business owners by identifying locations for shared community services, shared parking, shared transit and travel demand management facilities, shared waste management facilities, and similar facilities.

## § 240-24.1.13. Definitions applicable to the Hyannis Village Zoning Districts.

[Added 7-14-2005 by Order No. 2005-100]

- A. In the interpretation of §§ **240-24.1.1** through **240-24.1.11**, the following words and terms are to be used and interpreted as defined herein unless the context otherwise requires. The definitions contained in § **240-128** of the Barnstable Zoning Ordinance shall also apply to § **240-24.1.1** through **240-24.1.11**, provided that, in the event of a conflict the definitions below shall apply.

- B. As used in § 240-24.1.1 through 240-24.1.11, the following terms shall have the meanings indicated:

**ACCESSORY USE**

A structure or use that is subordinate in building area, building extent, and purpose to the principal use; is customarily incidental and subordinate to the principal use and contributes to the comfort, convenience, or necessity of the principal use; and, is located on the same lot as the principal use.

**ART GALLERY**

A public or private facility which is operated as a repository or a collection of works of individual art pieces, not mass-produced, consisting of one or more of the following: paintings, drawings, etchings or sculptures; may include the sale of related objects and services.

**ARTIST'S LOFT**

A place designed to be used as both a dwelling and a place of work by an artist, artisan, or craftsperson, including persons engaged in the application, teaching, or performance of fine arts, such as drawing, vocal or instrumental music, painting, sculpture, photography, graphics, media arts, and writing. The work activities shall not adversely impact the public health, safety, and welfare, or the livability, functioning, and appearance of adjacent property.

**AUTOMATED BANKING FACILITY (ATM)**

An automated device, which is operated by the customer, that performs banking or financial transactions.

**AUTOMOBILE GASOLINE AND REPAIR STATION**

A retail establishment engaged in the sale of automotive fuel, motor oil, and/or services, which provides for the routine maintenance of automobiles. Such services may include washing, polishing, greasing, emissions testing, tire repair, wheel alignment, brake repair, muffler replacement, engine tune-up, flushing of radiators, servicing of air conditioners, and other activities of minor repair and servicing.

**BANK**

A financial institution that is open to the public and engaged in deposit banking, and that performs closely related functions, such as making loans, investments, and fiduciary activities. Walk-in services to consumers are generally provided on site. Drive-through services may be allowed by special permit where banks are allowed as a principal permitted use.

**BUILDING HEIGHT**

Shall be measured as the vertical distance from the grade plane to the average height of the highest roof plane that also has the highest ridgeline.

**BUILDING STORY**

The vertical distance from top to top of two successive tiers of beams or finished floor surfaces; and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

**BUSINESS OFFICES**

Include all types of offices, other than professional offices as defined elsewhere in this chapter, which are defined as a room, or group of rooms used for conducting the affairs of a business, service industry, or government entity.

**BUSINESS SUPPORT SERVICES**

Establishments engaged in the sale, rental, or repair of office equipment, supplies, and materials, or the provision of services used by office, professional, and service establishments. Typical uses include office equipment and supply firms, small business

machine or computer repair shops, convenience printing and copying establishments, or hotel equipment and supply firms.

**CLINIC, DENTAL OR MEDICAL**

A building or portion of a building in which the primary use is the provision of health care services to patients or clients. Such services may include the following: medical, dental, psychiatric, psychological, chiropractic, dialysis, acupuncture, reflexology, mental health professional, physical and/or occupational therapy, related medical services, or a laboratory which provides bacteriological, biological, medical, x-ray, pathological and similar analytical or diagnostic services to doctors or dentists. This definition excludes in-patient or overnight care, animal hospitals, veterinarians, or other similar services. The sale of merchandise is allowed only as an accessory use.

[Amended 3-18-2010 by Order. No. 2010-069]

**CONFERENCE CENTER**

A facility which provides meeting halls for conferences, seminars, training and other similar functions for large numbers of people. A conference center shall be considered to be an accessory use to a hotel.

**CONVENIENCE STORE GAS STATION**

A facility associated with the sale of prepackaged food items and other retail goods, primarily for self-service by the consumer which also offers the retail sale of gasoline from pumps.

**DESIGN AND INFRASTRUCTURE PLAN**

A plan establishing site and building design standards and establishing fair share contributions to infrastructure (impact fees) for new development and redevelopment, as further defined in § 240.24.1.11 herein.

**DRIVE-THROUGH WINDOW**

This use is prohibited in all districts, with the exception that banks may seek a special permit to construct and operate a drive-through window.

**DRIVEWAY/CURB CUT**

Any access point onto a roadway. This may include, but is not limited to, an entrance to a parcel, or an intersection with another roadway.

**DRIVEWAY INTERCONNECTION**

A private driveway connection between two lots that does not require traveling on the public roadway system.

**FLOOR AREA RATIO (FAR)**

The ratio of gross building area to the lot area on which the building(s) are located. The ratio is calculated by dividing the gross area of said buildings by said lot area.

**FRATERNAL OR SOCIAL ORGANIZATION LODGE**

A building or land used for the activities of an association of persons for the promotion of some nonprofit common objective, such as literature, science, politics, and good fellowship (not accessory to, or operated as, or in connection with a tavern, eating place, or other place open to the public), which meets periodically and may be limited to members.

**GRADE PLANE**

A reference plane representing the natural, undisturbed ground level adjoining the proposed building at all exterior walls. Where the ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and a point six feet from the building, or between the building and the lot line, whichever point is closer.

**GROUND FLOOR**

The floor located at the street level, closest to the naturally occurring grade.

**HABITABLE ATTIC**

The habitable space between the rafters of a pitched roof and the next floor below.

**HABITABLE SPACE**

Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space and other similar areas are not considered "habitable space."

**HEALTH CLUB**

A building or portion of a building designed and equipped for the conduct of exercise and related activities utilizing weight control or muscle building equipment or other apparatus for the purpose of physical fitness, along with customary ancillary activities and facilities.

**HIGHEST ROOF PLANE**

The roof plane having the highest ridge and having highest average height (exclusive of cupolas and parapets) or the flat roof that is higher than any pitched roof.

**HOSPITAL**

A facility for the care and treatment of patients as licensed by the Massachusetts Department of Public Health under MGL c. 111, § 51.

**HOTEL**

One or more buildings providing temporary lodging accommodations offered to the public on a daily rate for compensation. The building or buildings have an interior hall and lobby with access to each room from such interior hall or lobby, supervised by a person in charge at all hours. Accessory uses may include a restaurant, conference center facility, meeting rooms, health club and other customary uses.

**HYANNIS VILLAGE ZONING DISTRICTS**

The seven Hyannis zoning districts including HVB, MS, SF, OM, HD, HG and TD.

**LOT COVERAGE, MAXIMUM**

A measure of the portion of a site that is impervious (i.e., does not absorb water), including but not limited to all areas covered by buildings, structures, parked surfaces and structures, driveways, roads, sidewalks and any area of concrete asphalt, except as otherwise defined herein. The remaining area of a site shall be maintained as natural vegetation or landscaped area.

**MIXED-USE DEVELOPMENT**

Development including residential and nonresidential principal permitted uses on a single lot and including at least 33% residential development for three-story buildings.

**MOTEL**

One or more attached or detached buildings providing residential room accommodations intended primarily for sleeping which are rented out to the public on a daily rate, where each room has a separate entrance leading directly outside the building.

**MULTIFAMILY HOUSING**

A structure containing three or more dwelling units, or apartments, each of which shall contain separate living, sleeping, cooking, and bathroom facilities for the families residing there.

**MUSEUMS**

A public or private facility, including an aquarium, established for preserving and exhibiting artistic, historical, scientific, natural or man-made objects of interest, designed to be used by members of the public for viewing, with or without an admission charge. Such activity may

include, as an accessory use, the sale of memorabilia, crafts work and artwork, and the holding of meetings and social events.

### **NURSING HOME**

A facility for the aged or chronically ill, providing bed-care and in-patient services for persons requiring regular medical attention, but excluding a facility providing surgical or emergency medical services.

### **OFFICE, DENTAL OR MEDICAL**

A building or portion of a building in which the primary use is the provision of health-care services to patients or clients by an appointment only. Appointments limited to the hours between 7:00 a.m. to 7:00 p.m., Monday through Friday, and Saturday from 7:00 a.m. to 1:00 p.m. Such services may include the following: medical, dental, psychiatric, psychological, chiropractic, dialysis, acupuncture, reflexology, mental health professional, physical and/or occupational therapy, related medical services, or a laboratory which provides bacteriological, biological, medical, x-ray, pathological and similar analytical or diagnostic services to doctors or dentists. This definition excludes in-patient or overnight care, animal hospitals, veterinarians, or other similar services. The sale of merchandise is allowed only as an accessory use.

[Added 3-18-2010 by Order No. 2010-069]

### **PACKAGING AND DELIVERY SERVICES**

The packaging and delivery of parcels as a retail service use. It shall not include the bulk storage of parcels on-site but may include the sale of ancillary goods typically used in the packaging and shipping of parcels.

### **PARKING FACILITY**

When identified as a permitted principle use within a zoning district, refers to either structured parking (such as a multi-level parking garage or parking deck), or a surface parking lot, which is not an accessory use to another permitted use in the district.

### **PEAK-HOUR ROADWAY USE**

For Monday through Friday, peak morning (7:30 a.m. to 9:30 a.m.) and peak evening (4:00 p.m. to 6:00 p.m.) roadway use; for Saturday, 10:00 a.m. to 12:00 p.m. roadway use. Based upon accepted engineering, legal and planning standards, the Design and Infrastructure Plan may change, modify or expand the definition of peak hour roadway use for specific roadways in the Hyannis Village Zoning Districts.

### **PERFORMING ARTS FACILITY**

An enclosed space suitable for a variety of cultural arts performances, permanently available for the primary principal use of public performing arts presentations, such as plays, dances, and concerts, although incidental use for private meetings, exhibits and presentations shall be permitted. Such space may also include studios, classrooms, and galleries.

### **PERSONAL SERVICES ESTABLISHMENT**

An establishment engaged in the provision of frequent or recurrent needed services of a personal nature. Typical uses include, but are not limited to, barbershop, beauty shop, dry cleaner, tailor, or other similar services, but shall not include a public laundry where clothing is laundered on-site.

### **PROFESSIONAL OFFICES**

The office of a member of a recognized profession maintained for the conduct of that profession. A "profession" is defined as an occupation requiring training in the liberal arts or sciences, or combination thereof, requiring advanced study in a specialized field, any occupation requiring licensing by the state and maintenance of professional standards applicable to the field. This category excludes medical and dental offices and clinics but includes lawyers and realtors.

**PUBLISHING AND PRINTING ESTABLISHMENT**

The publishing and printing of information as a retail service use. It shall not include the bulk publishing or printing of paper documents on-site, but may include the sale of ancillary goods typically used in the publishing and printing of information.

**RAIN GARDEN**

A bowl-shaped landscape area designed to absorb stormwater runoff from impervious surfaces. It cleanses water of pollutants by filtering water through soil and plants.

**RECREATIONAL ESTABLISHMENT**

An establishment engaged in the provision of public recreational services, including bowling and billiards, but not including miniature golf and video arcades.

**REPAIR SERVICES**

Repair and servicing of appliances, computers, electronic equipment, tools and other small machinery common to homes and businesses, not to include any appliances, tools or small machinery that are powered by hydrocarbon fuel.

**RESEARCH AND DEVELOPMENT FACILITY**

A business that engages in research and development of innovative ideas and technology. Examples include research and development of computer software, information systems, communication systems, transportation, multi-media and video technology. Development and construction of prototypes may be associated with this use.

**RESTAURANT**

An establishment where food and/or beverages are prepared, served, and consumed, and whose principal method of operation includes one or both of the following characteristics: customers are normally provided with an individual menu and served their food and beverages by a restaurant employee at the same table or counter where the items are consumed; or a cafeteria-type operation where food and beverages generally are consumed within the restaurant building. This category excludes drive-through restaurants.

**RESTAURANT, DRIVE-THROUGH**

An establishment whose primary business is serving food to the public for consumption on or off the premises, and which provides all or part of these services by means of a drive-through window. A "drive-through window" is defined as an opening in the wall of a building or structure designed and intended to be used to provide for sales to and/or service to patrons who remain in their vehicles.

**RETAIL USES**

A business or activity having as its primary function the sale of merchandise or wares to the end consumer (for example, grocery stores, hardware stores, apparel stores, bookstores); or establishments engaged in the rental of goods at retail, or in providing a service(s) to individuals and households (for example, travel agents or real estate sales offices). This category excludes animal sales or service; bulk retail sales or rental of building and garden materials or equipment (for example, lumber, electrical and heating fixtures, plant nurseries); and motor vehicle retail or wholesale sales and related equipment sales, leasing, rental, or repair.

**RETIREMENT HOUSING**

A facility for long-term residency exclusively by persons 60 years of age or older, which provides independent living and/or assisted living arrangements, and which may include common dining and social and recreational features, and special safety and convenience features designed for the needs of the elderly. The facility may also include the provision of services, such as meal services, transportation, housekeeping, personal care, or health care. Such a facility shall not be construed to mean a nursing home, group home, or residential treatment center.



**SPGA**

The special permit granting authority, which shall be the Barnstable Planning Board.

**STREET LINE**

The edge of the public layout of the street, or public right-of-way as defined by the sidewalk, whichever is greater.

**TOTAL FLOOR AREA**

Gross floor area as defined in § **240-128** of the Barnstable Zoning Ordinance, and shall include additions and auxiliary buildings.

**TOWNHOUSE**

A single dwelling unit which is not above or below another dwelling unit and whose side walls are separated from other dwelling units by a fire wall or walls. Each unit in the row may be owned by a separate owner.

**VEHICLE TRIPS PER DAY**

As defined by the Institute of Transportation Engineers' (ITE) Trip Generation Manual, 7<sup>th</sup> Edition, as that publication may be amended from time to time, provided, however, that the Design and Infrastructure Plan shall establish a process for permit applicants to challenge ITE assumptions regarding trip generation, and the Design and Infrastructure Plan may establish existing vehicle trips per day for a particular use or uses in the Hyannis Village Zoning Districts.

**WORKFORCE HOUSING**

Residential dwelling units, offered for sale or rent, affordable to families earning between 81% and 120% of the area median income, as defined by the U.S. Department of Housing and Urban Development, and provided within a multifamily structure. Such residential dwelling units shall remain affordable in perpetuity and shall provide a deed restriction, regulatory agreement and monitoring agreement and similar documentation as may be required by and approved by the Barnstable Town Attorney.

## § 240-24.2. Marstons Mills Village Zoning District.

[Added 6-17-2010 by Order No. 2010-122]

- A. Principal permitted uses. The following uses are permitted in the Marstons Mills Village Zoning District (MMVD). Uses not expressly allowed are prohibited.
- (1) Professional or business office.
  - (2) Medical or dental office.
  - (3) Branch office of a bank or credit union, excluding drive-through banking.
  - (4) Small-scale retail.
  - (5) Small-scale food service.
  - (6) Mixed use development where the building footprint does not exceed 5,000 square feet and total gross floor area does not exceed 10,000 square feet with retail or office use on the first floor, residential apartment units above not to exceed four apartment units.
  - (7) Bed-and-breakfast within an owner-occupied single-family residential structure subject to the provisions of § **240-11C(6)** except Subsection **C(6)(b)** [1] and [2]. No more than six total rooms shall be rented to not more than 12 total guests at any one time. For the purposes of this section, children under the age of 12 years shall not be considered in the total number of guests.

- (8) Single-family residential dwelling (detached).
- B. Accessory uses. In addition to Article V, Accessory Uses, herein, the following uses are also permitted as accessory uses in the MMV District.
- (1) Apartment incidental to a nonresidential use.
  - (2) Automated banking facilities (ATM) within a principal building or a walk-up ATM facility located in a side or rear yard.
- C. Conditional uses. The following uses are permitted as conditional uses in the MMV District, provided that a special permit is first obtained from the Zoning Board of Appeals, subject to the provisions of § 240-125C herein and the specific standards for such conditional uses as required in this section:
- (1) Mixed use development in excess of that permitted as of right above provided that:
    - (a) The building footprint does not exceed 5,000 square feet and total gross floor area of the building does not exceed 13,300 square feet;
    - (b) Retail or office use on the first floor with residential apartment units above;
    - (c) The number of residential apartment units does not exceed seven;
    - (d) Effluent from the on-site septic system for the mixed use development complies fully with all Board of Health regulations without relief or variances from the Board of Health nitrogen standard for this area; and
    - (e) The location of the mixed use development is appropriate and compatible with abutting uses and supports abutting uses.
  - (2) Health clubs.
  - (3) Artist's lofts.
  - (4) Art galleries.
  - (5) Museums.
  - (6) Performing arts facilities.
  - (7) Educational institutions.
  - (8) Bed-and-breakfast inns within an owner-occupied structure that exceed the provisions of accessory uses permitting, provided that the on-site septic system complies fully with all current Board of Health regulations.
  - (9) Not-for-profit fraternal or social organizations.
- D. Special permit standards. In addition to the standards for the grant of a special permit set forth in § 240-125C, the grant of any special permit within the MMVD requires findings to support that the development meets one or more of the following criteria:
- (1) The development maintains or improves pedestrian access and outdoor public spaces.
  - (2) The development contributes to the historic character of the Marstons Mills Village area.
  - (3) The development eliminates or minimizes curb cuts and driveways on Route 149 and River Road.
- E. Bulk regulations.

### Minimum Yard Setbacks

Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)	Maximum Coverage by Structures as a Percentage of Lot Area <sup>3</sup>
		Front <sup>4</sup> (feet)	Side (feet) <sup>1</sup>	Rear (feet) <sup>1</sup>		
10,000	20	10	0	0	30 <sup>2</sup>	20%

**Notes:**

<sup>1</sup> A minimum thirty-foot side or rear yard setback is required where lot boundaries abut a residential district.

<sup>2</sup> Or 2 1/2 stories, whichever is less, and except that:

The maximum building height may be increased to 36 feet when the roof pitch is at least six in 12.

Accessory rooftop equipment may extend to 36 feet, provided that it is set back from all exterior wall(s) by at least 10 feet, and is enclosed or screened with materials compatible with the building, and the equipment and screening are not visible from the ground. Accessory equipment shall not exceed 20% of the roof area.

<sup>3</sup> 30% of the total upland area of the lot shall remain pervious and may contain landscaping, tree plantings, mulch or natural vegetation including the requirements of § 240-53.

<sup>4</sup> Front yard landscape setback from the road lot line shall be 10 feet. Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of 3.0 inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure the site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

- F. Special permit for dimensional relief. The SPGA may provide relief from minimum yard setbacks where the boundary does not abut a residential district, facade length requirements or ground floor window requirements when such relief is consistent with this section and § 240-125C.
- G. Nonconforming use limitations. Within the MMVD the change of a nonconforming use to another nonconforming use is prohibited notwithstanding the provisions of § 240-94A. A nonconforming use shall only be permitted to change to a principal permitted use as of right or to a conditional use as provided for by the grant of a special permit pursuant to § 240-24.2C and D herein.
- H. Corporate branding. Buildings, colors, signage, architectural features, text, symbols, graphics, other attention-getting devices and landscape elements that are trademarked, branded or designed to identify with a particular formula business chain or corporation is prohibited. All structures and sites shall be designed to include architectural and design elements that are consistent with the MMVD architectural composition, character, and historic context. Interior corporate branding elements shall not be visible to the street through windows, doors or any other means. The Town will work with applicants to adapt critical functional features of prototype plans to their sites, but will not accept standard plans, building forms, elevations, materials, or colors that do not relate to the site, adjacent development or Marstons Mills community character.
- I. Design guidelines. Within the MMVD the following design guidelines shall apply to all new buildings and structures and/or expansions and alteration to existing buildings and structures as follows:

- (1) Facade and roof standards.

- (a) Facade length. Buildings or portions of a building with a mass over 50 feet wide must divide their elevations into smaller parts. A pronounced change in massing, pronounced changes in wall planes and introducing significant variations in the cornice/roofline are all possible methods to accomplish the desired divisions of elevations into smaller parts.
  - (b) Roof pitch. Roof pitch for new structures and additions to existing structures shall be within the range of roof pitches found on the main roofs of existing structures within the MMVD. Flat roofs may extend up to 20 linear feet only in combination with other pitched roof elements by right or, if greater than 20 feet with other pitched roof elements, through a special permit.
  - (c) Roofline variation. Roofline variation is achieved by visually and physically changing roof direction or off-setting roof peaks and ridgelines, both horizontally and vertically. The roofline shall be varied on all elevations visible from a street, parking area, or public space. Individual segments of the roofline shall not extend more than 30 feet in width measured horizontally.
- (2) Ground floor windows. Religious institutions are exempt from ground floor window requirements.
- (a) All new nonresidential development or redevelopment shall provide ground floor windows for facades facing the street, including windows that allow views into working areas or lobbies, pedestrian entrances, or display windows. The glazing pattern shall be aligned in regular and traditional patterns found within the MMVD.
  - (b) In new and redeveloped nonresidential structures, windows that block two-way visibility, such as darkly tinted and mirrored windows, are prohibited as ground floor windows along street facades.
  - (c) In new and redeveloped nonresidential structures, any wall that is within 30 feet of the street shall contain at least 20% of the ground floor wall area facing the street in display areas, windows, or doorways. Blank walls, including walls that do not include display areas, windows, architectural features, and/or doorways, are prohibited.
- (3) All structures within the MMVD shall utilize at least four of the following design features:
- (a) Gables.
  - (b) Offsets on the building face or roof of at least two inches.
  - (c) Gable dormers.
  - (d) Cupolas or other appropriate roof elements.
  - (e) Covered porch or recessed entry area.
  - (f) Window shutters.
  - (g) Horizontal lap siding.
  - (h) Wood shingles.
- (4) Divided light windows metal-sided buildings are prohibited within the Marstons Mills Village District.
- (5) Drive-through and drive-up windows are prohibited within the Marstons Mills Village District.
- (6) The design of all structures and materials selected for their exterior surfaces will utilize scale, color and materials that enhance and promulgate the traditional small-scale village character currently found in the MMVD.
- (7) Signs. In addition to compliance with Article VII, Sign Regulations, the following restrictions shall also apply to all signs in the MMVD.

- (a) Internally illuminated signs, halo and backlit signs are prohibited in the MMVD.
  - (b) Business identity, either by awnings, accent bands, paint or other applied color schemes, signage, decorative roof details or materials should not be the dominant architectural feature.
- J. Site development standards. In addition to Article **IX**, Site Plan Review, and Article **VI**, Off-Street Parking, the following additional requirements shall apply within the MMVD.
- (1) Loading docks. Loading docks shall be screened from Route 149, River Road and Main Street with landscaping or fencing materials of an appropriate scale.
  - (2) To the greatest extent feasible, all new parking areas shall be located to the side and rear of the building. Parking is not permitted in the required front yard setback with the exception of parking required by ADA compliance as determined by the Building Commissioner.
  - (3) Curb cuts and driveways.
    - (a) Shared driveways and parking area interconnections are strongly encouraged. No more than one curb cut on Route 149, River Road and Main Street shall be allowed for any lot. For traffic safety and to maintain traffic flow, no new driveways shall be permitted on Route 149, River Road and Main Street within 200 feet of any intersection.
    - (b) Driveways shall not exceed the width required by site plan review
  - (4) Lighting.
    - (a) All developments shall use full cutoff light fixtures for exterior lighting in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted.
    - (b) Flood, area and up lighting is prohibited.
- K. Definitions. The following terms are defined for the purpose of the MMVD and shall not be construed to apply to other regulations.

#### **APARTMENT**

One or more rooms with private bath and kitchen facilities comprising an independent self-contained rental dwelling unit (a unit not owned in fee simple) located in a building where the principal use is nonresidential.

#### **MIXED USE DEVELOPMENT**

Development including at least one residential unit and at least one nonresidential use on a single lot or several nonresidential uses on a single lot. In the MMV District, for every four apartment units permitted, one of those units shall be dedicated as affordable in addition to the provisions of Chapter 9, Article I, Inclusionary Affordable Housing Requirements.

#### **SMALL-SCALE FOOD SERVICE**

An establishment where food is served to customers by wait staff. Small-scale food service does not include restaurants designed to serve a large volume of customers. Small-scale food service is subject to corporate branding limitations as described herein. These uses are intended to increase pedestrian traffic.

#### **SMALL-SCALE RETAIL**

Small stores and businesses, including but not limited to, corner groceries, artist space, bookstore, galleries and other small retail uses typically found in small New England towns. Small-scale retail does not include retail or commercial buildings or storage designed to serve a large volume of customers, e.g. gasoline and oil filling stations, garages for automotive or machine repair. Small-scale retail is subject to corporate branding limitations as described herein. These uses are intended to increase pedestrian activity.

## § 240-25. HB Business District.

[Amended 11-7-1987 by Art. 1; 5-7-1988 by Art. 4; 3-11-1999 by Order No. 99-058; 12-20-2018 by Order No. 2019-032]

- A. Purpose. The proposed amendments to the Highway Business District strive to encourage investment in Barnstable's aging commercial corridors and respond to current market demands, while promoting an increase in property values, appropriate protection for adjacent residential land uses, and Barnstable's unique character and exceptional quality of life.
- B. Principal permitted uses. The following uses are permitted in the HB Business District:
- (1) Art galleries.
  - (2) Artisan, craftspersons, and meakers.
  - (3) Artists' lofts.
  - (4) Bank.<sup>1</sup>
  - (5) Bed-and-breakfasts, subject to the provisions of § **240-11C(6)**.
  - (6) Business support services.
  - (7) Dwelling, single-family.
  - (8) Dwelling, two-family.
  - (9) Dwelling, multifamily.
  - (10) Educational institutions.
  - (11) Fraternal or social organizations.
  - (12) Health club.
  - (13) Mixed use development.
  - (14) Movie theatre.
  - (15) Museums.
  - (16) Office, business and professional.
  - (17) Office, dental or medical.
  - (18) Performing arts facilities.
  - (19) Personal service establishments.
  - (20) Recreational establishment.
  - (21) Research and development, technological and computer research, software development and data processing including computer operations services.
  - (22) Restaurant and other food establishment.<sup>1</sup>
  - (23) Retail and wholesale.<sup>1</sup>
  - (24) Senior living, assisted living
  - (25) Senior living, nursing homes.
  - (26) Veterinary hospital/clinic.<sup>2</sup>

<sup>1</sup> Drive-throughs shall be permitted accessory to such use, subject to the issuance of a Special Permit pursuant to § 240-25C herein.

<sup>2</sup> The landscape setback from all residential property lines shall be 20 feet. Within the landscape buffer, existing mature trees shall be retained and shall be supplemented with plantings that will provide dense year-round screening, or a solid fence with landscape plantings on the residential side.

<sup>3</sup> Parking areas for commercial vehicles and any exterior areas used for loading or storage and dumpsters shall be screened from view from the public way.

C. Conditional uses. The following uses are permitted as conditional uses in the HB District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section, and to a finding that such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community:

- (1) Auto service and repair shops.<sup>1</sup>
- (2) Building, sale, rental, storage and repair of boats.<sup>1</sup>
- (3) Car rental services.<sup>1</sup>
- (4) Contractors' yards.<sup>1, 2</sup>
- (5) Funeral home or mortuary.<sup>1</sup>
- (6) Hotel and motel, subject to the provisions in § 240-22F.<sup>1[1]</sup>  
 [1] *Editor's Note: So in original.*
- (7) Manufacturing, light and industrial uses.<sup>1, 2</sup>
- (8) Retail, gasoline or diesel.<sup>1</sup>
- (9) Warehouse or distribution.<sup>1, 2</sup>
- (10) Drive-throughs for banks, retail uses, and restaurants and other food service establishments.
- (11) Contractor service establishments.<sup>1, 2</sup>

<sup>1</sup> The landscape setback from all residential property lines shall be 10 feet. Within the landscape buffer, existing mature trees shall be retained and shall be supplemented with plantings that will provide dense year-round screening, or a solid fence with landscape plantings on the residential side.

<sup>2</sup> Parking areas for commercial vehicles and any exterior areas used for loading or storage and dumpsters shall be screened from view from the public way.

D. Bulk regulations.

Minimum Yard Setbacks (Feet)								
Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Front	Rear	Side	Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
HB	15,000	20	100	20 <sup>1, 2</sup>	20	10	38 <sup>3</sup>	30

<sup>1</sup> Forty feet along Route 28 and Route 132.

<sup>2</sup> The front yard setback shall be a landscape setback in which existing trees and shrubs shall be retained within and supplemented with other landscape materials in accordance with accepted

landscape practices. Where natural vegetation cannot be retained, the front yard landscape setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage and distributed throughout the front yard landscape setback area. No plantings shall obscure site entrance and exit drives and/or road intersections. All landscape areas shall be continuously maintained substantially in accordance with Article **IX** herein.

<sup>3</sup> Or three stories, whichever is lesser.

E. District-wide design and performance standards.

(1) Applicability.

(a) Design and performance standards for the Highway Business District are provided in this subsection. Design and performance standards shall apply to expansions and modifications and new development as defined herein. Design and performance standards shall not apply to changes of use or tenancy changes in an existing building or expansions or modifications below the thresholds defined in Subsection **E(1)(a)[1]**.

[1] Expansions or modifications. A project shall be considered an expansion or modification where any alterations to an existing building are proposed that exceed the following thresholds, but do not meet the designation of New Development as described in Subsection **E(1)(b)** below:

[a] An expansion of the footprint of a building by more than 20%.

[b] More than 50% of the exterior walls or 50% of the roof area are completely removed or replaced.

[i] Alterations to existing structures to accommodate second- or third-floor additions shall not be considered for the purposes of calculating this subsection.

[2] Changes to the interior of a structure or the addition of accessory equipment shall not be considered when determining what constitutes an expansion or modification.

(b) New development. A project shall be considered new development where a building for a principal use is proposed for construction that did not previously exist within the HB. New development may include new construction or demolition and reconstruction.

(2) Building design standards.

(a) In addition to the site plan review submittal requirements of § **240-102**, architectural elevations shall be submitted.

(b) Building facades.

[1] Building facades shall not contain blank wall areas that exceed 25 linear feet, measured parallel to the street.

[2] New development shall vary the building footprint so that there are pronounced changes in the wall planes and building mass as defined herein. For every 50 linear feet of facade, at least 10 feet projection or setback in the facade should be accommodated. The recess or projection can be split into several components, but changes in the facade line of 10 feet or greater are most likely to reduce the visual impact of the building mass.

(c) Building entries.

[1] All buildings shall have an orientation to and entrance from the sidewalk along the primary building frontage. Entrances shall be visually distinctive from the remaining portions of the facade along which they are located.



- (d) Roof.
  - [1] Parapet walls along the roof shall feature three-dimensional cornice treatments or other shadow-creating details.
- (e) Building materials.
  - [1] The following building materials are prohibited on any facade:
    - [a] Plain concrete block.
    - [b] Glass block.
    - [c] Exposed aggregate (rough finish) concrete wall panels.
    - [d] Plastic.
    - [e] Corrugated metal.
- (f) Multitenant centers. Multitenant retail centers shall comply with the following additional design standards.
  - [1] A cohesive character is required through the use of coordinated building design, hardscape treatment (special paving materials, lighting, etc.) and landscaping.
- (3) Parking lot design standards.
  - (a) All new development shall comply with § **240-54**, Location of parking lot in relation to buildings, which states: "Parking lots shall be located to the rear or side of a building unless such location would have an adverse environmental impact or is infeasible due to configuration of the site."
- (4) Site design standards.
  - (a) Sites shall incorporate safe pedestrian access to the building(s) from the public right-of-way and safe pedestrian circulation within the development. Where pedestrian connections cross primary vehicular driveways or aisles, the walkways shall be designed to clearly show the space is dedicated to pedestrian traffic through the use of raised or alternative surfaces.
  - (b) Parking areas shall include provisions for the "parking" of bicycles in bicycle racks in locations that are safely segregated from automobile traffic and parking. For parking areas of 10 or more spaces, bicycle racks facilitating locking shall be provided to accommodate one bicycle per 20 parking spaces or fraction thereof.
- (5) Screening.
  - (a) Storage areas, loading docks, rooftop equipment, utility buildings, dumpsters and similar features shall be screened so as not to be visible to a pedestrian from within the right-of-way of a street abutting the property containing the building. The screening shall complement the design of the building through the use of similar materials, colors, finishes and architectural details. Plant materials may be used for ground level screening.
  - (b) Access. Driveways on Route 28, Route 132 and West Main Street shall be minimized. All driveways and changes to driveways shall:
    - [1] Provide the minimum number of driveways necessary to provide safe and convenient vehicular and emergency vehicle access.
    - [2] Provide shared access with adjacent development where feasible.
    - [3] Provide a driveway interconnection between adjacent parcels to avoid short trips and conflicts on the main road.

- F. Definitions. The following terms are defined for the purpose of the HB and shall not be construed to apply to other regulations:

**ARTISAN, CRAFTSPERSONS AND MAKERS**

A small-scale use employing people who practice manual skills to produce ornamental or functional works in limited quantities. A key feature of works produced by artisans, craftspeople or makers is the high degree of manual or specialized technical expertise involved. Examples include artists or makers in a variety of mediums, designers, and art conservation.

**ARTIST'S LOFT**

A place designed to be used as both a dwelling and a place of work by an artist, artisan, or craftsman, including persons engaged in the application, teaching, or performance of fine arts, such as drawing, vocal or instrumental music, painting, sculpture, photography, graphics, media arts, and writing. The work activities shall not adversely impact the public health, safety, and welfare, or the livability, functioning, and appearance of adjacent property.

**AUTO SERVICE AND REPAIR SHOPS**

A facility for the general repair and maintenance of motor vehicles, including motor vehicle inspections and car washes. This definition shall exclude vehicle dismantling or salvage.

**CONTRACTOR SERVICE ESTABLISHMENTS**

Wholesale sales and distribution of building materials including plumbing, carpentry, lumber, electrical, heating and air conditioning, and other similar service or repair businesses; associated showrooms and sales/display space customarily accessory to such uses.

**CONTRACTORS' YARDS**

Landscaping, construction and site preparation, and other similar service businesses, provided that all outdoor storage of building materials, trucks and landscaping equipment and materials, are screened from view from public ways.

**EDUCATIONAL INSTITUTIONS**

A public or private facility that offers in-classroom instruction at the PreK-12 or post-secondary levels. The institution may also have research facilities and/or professional schools that grant master and doctoral degrees. "Educational institutions" also include facilities that offer in-classroom vocational instruction in industrial, clerical, computer, managerial, automotive, repair (electrical, plumbing, carpentry, etc.), or commercial skills, or a business conducted as a commercial enterprise, such as a school for general educational development or driving school.

**FRATERNAL OR SOCIAL ORGANIZATIONS**

A building or land used for the activities of an association of persons for the promotion of some nonprofit common objective, such as literature, science, politics, and good fellowship (not accessory to, or operated as, or in connection with a tavern, eating place, or other place open to the public), which meets periodically and may be limited to members.

**FUNERAL HOME OR MORTUARY**

An establishment providing services such as preparing the human dead for burial and arranging and managing funerals, and may include limited caretaker facilities. This classification excludes cemeteries, crematoriums, and columbariums.

**HEALTH CLUB**

A facility for the purpose of physical exercise or wellness open only to members and guests or open to the public for a fee. It shall include health and fitness clubs, and specialty fitness uses, such as yoga studios or cross-fit facilities and may include customary accessory uses.

**MIXED USE DEVELOPMENT**

Development including at least one residential unit and at least one nonresidential use on a single lot; or development including several nonresidential uses on a single lot.

### **MUSEUMS**

A public or private facility, including an aquarium, established for preserving and exhibiting artistic, historical, scientific, natural or man-made objects of interest, designed to be used by members of the public for viewing, with or without an admission charge. Such activity may include, as an accessory use, the sale of memorabilia, crafts work and artwork, and the holding of meetings and social events.

### **OFFICE, DENTAL OR MEDICAL**

A building or portion of a building in which the primary use is the provision of health-care services to patients or clients by an appointment only. Such services may include the following: medical, dental, psychiatric, psychological, chiropractic, dialysis, acupuncture, reflexology, mental health professional, physical and/or occupational therapy, related medical services, or a laboratory which provides bacteriological, biological, medical, x-ray, pathological and similar analytical or diagnostic services to doctors or dentists.

### **PERFORMING ARTS FACILITY**

An enclosed space suitable for a variety of cultural arts performances, permanently available for the primary principal use of public performing arts presentations, such as plays, dances, and concerts, although incidental use for private meetings, exhibits and presentations shall be permitted. Such space may also include studios, classrooms, and galleries.

### **PERSONAL SERVICE ESTABLISHMENT**

An establishment engaged in the provision of frequent or recurrent needed services of a personal nature. Typical uses include, but are not limited to, barbershop, beauty shop, dry cleaner, tailor, or other similar services.

### **RECREATIONAL ESTABLISHMENT**

An establishment engaged in the provision of public recreational services, including bowling and billiards.

### **RETAIL, GASOLINE AND/OR DIESEL**

A facility where gasoline, diesel or any other automotive engine fuel is stored only in underground tanks and offered for sale directly to the public on the premises. Retail, gasoline and/or diesel shall be subject to the requirements of § 240-35, Groundwater Protection Overlay Districts.

### **SENIOR LIVING, ASSISTED LIVING**

A combination of housing, ancillary support services and personalized care that is designed to respond in a homelike setting to the individual needs of adults requiring help with activities of daily living, but who do not require the skilled medical care provided in a nursing home.

### **SENIOR LIVING, NURSING HOMES**

A facility, including for the aged or chronically ill, providing bed-care and in-patient services for persons requiring regular medical attention, but excluding a facility providing surgical or emergency medical services and including skilled nursing care facilities.

### **VETERINARY HOSPITAL/CLINIC**

A facility maintained by or for the use of a licensed veterinarian in the diagnosis, treatment, or prevention of animal diseases and injuries. Use as a kennel shall be limited to short-term boarding and shall be only incidental to such hospital use.

## **§ 240-26. HO Highway Office.**

A. Standards applicable to all uses within the HO Highway Office District:

- (1) Naturally occurring vegetation, including trees shall be incorporated into the design of the site wherever possible, and natural vegetation shall be retained in landscaped buffer areas to the maximum extent feasible. The limit of clearing shall be indicated on plans submitted to site plan review pursuant to Article IX herein. No clearance of vegetation shall occur prior to submission to site plan review.
- (2) No nonresidential development shall have principal vehicular access through a single-family residentially zoned area, or principal vehicular access via a road located in a single-family residential zoning district.
- (3) Building and site design shall, in so far as practical, conform to officially published, local and regional design guidelines applicable to Cape Cod.

B. Principal permitted uses. The following uses are permitted in the HO Highway Office Zone:

- (1) Business, professional and governmental office; bank, including drive-through facilities.
- (2) Medical, dental office and clinic, including patient treatment facilities.
- (3) Technological and computer research, data processing; computer operations.
- (4) Publishing and printing operations.

C. Accessory uses. (Reserved for future use.)

D. Conditional uses. (Reserved for future use.)

E. Special permit uses. (Reserved for future use.)

F. Bulk regulations.

[Amended 7-16-1998 by Order No. 98-133; 3-11-1999 by Order No. 99-056; 3-11-1999 by Order No. 99-058]

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Floor Area Ratio <sup>2</sup>
				Front	Side	Rear		
HO	2 acres	200	—	45	15	20	30 <sup>1</sup>	0.3

<sup>1</sup> Or two stories, whichever is lesser.

<sup>3</sup> Floor area ratio (FAR) is the ratio of gross building square feet to lot area.

NOTE: Front yard landscaped setback from the road lot line: 45 feet. Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

(1) Dimensional requirements.

(2) Landscape buffer:

- (a) Landscape buffer from side yard: 10 feet.
- (b) Landscape buffer from rear yard: 20 feet.

- (c) Natural vegetation shall be retained in landscape buffers and supplemented, or replanted where natural vegetation has been lost, with similar plant materials common to Cape Cod, including bushes, trees and ground cover.

## § 240-27. S&D Service and Distribution District.

[Amended 7-16-1998]

- A. Principal permitted uses. The following uses are permitted in the S&D District:
  - (1) Retail store.
  - (2) Professional/business office.
  - (3) Bank.
  - (4) Personal service store/shop.
  - (5) Warehouse and distribution facility.
  - (6) Servicing, storing and processing of goods in transit.
  - (7) Facilities for service-type trades, including shops and storage yards.
- B. Accessory uses. The following uses are permitted as accessory uses in the S&D district.
  - (1) Offices, garages and related facilities for uses listed as principal permitted uses in Subsection A herein.
- C. Conditional uses. The following uses are permitted as conditional uses in the S&D District provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:
  - (1) Full-service restaurants and delicatessens.
  - (2) Kennels as defined in MGL Ch. 140, § 136A, or other similar facilities for the breeding, boarding, sale or training and related treatment of common domestic pets subject to the following:
    - (a) The Board may impose reasonable conditions, including without limitation, measures for security and the reduction or containment of noise so as to render such uses as inoffensive as practicable.
  - (3) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use
  - (4) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.
- D. Special permit uses. (Reserved for future use.)
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		

**Minimum Yard Setbacks  
(feet)**

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
S&D	43,560	20	160	60	25	40	30 <sup>1</sup>	25

<sup>1</sup> Or two stories, whichever is lesser.

NOTE: Front yard landscaped setback from the road lot line:

S & D: 20 feet, 60 feet from Route 28.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. [Amended 3-11-1999 by Order No. 99-056]

## § 240-28. SD-1 Service and Distribution District.

- A. Principal permitted uses. The following uses listed in Subsection **A(1)** through **(9)** below are permitted in the SD-1 Service and Distribution District, provided that no operation shall result in the treatment, generation, storage or disposal of hazardous materials, except as follows: very small quantity generators; waste oil retention facilities for retailers of motor oil required and operated in compliance with MGL Ch. 21, § 52A; oil on site for heating of a structure or to supply an emergency generator.
- (1) Medical, dental offices, laboratory services, treatment facilities.
  - (2) All other business, governmental and professional offices.
  - (3) Bank.
  - (4) Personal service business including but not limited to the following: barber, beauty shop, dry-cleaning pickup service, shoe repair, tailor and dressmaker.
  - (5) Mortuary or funeral home.
  - (6) Research and development, technological and computer research, software development and data processing including computer operations services.
  - (7) Publishing and printing establishments.
  - (8) Boat sales and storage.
  - (9) Contractor service establishments:
    - (a) Wholesale sales and distribution of building materials including plumbing, carpentry, lumber, electrical, heating and air conditioning, and other similar service or repair businesses; associated showrooms and sales/display space customarily accessory to such uses; and
    - (b) Landscaping, construction and site preparation, and other similar service businesses, provided that all outdoor storage of building materials, trucks and landscaping equipment

and materials, are screened from view from Route 28 and Old Post Road.

B. Accessory uses. (Reserved for future use.)

C. Conditional uses. (Reserved for future use.)

(1) Retail store, provided that Zoning Board of Appeals finds that:

(a) The proposed business is a low- to average-volume traffic generator, not to include a high-volume traffic generator such as a convenience store. The applicant shall provide the Zoning Board of Appeals with traffic data including a comparison with trip generation rates for different types of retail uses, from the Institute of Transportation Engineers "Trip Generation Manual."

(2) Full-service restaurant, subject to the following conditions:

- (a) Food is served to customers at tables by waitpersons, except that the Zoning Board of Appeals may permit buffet style dining;
- (b) Approximately 85% of food is consumed on the premises;
- (c) Bar seats or places do not exceed 15% of restaurant seats;
- (d) Entertainment shall be limited to nonamplified dinner music;
- (e) No drive-in or outdoor take-out counter facilities shall be permitted; and
- (f) Access shall be from Industry Road or Old Post Road.

D. Special permit uses. (Reserved for future use.)

E. Bulk regulations (dimensional requirements).

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)	Maximum Floor Area Ratio <sup>2</sup> Retail/All Other
				Front (feet)	Side (feet)	Rear (feet)		
SD-1	43,560	150	—	45	15	20	30 <sup>1</sup>	0.25/0.30

NOTES:

<sup>1</sup> Or two stories, whichever is lesser.

<sup>2</sup> Floor area ratio (FAR) is the ratio of gross building square feet to lot area.

Front yard landscaped setback from the road right-of-way: 20 feet, 45 feet from Route 28.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

[Added 7-15-1999]

## § 240-29. SCCRCOD Senior Continuing Care Retirement Community Overlay District.

[Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

[1] *Editor's Note: Former § 240-29, MA-1 Business District, as amended, was repealed 7-14-2005 by Order No. 2005-100. The specific requirements for the SCCRCOD District are found in §§ 240-29.1 through 240-29.11.*

## § 240-29.1. Purpose.

[Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

The purpose of this section is to encourage the development of residential communities designed to offer shelter, convenience, services and personal medical care, including nursing facility services, to senior persons while providing adequate and economical provision of streets, utilities and public spaces and preserving the natural and scenic qualities of the open areas. These facilities shall offer a continuum of care, ranging from independent living to assisted living and nursing home care that reflects the changing needs of their residents.

## § 240-29.2. Definitions.

[Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

As used in this § 240-29, the following terms shall have the meanings indicated:

### **APPLICANT**

The person or persons, including a corporation or other legal entity, who applies for approval of a Senior Continuing Care Retirement Community Overlay District (SCCRCOD) hereunder. The applicant must own, or be the beneficial owner of, all the land included in the proposed SCCRCOD, or have authority from the owner(s) to act for the owner (s) or hold an option or contract duly executed by the owner(s) and the applicant giving the latter the right to acquire the land to be included in the site.

### **ASSISTED-LIVING UNITS**

Residential living units in which supportive services are offered for individuals who need assistance in activities of daily living.

### **BUILDING HEIGHT**

Building height shall be measured as the vertical distance from the grade plane to the average height of the highest roof plane that also has the highest ridgeline.

### **BUILDING STORY**

The vertical distance from top to top of two successive tiers of beams or finished floor surfaces; and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

### **CONTINUING CARE RETIREMENT COMMUNITY**

A facility which may include a wide range of housing types including studio, one-, two-, and three-bedroom apartments, townhouses, duplexes, clusters or single-family homes and which offers a continuum of services ranging from in-home services to on-site nursing home care. The facility shall include independent living units, assisted living units and skilled nursing home facilities. The facility may include accessory uses for the benefit of the residents which accessory uses are subordinate and incidental to the continuing care retirement community as determined by the Town of Barnstable Planning Board. Other than nursing home beds, the facility shall meet the Town's Inclusionary Ordinance, Chapter 9 of the Barnstable Code, requiring that 10% of the units be affordable as "affordable" is currently defined under Chapter 9, with the exception that required affordable units may be provided off-site. In the event that off-site units are allowed, the applicant shall provide such units in accordance with § 240-29.3 below.

### **GRADE PLANE**



A reference plane representing the average of the finished ground level adjoining the building at all exterior walls. The reference plane shall be established by using the lowest points of grade within the area between the building and a point six feet from the building.

#### **SENIOR PERSON**

Person aged 55 or older or in the case of a couple, one spouse must be over the age of 55. It may include a developmentally disabled adult person under the age of 55.

#### **SPECIAL PERMIT GRANTING AUTHORITY**

For the purposes of this section, the Barnstable Planning Board shall be the special permit granting authority.

#### **NURSING OR CONVALESCENT HOME**

Any dwelling or building with sleeping rooms for people who are housed or lodged with meals and nursing care for hire, as licensed by the Massachusetts Department of Public Health under MGL c. 111 §§ 71 through 73, as amended.

#### **VISITABILITY**

Shall mean that a dwelling unit has no steps between the exterior walking surface adjacent to the unit and the interior primary floor level of the unit; that at least one egress door from the unit be at least three feet wide; that all primary floor passage doors in the unit are at least two feet eight inches wide; and that at least one toilet room be located on the primary floor of the unit.

### **§ 240-29.3. Description of district.**

[Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

The SCCRCOD is an overlay district that allows a continuing care retirement community as a use by special permit and which overlay district may be superimposed on any parcel(s) of five acres or more of contiguous upland in any zoning district deemed appropriate as determined by the Town of Barnstable Planning Board. Where the SCCRCOD authorizes uses not otherwise allowed in the underlying district, the provisions of the SCCRCOD shall control. In the event that off-site affordable units are allowed, such units are not required to meet the definition of a "continuing care retirement community" but must meet the following criteria: The number of required affordable units shall be increased to a number not less than 12% of the total proposed market rate units on-site plus not less than 12% of any additional market rate units proposed off site.

### **§ 240-29.4. Location.**

[Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

The SCCRCOD is to be shown on the Official Zoning Map of the Town of Barnstable.

### **§ 240-29.5. Concept plan.**

[Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

Prior to the rezoning of any property for inclusion in the SCCRCOD and as part of a petition for such rezoning, a schematic plan, called for purposes of this section, a "concept plan," shall be filed by the applicant with the Planning Board for review at least 21 days prior to a regularly scheduled meeting of the Planning Board. The concept plan shall be consistent with the provisions of this SCCRCOD Ordinance. In deliberation on approval of a concept plan, the Planning Board shall give consideration to the Town of Barnstable Local Comprehensive Plan. The purpose of the concept plan is to ensure that the overall development scheme is consistent with Town policies and plans; adequately protects natural resources; provides safe traffic circulation consistent with the adjacent roadway network that also ensures adequate access to the development; and to ensure that the development is arranged to provide maximum protection of its residents from nuisance and hazard.

- A. The concept plan shall include:
- (1) A schematic site development plan showing in general, the location and square footage of all proposed buildings, general site grading, parking, landscaping, roads, walkways and accessways, open space, wetlands, lighting and signage.
  - (2) A general breakdown of building types: single-family, two-family, multifamily and accessory structures, including total number of bedrooms for the entire development.
  - (3) A schematic subdivision plan(s), if applicable.
  - (4) Specific floor plans, building plans or other detailed construction documents are not required at the concept plan stage.
- B. The Barnstable Planning Board will notify the public of the time and date of the public meeting on the concept plan. Thereafter, the Barnstable Planning Board shall determine that (i) the concept plan has been approved; or (ii) the concept plan has been approved subject to modifications; or (iii) the concept plan has been disapproved. The Barnstable Planning Board shall provide to the applicant in writing the reasons for any denial of approval of the concept plan. The determination of the Barnstable Planning Board of the approvability of the concept plan shall be the basis for a recommendation to the Town Council for the rezoning petition.

## § 240-29.6. Map amendment.

[Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

In order to obtain approval of a SCCRCOD the applicant, after first having received a decision from the Planning Board on the approvability of its concept plan, must file a petition for the amendment of the Town of Barnstable Zoning Map for inclusion of the subject parcel(s) within the SCCRCOD.

## § 240-29.7. Application for special permit.

[Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

After successful rezoning of a SCCRCOD, an application for a special permit shall be submitted to the Planning Board within one year from the effective date of such rezoning. The Planning Board may grant extensions for the time of filing for a special permit as may be deemed appropriate due to the size and scope of the proposed development. The application for special permit shall be submitted on forms furnished by the Planning Board, accompanied by the following:

- A. A site plan in accordance with the Town of Barnstable site plan review regulations, §§ **240-98** through **240-105**, indicating the planned location of buildings and their use, off-street parking areas, driveways, easements, walks, the location, type and height of walls, and the extent of landscaping or other treatment for the protection of adjacent properties.
- B. Building plans and elevations for all buildings and structures as may be required to fully describe the project.
- C. A tabulation of the areas of the proposed site elements (including footprints and gross floor area), including total number of buildings, number of bedrooms, accessory structures, parking structures and surface parking areas (square footage and number of parking spaces) and stormwater management areas.
- D. Information pertaining to the proposed entity that is to manage the SCCRCOD and the type of operating agreement contemplated.
- E. If a subdivision is proposed, then all documents as required for the subdivision shall be reviewed during the special permit process.

- F. A narrative detailing the services to be provided to the residents and the staff to be employed to provide those services.
- G. Description of all proposed accessory structures and uses.
- H. Building phasing schedule, if applicable.
- I. Description of any green building construction techniques being used, including a description of how maximum water and energy efficiencies will be achieved.
- J. A landscape plan signed and stamped by a Massachusetts certified landscape architect.
- K. Proposed signage, consistent with the requirements of the underlying zoning district.
- L. Plans detailing provision for wastewater disposal.
- M. Description of any infrastructure improvements that may be necessary to provide for the project.
- N. Additional information as may be required by the Planning Board as reasonably necessary to making the determinations required by this section.

## § 240-29.8. Joint Cape Cod Commission Review.

[Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

- A. Upon a determination by the Building Commissioner that an application for site plan review for a development requiring a special permit under the SCCRCOD constitutes a development of regional impact (DRI) under Section 12(h) of the Cape Cod Commission Act, 1990 Mass. Acts, Ch. 716, a referral shall be made to the Cape Cod Commission, accompanied by a request that a joint review process of the proposed development be established between the Cape Cod Commission and the Planning Board.
- B. The joint review process shall include joint hearings between the Planning Board and the Cape Cod Commission, as feasible.

## § 240-29.9. Standards.

[Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

In order to be eligible for consideration for a special permit, the proposal must contain parcels included in the SCCRCOD and shall meet all of the following standards:

- A. Compliance with applicable regulations and standards. In the case of a subdivision, all plans and development shall comply with all applicable standards of the Planning Board's Subdivision Rules and Regulations, including such waivers as may be granted by the Planning Board.
- B. Bulk regulations. For all lots within the SCCRCOD the minimum lot area shall be 217,800 square feet of contiguous upland. For all lots and buildings within the SCCRCOD, the density, minimum lot frontage, property line and road layout setbacks, minimum building height and number of stories and minimum building separation requirements of the underlying zoning district shall apply unless the Planning Board finds that a waiver of any of those requirements is beneficial to create a SCCRCOD which better preserves open space without creating adverse environmental or aesthetic impacts or facilitates the delivery of services to senior persons or provides benefits which outweigh any detriments or provides sufficient mitigation to offset impacts.
- C. Parking. Parking shall be provided as follows:

**SCCRCOD Uses**

**Minimum Number of Spaces    Guest Spaces**

<b>SCCRCOD Uses</b>	<b>Minimum Number of Spaces</b>	<b>Guest Spaces</b>
Independent-living dwelling unit	0.75 per dwelling unit	0.5 per dwelling unit
Assisted-living dwelling unit	0.5 per dwelling unit	0.5 per dwelling unit
Skilled care facility	0.5 per bed	0.5 per bed
Employee — dwelling unit administration	0.75 per 5 dwelling units	N/A
Employee — skilled care facility	0.5 per bed	N/A

- D. Waiver of parking requirements. The Planning Board may waive the number of parking spaces required for the above-listed uses upon a finding that the applicant has provided a parking demand analysis that adequately demonstrates alternate parking requirements for the proposed use or combination of uses.
- E. Parking and loading design standards.
- (1) Any above-grade parking or loading facility should be screened from public view to the extent necessary to eliminate unsightliness. Screening shall consist of landscape materials, topographic features, residential buildings or any combination of these. In the alternative, the parking facility shall treat exterior walls with architectural features typical of the development it serves. Aboveground, multilevel parking garages are discouraged.
  - (2) Outdoor storage shall not be permitted.
  - (3) These requirements are in addition to the parking and parking lot landscaping requirements of the underlying zoning district.
- F. Visitability. The applicant shall provide that all of the dwelling units shall be visitable as determined by the SPGA.
- G. Design standards.
- (1) All buildings in the layout and design, including landscaping, the placement of pedestrian sidewalks and parking, shall be an integral part of the development and have convenient access to and from adjacent uses.
  - (2) Primary landscape treatment shall consist of a combination of indigenous grasses, trees and shrubs commonly found on Cape Cod and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Planting areas should be designed to serve as stormwater treatment areas often known as "rain gardens."
  - (3) Existing significant trees and natural vegetation shall be retained to the maximum extent possible. A minimum of one tree with a three-inch minimum caliper is required to be planted within the front setback for every 30 feet of frontage of property.
  - (4) All landscaped areas shall be continuously maintained, irrigated, and organically fertilized.
  - (5) All stormwater shall be treated as appropriate and discharged on site and shall incorporate low-impact techniques for stormwater discharge.
  - (6) Minimum recommended light levels established by the Cape Cod Commission Technical Bulletin 95-001, DRI Standards and Submittal Requirements for Exterior Lighting Design shall apply. Site lighting, security lighting and architectural/landscape lighting shall provide illumination levels appropriate for the designed activity without exceeding minimum requirements.
  - (7) There shall be an adequate safe and convenient arrangement of pedestrian circulation facilities, sidewalks, roadways, driveways, off-street parking and loading space. Buildings and

vehicular circulation open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic.

- H. Impact analysis. The applicant shall provide additional data and analysis requested by the Planning Board to enable the Board to assess the fiscal, community and environmental impacts of the proposed development. At its discretion, the Planning Board may impose reasonable fees upon the applicant for the hiring of outside consultants and the provisions of MGL c. 44, § 53G, shall apply thereto.
- I. Phasing and period of validity for special permit. The applicant, as part of the application, may propose a phasing plan identifying the specific units to be constructed in each phase and stating the reasons for the request. Said submission shall show the full buildout of the development. The Planning Board, upon a finding of good cause and of consistency with the provisions of this section, may approve a phasing plan that allows the construction of the development to be extended over a period not to exceed 10 years. Notwithstanding anything to the contrary contained in § **240-125C(3)**, as long as the applicant proceeds with construction continuously in compliance with the approved phasing plan or with any modifications thereto approved by the Planning Board, the period of validity for the special permit shall be the same as the period of the phasing plan.  
[Added 6-18-2009 by Order No. 2009-139]

## § 240-29.10. Decision.

[Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

The Planning Board may grant a special permit for a SCCRCOD where it makes the following findings:

- A. The SCCRCOD complies with all applicable Subdivision Rules and Regulations,<sup>[1]</sup> except as they may be waived by the Board.  
[1] *Editor's Note: See Ch. 801, Subdivision Regulations.*
- B. The SCCRCOD does not cause substantial detriment to the neighborhood.
- C. The SCCRCOD is consistent with the Town of Barnstable Local Comprehensive Plan.
- D. The SCCRCOD provides an effective and unified treatment of the development on the project site making appropriate provision for environmental protection, the preservation of scenic features, sensitive habitat and other amenities of the site and the surrounding areas.
- E. The SCCRCOD is planned and developed to harmonize with any existing or proposed development in the surrounding area.
- F. The applicant has provided mitigation that sufficiently addresses the impacts of the SCCRCOD.
- G. The SCCRCOD provides services which are tailored to the needs of senior persons and may include meals, housekeeping, transportation, health care services and personal care assistance, and the benefits of the development for the residents and the community outweighs the detriments.
- H. The SCCRCOD complies with the standards established in §§ **240-29.9** and **240-29.3** except as they may be waived by the Board based upon a finding that the waivers granted do not jeopardize health and safety and do not diminish environmental and aesthetic protections. Nothing herein shall allow the Board to waive the minimum twelve-percent off-site inclusionary housing requirement.
- I. Where a phasing plan has been proposed, that the applicant has demonstrated good cause to phase the development and that the approved phasing plan is consistent with the provisions of the SCCRCOD.  
[Added 6-18-2009 by Order No. 2009-139]

## § 240-29.11. Transferability.

[Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

The special permit for the SCCRCOD shall be transferable upon the prior written approval of the Planning Board.

## § 240-30. Medical Marijuana Overlay District.

[Added 2-6-2014 by Order No. 2014-050]

- A. District established. A Medical Marijuana Overlay District is hereby established, and shall be considered as superimposed over any other districts established by this chapter, and is shown as an overlay on the Official Zoning Map established pursuant to § **240-6**, Zoning Map, herein.
- B. Purpose; use.
- (1) Purpose. The purpose of the Medical Marijuana Overlay District is to provide for the limited establishment of registered marijuana dispensaries as they are authorized pursuant to state regulations set forth at 105 CMR 725.000, Implementation of an Act for the Humanitarian Medical Use of Marijuana. Given that registered marijuana dispensaries shall be limited in number and strictly regulated by the Massachusetts Department of Public Health, these zoning regulations intend to permit them where there is access to both regional roadways and public transportation, where they may be readily monitored by law enforcement for health and public safety purposes, and where their impacts are ameliorated by these locations.
  - (2) Use. Within the Medical Marijuana Overlay District, a registered marijuana dispensary that dispenses, cultivates and prepares marijuana products may be permitted as a conditional use only within the overlay district, provided a special permit is first obtained from the Zoning Board of Appeals, subject to the provisions of § **240-125C** herein and subject to the all additional standards and conditions of this section.
- C. Special permit granting authority. Within the MMOD, the Zoning Board of Appeals shall be the special permit granting authority.
- D. Use. Notwithstanding the use limitations of the base zoning district or any other overlay zoning district, a registered marijuana dispensary shall be allowed within the Medical Marijuana Overlay District upon the granting of a special permit, subject to the requirements set forth in this section. Within the Medical Marijuana Overlay District, and only within the Medical Marijuana Overlay District, a registered marijuana dispensary may be permitted, provided that a special permit is first obtained from the Zoning Board of Appeals, subject to the following standards and conditions.
- E. Requirements/standards.
- (1) Registration. All permitted registered marijuana dispensaries shall be properly registered with the Massachusetts Department of Public Health pursuant to 105 CMR 725.100 and shall comply with all applicable state and local public health regulations and all other applicable state and local laws, rules and regulations at all times. No building permit or certificate of occupancy shall be issued for a registered marijuana dispensary that is not properly registered with the Massachusetts Department of Public Health.
  - (2) Building. A registered marijuana dispensary shall be located only in a permanent building and not within any mobile facility. All sales shall be conducted either within the building or by home deliveries to qualified clients pursuant to applicable state and local regulations.
  - (3) Proximity to residential uses. A medical marijuana treatment center shall not be allowed within a building containing a residential use, or upon a lot with a residential use, except an incidental residential use that may be necessary for RMD security.

- (4) Separation requirements. The site is located at least 1,000 feet distant from a religious institution/place of religious assembly, school, day-care center, preschool or afterschool facility or any facility in which children commonly congregate, or if not located at such a distance, it is determined by the Zoning Board of Appeals to be sufficiently buffered from such facilities such that its users will not be adversely impacted by the operation of the registered marijuana dispensary, but in no case shall the distance be less than 500 feet measured from parcel boundary to parcel boundary. In no case shall a RMD directly abut another RMD or any medical marijuana use.
- (5) Dimensional requirements. Except where it is explicitly stated otherwise in this section, Registered marijuana dispensaries shall conform to the dimensional requirements applicable to nonresidential uses within the underlying and other overlaying zoning districts.
- (6) Parking. The required number of parking (both long-term and short-term) spaces for a registered marijuana dispensary shall be one space for every 200 square feet of gross floor area for a RMD; and one space for every 700 square feet of gross floor area for RMD marijuana infused product manufacturing or marijuana cultivation. The Board of Appeals shall also rely on the recommendation of site plan review.
- (7) Loading. The Board of Appeals may require loading bays based on the recommendation of site plan review and/or based on the needs of the proposed use.
- (8) Signage. Signage shall not exceed 12 square feet in area, and no part of the sign shall exceed eight feet above existing average grade. For other site signage, the requirements of Article VII of this chapter shall also apply through the underlying zoning district. The Zoning Board of Appeals may impose additional restrictions on signage, as appropriate, to mitigate any aesthetic impacts.
- (9) Consistency with registration materials. Plans and information provided to the Zoning Board of Appeals shall be consistent with the with the registration materials issued by the Massachusetts Department of Public Health and any other information and materials provided to the Massachusetts Department of Public Health.

F. Special permit requirements.

- (1) Application requirements. An application to the Zoning Board of Appeals shall include, at a minimum, the following information:
  - (a) Complete application form.
  - (b) Description of activities: A narrative providing information about the type and scale of all activities that will take place on the proposed site, including but not limited to cultivating and processing of marijuana or marijuana infused products (MIPs), on-site sales, off-site deliveries, site security, hours of operation, community benefit, distribution of educational materials, and other programs or activities.
  - (c) Service area: A scaled map and narrative describing the area proposed to be served by the registered marijuana dispensary and the anticipated number of clients that will be served within that area. This description shall indicate where any other registered marijuana dispensaries exist or have been proposed within the expected service area.
  - (d) Context map: A scaled map depicting all properties and land uses within a two-thousand-foot radius of the project site, whether such uses are located in Barnstable or within surrounding communities, including but not limited to all religious institutions/places of religious assembly, schools, day-care centers, preschool or afterschool facilities or any facilities in which children commonly congregate.
  - (e) Site plan: The proposal is subject to the provisions of Article IX, Site Plan Review, § 240-102.

- (f) Security plan: The security plan shall be submitted to the Chief of Police who shall provide written comment to the Board as to the adequacy or inadequacy of the security provisions and plans.
  - (g) Building elevations and signage: Architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used. Perspective drawings and illustrations of the site from public ways and abutting properties are recommended but not required.
  - (h) Registration materials: Copies of registration materials issued by the Massachusetts Department of Public Health and any materials submitted to the Massachusetts Department of Public Health for the purpose of seeking registration, to confirm that all information provided to the Zoning Board of Appeals is consistent with the information provided to the Massachusetts Department of Public Health.
- (2) Special permit criteria. In granting a special permit for a registered marijuana dispensary, in addition to the general criteria for issuance of a special permit as set forth in § **240-125C** herein and in consideration of all application materials submitted and testimony received, the Zoning Board of Appeals shall find that the following criteria are met:
- (a) The registered marijuana dispensary complies with all requirements of this section, including but not limited to Subsections **E** and **F** in their entirety.
  - (b) The registered marijuana dispensary is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by other registered marijuana dispensaries, it has been established by the Massachusetts Department of Public Health that supplemental service is needed.
  - (c) The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, cyclists and public transportation users.
  - (d) Traffic generated by client trips, employee trips, and deliveries to and from the registered marijuana dispensary shall not create a substantial adverse impact on nearby residential uses.
  - (e) Where necessary to shield adjacent uses, the Zoning Board of Appeals may require buffering by fencing, vegetation or other screening methods.
- (3) Prohibition on transfer. The special permit shall be issued to the owner of the Medical marijuana treatment center and shall not transfer with a change in ownership of the business and/or property.
- (4) Limitation of approval. A special permit authorizing the establishment of a registered marijuana dispensary shall be valid only for the registered entity to which the special permit was issued, and only for the site on which the registered marijuana dispensary has been authorized by special permit. If the registration for a registered marijuana dispensary has been revoked, transferred to another controlling entity, or relocated to a different site within the Medical Marijuana Overlay District, a new special permit shall be required prior to issuance of a certificate of occupancy.
- (5) Revocation/nonrenewal.
- (a) In accordance with 105 CMR 725.100(E), Expiration and Renewal of Registration, all materials submitted pursuant to the RMD compliance with that section shall also be submitted to the Zoning Board of Appeals record file. The Board reserves the right to hold a public hearing based on a review of the materials showing inconsistencies with special permit conditions and/or the requirements and standards of this section.
  - (b) In accordance with 105 CMR 105(O), Requirements Upon Expiration, Revocation or Voiding of Certificate of Registration of RMD, should DPH take action under this section,



the special permit shall be null and void.

- G. Relationship to other laws. Nothing in this section poses an obstacle to federal enforcement of federal law. Nothing in this law supersedes Massachusetts law prohibiting the possession, cultivation, transport, distribution, or sale of marijuana for nonmedical purposes. Nothing in this law requires the violation of federal law or purports to give immunity under federal law.

[1] *Editor's Note: Former § 240-30, MA-2 Business District, as amended, was repealed 7-14-2005 by Order No. 2005-100.*

## § 240-31. (Reserved)

[1] *Editor's Note: Former § 240-31, B-1 Business District, added 7-19-2001 by Item Nos. 2001-037, 2001-038, 2001-039, was repealed 7-14-2005 by Order No. 2005-100. Said § **240-31**, was subsequently repealed again 6-1-2006 by Order No. 2006-136.*

## § 240-32. IND Limited Industrial District.

### A. Principal permitted uses.

(1) The following uses are permitted in the IND Limited District:

- (a) Warehousing and wholesale distribution facilities of nontoxic and nonhazardous materials.
- (b) Light manufacturing and assembly facilities.
- (c) Research and development facilities.
- (d) Professional or business offices, banks, architectural, engineering and drafting firms, computer operations centers, recreation facilities, and such sewerage treatment facilities as may have been allowed by previous Zoning Ordinance.

(2) Specifically prohibited are petroleum refineries, landfills, resource recovery facilities, hotels, motels, restaurants, manufacturing and processing uses, any use involved in the manufacture, storage, transportation, disposal or use of toxic or hazardous materials and any residential use.

### B. Accessory uses. (Reserved for future use.)

C. Conditional uses. The following uses are permitted as conditional uses in the IND Limited District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § **240-125C** herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- (2) Public or private regulation golf courses subject to the provisions of § **240-11C(2)** herein.

### D. Special permit uses. (Reserved for future use.)

### E. Bulk regulations.

#### Minimum Yard Setbacks

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front (feet)	Side (feet)	Rear (feet)		
IND LTD	90,000	20	200	50	30	30	30 <sup>1</sup>	25

NOTES:

<sup>1</sup> Or two stories, whichever is lesser.

- F. Special screening standards. In IND Limited Districts a buffer strip with a minimum depth of 30 feet at the rear and side site lines and a buffer strip of 50 feet at the front line shall be maintained in existing ground cover and trees or shall be replanted with native trees, shrubs and grasses which do not require continued nurturing and watering; provided, however, that in no instance shall the natural vegetation coverage on any lot consist of less than 25% of the total lot area. A maximum of two driveways, each not more than 50 feet wide, shall be allowed for ingress and egress.

## § 240-33. IND Industrial District.

A. Principal permitted uses.

(1) The following uses are permitted in the IND District:

- (a) Any use permitted in the B District.
- (b) Lumber, fuel and ice establishments.
- (c) Contractors' yards.
- (d) Manufacturing and industrial uses.
- (e) Any use permitted in the S&D District.
- (f) Recreation ice rink facilities.
- (g) Sports and recreation facility.  
[Added 8-17-2017 by Order No. 2017-165]

(2) Specifically prohibited are petroleum refineries, landfills, resource recovery facilities, sewerage treatment facilities which process and discharge less than tertiary-treated effluent, and any other use which involves as a principal activity the manufacture, storage, use, transportation or disposal of toxic or hazardous materials.

B. Accessory uses. (Reserved for future use.)

C. Conditional uses. The following uses are permitted as conditional uses in the IND District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Kennels as provided for in § 240-27C(2) herein.

- (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- (3) Public or private regulation golf courses subject to the provisions of § **240-11C(2)** herein.
- D. Special permit uses. (Reserved for future use.)
- E. Bulk regulations.  
[Amended 8-17-2017 by Order No. 2017-165]

**Minimum Yard Setbacks**

(feet)

Zoning Districts	Minimum Lot Area	Minimum Lot Frontage	Minimum Lot Width	Minimum Yard Setbacks			Maximum Building Height	Maximum Lot Coverage as % of Lot Area <sup>4</sup>
	(square feet)	(feet)	(feet)	Front <sup>1</sup>	Side <sup>2</sup>	Rear <sup>2</sup>	(feet)	
IND	90,000	20	200	60	30	30	30 <sup>3</sup>	25

- <sup>1</sup> For sports and recreation facilities, outdoor uses (e.g., fields, tracks, courts and swimming pools, etc.) and their accessory structures with a footprint of less than 2,000 square feet shall have a minimum front yard setback of 20 feet; provided however, that for such outdoor uses which are temporarily (i.e., not more than 182 days) covered by an air-supported or removable bubble/dome, said temporary bubble/dome shall have a minimum front yard setback of 15 feet. Retaining walls (including those used for outdoor climbing) and outdoor field/court lighting for sports and recreation facilities shall not be subject to these setbacks.
- <sup>2</sup> For sports and recreation facilities, outdoor uses (e.g., fields, tracks, courts and swimming pools, etc.) and their accessory structures with a footprint of less than 2,000 square feet shall have a minimum side and rear setback of 10 feet; this ten-foot side/rear setback shall also apply to such outdoor uses which are temporarily (i.e., not more than 182 days) covered by an air-supported or removable bubble/dome. Retaining walls (including those used for outdoor climbing) and outdoor field/court lighting for sports and recreation facilities shall not be subject to these setbacks.
- <sup>3</sup> Or two stories, whichever is lesser; except that for sports and recreation facilities, the maximum building height shall be 55 feet measured to the highest point on the roof (not including antennas or similar roof fixtures).
- <sup>4</sup> For sports and recreation facilities, the following outdoor uses shall not be considered structures included in this calculation: open-air solar-mounted carports, fields (grass or turf), courts, tracks, swimming pools, retaining walls, and similar outdoor, open-air features; additionally, any such outdoor uses which are temporarily (i.e., not more than 182 days) covered by an air-supported or removable bubble/dome shall not be included in this calculation.

- F. Special screening requirements. The provisions of § **240-32F** herein shall apply to all uses, except they shall not apply to sports and recreation facilities.  
[Amended 8-17-2017 by Order No. 2017-165]

## § 240-34. Floodplain District.

[Amended 5-22-2014 by Order No. 2014-126]

A Floodplain District is herein established within the Town of Barnstable. The district includes all special flood hazard areas within the Town designated as Zone AE, AO, or VE on the Barnstable County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Barnstable County FIRM that are wholly or partially within the Town of Barnstable are Panel Numbers 25001C0532J, 25001C0533J, 25001C0534J, 25001C0537J, 25001C0539J, 25001C0541J,

25001C0542J, 25001C0543J, 25001C0544J, 25001C0551J, 25001C0552J, 25001C0553J, 25001C0554J, 25001C0556J, 25001C0557J, 25001C0558J, 25001C0559J, 25001C0561J, 25001C0562J, 25001C0563J, 25001C0564J, 25001C0566J, 25001C0567J, 25001C0568J, 25001C0569J, 25001C0752J, 25001C0754J, 25001C0756J, 25001C0757J and 5001C0776J, effective date July 16, 2014. The exact boundaries of the district may be defined by the one-hundred-year base flood elevations shown on the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Commissioner, and Engineering Department.

Permits for new construction, alteration of structures, or other development (any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations), at or below the base flood elevation as specified with the A and V Zones as determined by the Flood Insurance Study and designated on the special FEMA Flood Insurance Rate Maps, shall be approved subject to the following:

- A. New construction or substantial improvement (repair, construction or alteration costing 50% or more of the market value of the structure before improvement, or if damaged, before damage occurred) of residential structures shall have the lowest floor (including basement) elevated to not less than base flood elevations. New construction or substantial improvement of nonresidential structures shall either be similarly elevated or, together with attendant utility and sanitary facilities, be floodproofed to not less than base flood elevations.
- B. Where floodproofing is utilized in accordance with Subsection **A** herein, a registered engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood.
- C. Any new construction or substantial improvement to be under taken within flood areas shall be in accordance with Massachusetts State Building Code 780 CMR. The Building Commissioner shall review all proposed development within flood areas to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Sec. 404 of the Federal Water Pollution Control Act Amendments of 1972, U.S.C. § 1334, and shall obtain and maintain records of elevation and floodproofing levels for new construction or substantial improvement within the flood areas.
- D. Any new construction, alteration of structures or other development which is removed from the A or V Zones by subsequent FEMA Flood Insurance Rate Map amendments shall only have to meet the requirements of its new zone designation.
- E. All subdivision proposals and other proposed new developments greater than 50 lots or five acres, whichever is lesser, shall include within such proposals base flood elevation data.
- F. Subdivision and development proposals, including utility and drainage systems, shall assure that they are located and designed to be consistent with the need to minimize flood damage.
- G. In Zone AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- H. In a riverine situation, the Conservation Division Administrator or designee shall notify the following of any alteration or relocation of a watercourse: Adjacent Communities, the NFIP State Coordinator, Massachusetts Department of Conservation and Recreation, 251 Causeway Street, Suite 600-700, Boston, MA 02114-2104, and the NFIP Program Specialist, Federal Emergency Management Agency, Region I at 99 High Street, 6th Floor, Boston, MA 02110.
- I. Within Zone AO on the FEMA Flood Insurance Rate Maps, adequate drainage paths must be provided around structures on slopes to guide floodwaters around and away from proposed structures.

- J. No land within areas designated as V (Velocity) Zones on the FEMA Flood Insurance Rate Maps shall be developed unless such development is demonstrated by the applicant to be located landward of the reach of the mean high tide. All new construction and substantial improvement within the V Zones shall be in full compliance with the State Building Code and shall be certified by a registered professional engineer or architect that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.
- K. The following shall be prohibited within flood areas designated as V Zones:
- (1) Any man-made alteration of sand dunes and salt marshes which might increase the potential for flood damage.
  - (2) Use of fill.
  - (3) Mobile homes.
- L. The Zoning Board of Appeals may authorize exceptions from the flood regulations of this section by special permit within the flood areas in accordance with § 240-125 herein, as in any other zoning district, and may grant special permit exceptions from the requirements of this section in the case of new structures or substantial improvement to be erected on a lot contiguous to and surrounded by lots with existing structures and constructed below the base flood elevation, provided that the following are met:
- (1) A showing of good and sufficient cause.
  - (2) A determination that failure to grant the special permit would result in exceptional hardship to the applicant.
  - (3) A determination that the special permit will not result in increased flood heights, additional threats to public safety or environment, extraordinary public expense, or any conflict with requirements in accordance with Chapter 40A of the Massachusetts General Laws.
  - (4) The Zoning Board of Appeals has notified the applicant for the special permit in writing that the actuarial rates will increase as the first-floor elevation decreases, and that such construction below base flood elevation increases risks to life and property.
  - (5) Favorable recommendation from the Board of Health on all structures requiring sewerage disposal and/or water supply.
- M. Upon the granting of such a special permit or permits, the Zoning Board of Appeals shall maintain a record of all such special permits granted by said Board, including justification for their issuance, and report such special permits in its annual report to the Flood Insurance Administrator in accordance with the Housing and Urban Development Guidelines.
- N. The Zoning Board of Appeals may grant a special permit for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places or the Old King's Highway Regional Historic District without regard to the procedures set forth in Subsection J herein.

## § 240-35. Groundwater Protection Overlay Districts.

[Added 11-7-1987 by Art. 2; amended 11-4-1989 by Art. 5; 8-19-1993 by Order No. 93-105]

- A. Purpose. The purpose of this section is to protect the public health, safety, and welfare by encouraging nonhazardous, compatible land uses within groundwater recharge areas.
- B. Districts established. In order to carry out the purpose of this section, the following overlay districts are hereby established, and shall be considered as superimposed over any other district established by this chapter:

- AP Aquifer Protection Overlay District
- GP Groundwater Protection Overlay District
- WP Well Protection Overlay District

- (1) The GP Groundwater Protection Overlay District is based on Zone 11 delineations to existing, proven future, and proposed future public supply wells, as determined by Geraghty and Miller, Inc., and as shown on Figure 44, in their report entitled "Groundwater Conditions, Town of Barnstable, Massachusetts, Volumes I of III; together with Appendices A-D and E-H in Volumes II of III and III of III," dated November 1993 and "Corrections, Zone II Delineations for Public Water Supply Wells, Town of Barnstable, Massachusetts," dated December 1993; except that the GP Groundwater Protection Overlay District (Zone II), to Barnstable Fire District wells 3 and 4, is delineated by Whitman and Howard, Inc. in a report entitled "Report on Prolonged Pumping Test and Zone II Delineation at Test Well Site 8-90, Barnstable Fire District, Barnstable, Massachusetts," dated October 1991. The Zone II delineations to existing and proven future wells have been approved by the Department of Environmental Protection, Executive Office of Environmental Affairs, Commonwealth of Massachusetts, in a letter to the Town of Barnstable dated March 13, 1996.
  - (2) The WP Well Protection Overlay District is based on a five-year time of travel zone to existing, proven future and potential future public supply wells, delineated by Geraghty and Miller Inc., in reports referenced above, except that the WP Zone to Barnstable Fire District Well No. 2 is delineated by Earth Tech, consultant to Barnstable Fire District, summarized in a letter and a map to the district dated May 13, 1997. The WP Well Protection Overlay District to Barnstable Fire District 2 is that portion of the five-year time of travel zone located within the GP Groundwater Protection Overlay District (Zone 11).
  - (3) The AP Aquifer Protection Overlay District consists of all areas of the Town, except those areas within the GP Groundwater and WP Well Protection Overlay Districts. The reports, letters and maps are on file with the Town Clerk.  
[Amended 9-17-1998 by Order No. 99-012]
- C. Overlay Districts Map. The overlay districts established by this section (the GP Groundwater Protection District; the WP Well Protection Overlay District; and the AP Aquifer Protection Overlay District) are shown on the Official Zoning Map, § **240-6A**, Identification of Zoning Map.  
[Amended 9-17-1998 by Order No. 99-012]
- D. District boundaries. Where the overlay district boundaries divide a lot, each portion of that lot shall be subject to all the regulations applicable to the district in which it is located.  
[Amended 9-17-1998 by Order No. 99-012]
- E. AP Aquifer Protection Overlay District regulations.
- (1) Permitted uses. The following uses are permitted in the AP Aquifer Protection Overlay District:
    - (a) Any use permitted in the underlying zoning districts, except for those uses specifically prohibited by Subsection **E(2)** herein.
  - (2) Prohibited uses. The following uses are prohibited in the AP Aquifer Protection Overlay District:
    - (a) Any use prohibited in the underlying zoning districts.
- F. GP Groundwater Protection Overlay District regulations.
- (1) Permitted uses. The following uses are permitted in the GP Groundwater Protection Overlay District:
    - (a) Any use allowed in the underlying zoning districts, except those uses specifically prohibited in Subsection **F(2)** herein:

- (2) Prohibited uses. The following uses are prohibited in the GP Groundwater Protection Overlay District:
- (a) Any use prohibited in the underlying zoning districts.
  - (b) Landfills and open dumps as defined in 310 CMR 19.006.
  - (c) Junkyards, salvage yards and automobile graveyards, as defined in MGL Ch. 140B, § 1.  
[1] *Editor's Note: See Ch. 502, Junk Dealers.*
  - (d) Mining of land, removal of sand and gravel, and quarrying of other raw materials.
  - (e) The removal of soil, loam, sand, gravel and other mineral substances to within four feet of the historic high-water mark unless the substances removed are redeposited within 45 days and the final grade exceeds four feet above the historic high-water mark, and except for excavations for the foundations of buildings and structures and the installation of utilities.
  - (f) Underground fuel storage tanks.<sup>[2]</sup>  
[2] *Editor's Note: See Ch. 326, Fuel and Chemical Storage Systems.*
  - (g) Storage for resale of heating fuels, including but not limited to, oil, coal, gas and kerosene.
  - (h) Sewage treatment plant, disposal works, or small package treatment facility subject to 314 CMR 5.00, except for the following:
    - [1] The replacement or repair of an existing facility that will not result in a design capacity greater than the design capacity of the existing system(s);
    - [2] Treatment works approved by the Department of Environmental Protection designed for the treatment of contaminated ground or surface waters; and
    - [3] Sewage treatment works including package treatment facilities, which are owned and operated by the Town of Barnstable, and located in areas with existing water quality problems attributable to current septic systems where there will be a net improvement in water quality with the installation of the treatment facility.
  - (i) Commercial feeding of livestock.
  - (j) Storage of road salt or other deicing materials.
  - (k) Metal plating, finishing and polishing.
  - (l) Chemical and bacteriological laboratories.
  - (m) Boat, motor vehicle and aircraft cleaning, service and repair.
  - (n) Dry-cleaning processing establishments.
  - (o) Furniture stripping, painting and refinishing.
  - (p) Any other use which generates, treats, stores or disposes of hazardous waste that are subject to MGL Ch. 21C and 310 MCR 30.00, except for the following uses:
    - [1] Very small quantity generators as defined by 310 CMR 30.00;
    - [2] Waste oil retention facilities for retailers of motor oil required and operated in compliance with MGL Ch. 21, § 52A.
    - [3] Treatment works approved by the Department of Environmental Protection designed in accordance with 314 CMR 5.00, for the treatment of contaminated ground or

surface waters.

- [4] Household hazardous waste collection centers or events operated according to 310 CMR 30.390.
- (q) Landfilling of sludge and septic as defined in 310 CMR 32.05.
- (r) Storage of sludge and septage, as defined in 310 CMR 32.05, unless in compliance with 310 CMR 32.30 and 310 CMR 32.41
- (s) Storage of animal manures unless protected from the elements and contained in a structure which prevents leachate from contaminating groundwater, in accordance with all the requirements of the United States Soil Conservation Service.
- (t) Stockpiling and disposal of snow and ice removed from highways and streets located outside of the GP and WP Districts which contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for ice and snow removal.
- (u) Storage of liquid petroleum products of any kind, except those incidental to:
- [1] Normal household use and outdoor maintenance or the heating of a structure;
  - [2] Waste oil retention facilities required by MGL Ch. 21, § 52A;
  - [3] Emergency generators required by statute, rule or regulation;
  - [4] Treatment works approved by the Department designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters;
- and provided that such storage is either in a freestanding container within a building or in a freestanding container above ground level with protection adequate to contain a spill the size of the container's total storage capacity; however, replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline is allowed consistent with state and local requirements; and
- [5] Any other use which involves as a principal activity or use the generation, storage, use, treatment, transportation or disposal of hazardous materials.
- (v) Storage of commercial fertilizers, as defined in MGL c 128, § 64, unless such storage is within a structure designed and engineered to prevent escape or transport of commercial fertilizers to the groundwater under any circumstances.  
[Added 1-17-2013 by Order No. 2013-001]
- (3) Lot coverage. Unless the applicant demonstrates that all runoff is recharged on site, no more than 15% or 2,500 square feet, whichever is greater, of the total area of any lot shall be rendered impervious by the installation of buildings, structures and paved surfaces. If all recharge is disposed of on site, no more than 50% of the total upland area of any lot shall be made impervious by the installation of buildings, structures, and paved surfaces. For the purposes of this section, a temporary (i.e., not more than 182 days) air-supported or removable bubble/dome over a sports and recreation facility's outdoor use (e.g., outdoor field, track, court, and swimming pool) shall not be considered a building or structure.  
[Amended 8-17-2017 by Order No. 2017-165]
- (4) Site clearing. A minimum of 30% of the total upland area of any lot shall be retained in its natural state. This shall not prevent the removal of dead, diseased or damaged trees. For sports and recreation facilities, the site clearing/natural state requirements shall not apply where the proposed stormwater management system will be designed and constructed to provide a minimum water quality volume treatment equal to one inch times the total impervious area of the post-development site; and to provide treatment to remove at least 44% total suspended solids prior to discharge to the infiltration system.  
[Amended 8-17-2017 by Order No. 2017-165]



- (a) Additionally, a long-term operations and maintenance plan shall be developed and implemented to ensure that stormwater management systems function as designed. At a minimum, the plan shall include:
- [1] Stormwater management system(s) owners;
  - [2] The party or parties responsible for operation and maintenance, including how future property owners will be notified of the presence of the stormwater management system and the requirement for proper operation and maintenance;
  - [3] The routine and nonroutine maintenance tasks to be undertaken after construction is complete and a schedule for implementing those tasks;
  - [4] A plan that is drawn to scale and shows the location of all stormwater BMPs in each treatment train along with the discharge point;
  - [5] A description and delineation of public safety features; and
  - [6] An estimated operations and maintenance budget.
- (b) The plan shall be subject to review and approval by the Director of Public Works as a condition of site plan review approval. stormwater operation and maintenance reports documenting compliance with the plan shall be submitted annually to the Director of Public Works and Director of Planning and Development.
- G. WP Well Protection Overlay District regulations.  
[Amended 8-19-1993 by Order No. 93-105]
- (1) Permitted uses. The following uses are permitted in the WP Well Protection Overlay District:
- (a) Any use allowed in the underlying zoning districts, except those specifically prohibited in Subsection **G(2)** herein:
- (2) Prohibited uses. The following uses are prohibited in the WP Well Protection Overlay District:
- (a) Any use prohibited in the underlying zoning districts.
  - (b) All uses prohibited in Subsection **F(2)** herein.
  - (c) Parking and/or storage of transport vehicles for fuel, including but not limited to oil, coal and gas.
  - (d) Parking and/or storage of transport vehicles for toxic and/or hazardous substances.
  - (e) Any use which uses, generates or stores, including racking for resale, toxic or hazardous substances, totaling at any one time more than 50 gallons liquid volume or 25 pounds dry weight.
- (3) Lot coverage. Unless the applicant demonstrates that all runoff is recharged on site, no more than 15% or 2,500 square feet, whichever is greater, of the total area of any lot shall be rendered impervious by the installation of buildings, structures and paved surfaces. If all recharge is disposed on on site, no more than 50% of the total upland area of any lot shall be made impervious by the installation of buildings, structures, and paved surfaces. For the purposes of this section, a temporary (i.e., not more than 182 days) air-supported or removable bubble/dome over a sports and recreation facility's outdoor use (e.g., outdoor field, track, court, and swimming pool) shall not be considered a building or structure.  
[Amended 8-17-2017 by Order No. 2017-165]
- (4) Site clearing. A minimum of 30% of the total upland area of any lot shall be retained in its natural state. This shall not prevent the removal of dead, diseased or damaged trees. For sports and recreation facilities, the site clearing/natural state requirements shall not apply where the proposed stormwater management system will be designed and constructed to

provide a minimum water quality volume treatment equal to one inch times the total impervious area of the post-development site; and to provide treatment to remove at least 44% total suspended solids prior to discharge to the infiltration system.

[Amended 8-17-2017 by Order No. 2017-165]

- (a) Additionally, a long-term operations and maintenance plan shall be developed and implemented to ensure that stormwater management systems function as designed. At a minimum, the plan shall include:
- [1] Stormwater management system(s) owners;
  - [2] The party or parties responsible for operation and maintenance, including how future property owners will be notified of the presence of the stormwater management system and the requirement for proper operation and maintenance;
  - [3] The routine and nonroutine maintenance tasks to be undertaken after construction is complete and a schedule for implementing those tasks;
  - [4] A plan that is drawn to scale and shows the location of all stormwater BMPs in each treatment train along with the discharge point;
  - [5] A description and delineation of public safety features; and
  - [6] An estimated operations and maintenance budget.
- (b) The plan shall be subject to review and approval by the Director of Public Works as a condition of site plan review approval. stormwater operation and maintenance reports documenting compliance with the plan shall be submitted annually to the Director of Public Works and Director of Planning and Development.

## § 240-36. RPOD Resource Protection Overlay District.

[Added 10-26-2000]

### A. Purpose.

- (1) The purpose of this section is to create a Resource Protection Overlay District overlaying residential zoning districts, and, in part, the Groundwater Protection Overlay District. The boundaries of the Resource Protection Overlay District shall include the recharge areas to the Centerville River, Popponessett and Shoestring Bays, and the Three Bays area of Cotuit and Osterville, so-called, together with areas dependent upon private well water supplies, and shall be as shown on the Barnstable Zoning Map as described in Subsection **C** below. When regulations are in conflict, the more restrictive regulation shall apply.
- (2) The Resource Protection Overlay District implements the Barnstable Local Comprehensive Plan, adopted by the Barnstable Town Council, October 30, 1997, and approved by the Cape Cod Commission, February 12, 1998. The purposes of the Resource Protection Overlay District include:
  - (a) To reduce nitrogen contamination by reducing impacts from septic systems, fertilizers, and runoff from impervious surfaces, which contamination adversely affects groundwater, ponds and freshwater bodies, and south coastal marine embayments.
  - (b) To reduce nitrogen loading to groundwater, surface water and coastal embayments to prevent deterioration of water quality, destruction of bottom habitat, loss of fin fish and shellfish habitat, closure of swimming areas, and other adverse environmental and economic impacts.
  - (c) To increase protection of groundwater quality in areas where no public wastewater treatment and no public water supply is provided; to ensure protection of private drinking

water wells; to protect private drinking water wells from adverse impacts in areas of varying soil conditions that are vulnerable to contamination of groundwater due to environmental conditions such as impervious soils, high groundwater levels or steep slopes; and to protect private wells from impacts from adjacent road drainage systems.

- (d) To reduce development potential. The Barnstable Local Comprehensive Plan identifies the potential for 36% more residential growth and a shortfall in public facilities to service that additional residential development. Potential shortfalls in public services include inadequate roads, lack of capacity in public wastewater treatment facilities, lack of options for public water supply development, and lack of capacity of schools and recreational facilities.
- B. Districts established. In order to implement the purpose of this section, the Resource Protection Overlay District is hereby established, and shall be superimposed over existing residential zoning districts established by this chapter, and as they may be amended from time to time.
- C. Overlay Districts Map. The boundaries of the Resource Protection Overlay District established by this section are shown on the Official Zoning Map, § **240-6A**, Identification of Zoning Map, as amended with a file date of October 26, 2000, and a title of "Resource Protection Overlay District."
- D. Resource Protection Overlay District regulations. Within the Resource Protection Overlay District, the minimum lot area requirement of the bulk regulations in all residential zoning districts shall be 87,120 square feet.

## § 240-37. Dock and Pier Overlay District.

[Added 2-1-2001]

### A. Purpose.

- (1) The purpose of this section is to protect the general public interest in, and access to, the public tidelands of the commonwealth by creating a Dock and Pier Overlay District overlaying residential zoning districts. The boundaries of the Dock and Pier Overlay District shall include an area along the western and northerly shores of Cotuit Bay from Loop Beach to Handy Point, and shall be as shown on the Barnstable Zoning Map as described in Subsection **C** below. If the provisions of this amendment conflict with any other provisions of this chapter, the more restrictive provisions shall apply.
- (2) The Dock and Pier Overlay District implements the Barnstable Local Comprehensive Plan, adopted by the Barnstable Town Council on October 30, 1997, and approved by the Cape Cod Commission on February 12, 1998. The purposes of the Dock and Pier Overlay District include:
- Maintaining public access along the shore and to shellfish and shellfish beds, whether existing or potential, for the purposes allowed by law (Strategy 2.2.6.1.1);
  - Maintaining safe, open waters for recreational pursuits, including swimming, power boating, rowing, rowing instruction, sailing, sailing instruction, sailboat racing, and kayaking (Goal 2.2.4); and
  - Protecting and retaining the natural open character and scenic vistas of the seacoast and water (Policy 2.2.6.2).

### B. Establishment of district.

- (1) In order to implement the purposes of this section, the Dock and Pier Overlay District is hereby established and shall be considered as superimposed over any other districts established by this chapter as amended from time to time.

- C. Overlay District Map. The boundaries of the Dock and Pier Overlay District established by this section are shown on the Official Zoning Map, § **240-6A**, Identification of Zoning Map, as amended with a file date of August 30, 2000.
- D. Prohibition. Within the Dock and Pier Overlay District, the construction and/or installation of docks and piers is prohibited.
- E. Reestablishment of damaged or destroyed nonconforming docks or piers. The reestablishment of a lawful preexisting nonconforming dock or pier which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted pursuant to § **240-95**, Reestablishment of damaged or destroyed nonconforming use or building or structure. The redeployment of a lawful preexisting nonconforming seasonal dock or pier is permitted.
- F. Expansion of existing docks or pier. For the purposes of Article **VIII**, Nonconformities, the expansion of an existing dock or pier located within the Dock and Pier Overlay District shall be deemed to be substantially detrimental and shall be prohibited.

## § 240-37.1. Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District.

[Added 4-3-2008 by Order No. 2008-091; amended 10-7-2010 by Order No. 2010-159]

- A. Purpose.
  - (1) The purpose of this section is to protect the general public's interest in the recreational harvesting of shellfish by creating a Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District within said overlay zoning district.
  - (2) The purposes of the Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District include:
    - (a) Maintaining public access along the shore and to shellfish and shellfish beds, whether existing or potential, for the purposes allowed by law.
    - (b) Prohibiting docks and piers in mapped portions of the coastal waters of Cotuit Bay, North Bay, West Bay, Lewis Bay and Barnstable Harbor designated as a Recreational Shellfish Area or Shellfish Relay Area.
- B. Establishment of district. The boundaries of the Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District are hereby established and shall be considered as superimposed over any other districts established by this chapter as amended from time to time. The Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District shall include those areas shown on a maps on file with the Town Clerk entitled "Recreational Shellfish Area and Shellfish Relay Area Overlay District," dated June 17, 2010, and "Amendment to the Barnstable Zoning Map - Sheet 1 of 7, Cotuit Zoning Map Sheet 7 of 7, Hyannis Zoning Map Sheet 3 of 7, Centerville Zoning Map Sheet 4 of 7, Osterville Zoning Map Sheet 5 of 7," all dated June 17, 2010, up to and including the area seaward of the mean high water line, which map, together with all explanatory material thereon, is hereby incorporated in and made part of this chapter.
- C. Prohibition. Within the Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District, the construction and/or installation of docks and piers is prohibited, unless such dock or pier has the benefit of a valid order of conditions issued prior to August 17, 2007, and receives all other necessary local, state and federal permits, in which case the construction and/or installation and maintenance of said dock or pier shall not be prohibited.
- D. Reestablishment of damaged or destroyed nonconforming docks or piers. The reestablishment of a lawful preexisting nonconforming dock or pier which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted pursuant to § **240-95A(1)** and **B**, provided

that such reestablishment shall include only materials currently allowed for such construction by the Barnstable Conservation Commission, and, for the purposes of this section, the "pursuit of construction continuously to completion" shall mean that construction shall be completed within one year of receipt of all required permits. The redeployment of a lawful preexisting nonconforming seasonal dock or pier is permitted.

- E. Expansion of existing docks or pier. For the purposes of Article **VIII**, Nonconformities, the expansion of an existing dock or pier located within the Recreational Shellfish Area and Shellfish Relay Area Overlay District shall be deemed to be substantially detrimental and shall be prohibited.
- F. Definitions. As used in this section, the following terms shall have the meanings indicated, [(from Ch. **703**, Private Docks and Piers, § **703-2**, Definitions.)]

#### **DOCK and PIER**

The terms "dock" and "pier" shall be used interchangeably for the purposes of these regulations and shall mean the entire structure of any pier, wharf walkway, or float, and any part thereof, including pilings, ramps, walkways, float, tie-off pilings, dolphins and/or outhaul posts, that is located on a coastal bank (310 CMR 10.30), land under water bodies and waterways (310 CMR 10.56), land under the ocean (310 CMR 10.25), land under a salt pond (310 CMR 10.33), rocky intertidal shore (310 CMR 10.31), or that portion of a coastal beach (310 CMR 10.27) seaward of the mean high water line. Notwithstanding the above, either a swimming float or work float, kept at a mooring, that receives a permit from the Harbormaster and is not connected with the shore, is not a float subject to these regulations. Bulkheads duly permitted for the purpose of erosion control are not subject to this section.

#### **SEASONAL**

The dock, ramp, floats and all supporting materials are not in place prior to April 1 of each year and are removed prior to November 1 of each year.

- G. Enforcement. Any violation of the provisions of the Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District shall be subject to penalty and fines pursuant to § **240-123** of the Town of Barnstable Code.

## § 240-38. Medical Services Overlay District.

[Added 8-16-2001]

- A. Purpose.
  - (1) The purpose of this section is to permit the development and relocation of medical and healthcare services on a previously developed site with convenient regional access. The Medical Services Overlay District is established as a special district which overlays the Industrial Zoning District and, in part, the Groundwater Protection Overlay District. The boundaries of the Medical Services Overlay District are shown on a map of land entitled "Medical Services Overlay District" filed with the Town Clerk, which map, together with all explanatory matter therein, is hereby incorporated in and made a part of this chapter.
  - (2) Provisions of this section are designed to insure that all development activities associated with the Medical Services Overlay District will be carried out so as to provide for and maintain protection of neighboring properties, convenient and safe access for vehicular and pedestrian movement, fire-fighting and emergency rescue vehicles, satisfactory methods of stormwater management, groundwater recharge and handling and disposal of sewage and waste and adequate off-street parking. Nothing contained herein shall serve to invalidate or affect the provisions of any existing zoning ordinances which affect the proposed Medical Services Overlay District, including without limitations, the provisions of §§ **240-33** and **240-35** of this chapter.

- B. Principal permitted uses. The principal permitted uses allowed in the Medical Services Overlay District shall include ambulatory medical services, medical offices, dental offices and clinics including patient treatment facilities of an ambulatory nature, research and development activities associated with medical and healthcare issues and/or healthcare research, treatment or administration.
- C. Accessory use. (Reserved for future use.)
- D. Conditional use. (Reserved for future use.)
- E. Special permit use. (Reserved for future use.)
- F. Bulk regulations (dimensional requirements).
  - (1) Minimum lot area: 90,000 square feet.
  - (2) Minimum lot frontage: 200 feet.
  - (3) Minimum setback, front: 60 feet (except 100 feet from Hadaway).
  - (4) Side/rear yard: 30 feet maximum.
  - (5) Building height: 30 feet or 2 1/2 stories, whichever is less.
  - (6) Front yard landscape buffer: 45 feet.
  - (7) Landscape buffer, rear and side yard: 30 feet.
  - (8) Maximum lot coverage: 25%.
  - (9) Maximum floor area ratio: 0.40.

## § 240-38.1. Mixed-Use Subzone of Medical Services Overlay District.

[Added 10-21-2021 by Order No. 2022-007]

- A. Purpose.
  - (1) The purpose of this section is to permit the development and relocation of medical and health care services, together with commercial, retail and residential uses, on a site with convenient regional access. The Mixed-Use Subzone is established as a special district of the Medical Services Overlay District which overlays in majority part the Industrial Zoning District, and, in part, the Groundwater Protection and Wellhead Protection Overlay Districts.
  - (2) Provisions of this section are designed to ensure that all development activities associated with the Mixed-Use Subzone will be carried out so as to provide for and maintain protection of neighboring properties, convenient and safe access for vehicular and pedestrian movement, firefighting and emergency rescue vehicles, satisfactory methods of stormwater management, groundwater recharge and handling and disposal of sewage and waste and adequate off-street parking. To the extent anything contained in this § **240-38.1** conflicts with any other provisions of this chapter, this § **240-38.1** shall govern.
- B. District established. A Mixed-Use Subzone of the Medical Services Overlay District is hereby established and shall be considered superimposed over any other districts established by this chapter and is shown as an overlay on the Official Zoning Map established pursuant to § **240-6**, Zoning Map, herein.
- C. Principal permitted uses. The principal permitted uses allowed in the Mixed-Use Subzone shall include all uses permitted in the Medical Services Overlay District, which include all uses permitted in the underlying IND District (including, without limitation, any use permitted in the B

and S&D Districts). Additionally, multifamily dwellings (apartments) on a lot within 1,000 feet of Kidd's Hill Road within the Mixed-Use Subzone shall be permitted subject to the following provisions in lieu of the requirements set forth in § **240-21A(9)(a)** through **(i)** or **240-38F**, or any other provisions as may be set forth in this chapter:

- (1) The minimum lot area ratio shall be 1,500 square feet of lot area per each apartment unit for new multifamily structures.
  - (2) The maximum lot coverage shall be 25%.
  - (3) The maximum height shall not exceed 35 feet. [NOTE: Except that for multifamily structures on a lot not less than 10 acres, the maximum building height shall be not more than four stories which shall not be more than 55 feet in height measured to the highest point on the roof (not including antennas or similar roof structures).]
  - (4) The minimum front yard setback shall be 60 feet.
  - (5) The minimum side and rear yard setbacks shall be 30 feet.
  - (6) The maximum floor area ratio shall be 0.75.
  - (7) A perimeter green space of not less than 20 feet in width shall be provided, such space to be planted and maintained as green area and to be broken only in a front yard by a driveway.
  - (8) No living units shall be constructed or used below the ground level.
  - (9) Multifamily dwelling units shall be leased for a term of not less than 12 months; provided, however, that up to 10% of the units in a multifamily dwelling development in the Mixed-Use Subzone may be leased for a term of less than 12 months but not less than six months.
- D. Accessory uses. Within the Mixed-Use Subzone, accessory uses or accessory buildings are permitted, including, without limitation, parking garages, pools, parking areas and offices, provided that any such use or building is customarily incidental to, subordinate to and on the same lot as the principal use it serves.
- E. Conditional uses. The conditional uses allowed in the Mixed-Use Subzone shall include all conditional uses permitted in the Medical Services Overlay District, the IND District, the S&D District, and the B District.
- F. Special permit uses. The special permit uses allowed in the Mixed-Use Subzone shall include all special permit uses permitted in the Medical Services Overlay District, the IND District and the B District, senior living, assisted living, senior living, nursing homes, (NOTE: As such terms are defined in § **240-25F**.) independent living facilities, memory care facilities, and long-term care facilities. Additionally, multifamily dwellings (apartments) on a lot, any portion of which is set back greater than 1,000 feet from Kidd's Hill Road within the Mixed-Use Subzone, shall be allowed by special permit, subject to the provisions of § **240-38.1C** above in lieu of the requirements set forth in § **240-21A(9)(a)** through **(i)** or **240-38F**, or any other provisions as may be set forth in this chapter.
- G. Bulk regulations (dimensional requirements) for all uses other than multifamily dwellings (apartments):
- (1) Minimum lot area: 90,000 square feet.
  - (2) Minimum lot frontage: 200 feet.
  - (3) Minimum setback, front: 60 feet.
  - (4) Side/rear yard: 30 feet minimum.
  - (5) Building height: (NOTE: Skylights, mechanical penthouses and architectural features not designed for human occupancy shall be excluded in determining the height of any building in

the Mixed-Use Subzone.) 35 feet. [NOTE: Except that for structures containing senior living, assisted living, senior living, nursing homes, independent living facilities, memory care facilities and/or long-term care facilities, on a lot not less than 10 acres, the maximum building height shall not be more than four stories which shall not be more than 55 feet measured to the highest point on the roof (not including antennas or similar roof structures).]

- (6) Front yard landscape buffer: 45 feet.
  - (7) Landscape buffer, rear and side yard: 30 feet.
  - (8) Maximum lot coverage: 25%.
  - (9) Maximum floor area ratio: 0.40.
- H. Parking regulations.
- (1) For multifamily dwellings, off-street parking shall be provided at a ratio of 1.3 spaces per dwelling unit, and one guest space per 10 dwelling unit spaces.
  - (2) For retail uses, off-street parking shall be provided at a ratio of one space per 250 retail square feet.
  - (3) For medical uses, off-street parking shall be provided at a ratio of one space per 300 square feet.
- I. Affordable housing units. Notwithstanding any other provisions as may be set forth in this chapter, any multifamily dwelling development in the Mixed-Use Subzone shall comply with the following affordable housing requirements:
- (1) The provisions of the Town of Barnstable Code, Chapter 9, Article I, Inclusionary Affordable Housing Requirements; and
  - (2) An additional 3% of the multifamily dwelling units shall be deed restricted as affordable housing units subject to the provisions for affordable units in Town of Barnstable Code, Chapter 9, Article I, Inclusionary Affordable Housing Requirements, except that for the purposes of this subsection, a qualified affordable housing unit tenant shall be defined as an individual or household with total annual income that does not exceed 80% of the median income for the Town of Barnstable, as determined annually by the Department of Housing and Urban Development. The affordable units shall conform to all Department of Housing and Community Development (DHCD) standards that must be met to qualify these units for inclusion in the DHCD Subsidized Housing Inventory (SHI) as Local Initiative Program units.
  - (3) No certificate of occupancy permit shall be issued until recordation of the regulatory agreement and declaration of restrictive covenants.
- J. Design and screening standards. Notwithstanding anything contained in § 240-52, or any other provisions as may be set forth in this chapter, each off-street parking space in the Mixed-Use Subzone shall have minimum dimensions of nine feet by 18 feet, excluding the driveway to such space.
- K. Incidental storage of hazardous materials and impervious coverage.
- (1) Hazardous materials may be stored and offered for sale in connection with retail use or incidental to multifamily use in the Mixed-Use Subzone, except as prohibited by the WP Wellhead Protection Overlay District.
  - (2) In the Mixed-Use Subzone, compliance with the lot coverage requirements set forth in §§ 240-35F(3) and 240-35G(3) may be determined across multiple lots located within the district if the owners of such lots agree to do so in a written agreement provided to the Building Department. Additionally, for purposes of §§ 240-35F(3) and 240-35G(3), porous pavement shall not be considered paved surface.



- L. Signage. Notwithstanding the provisions of §§ **240-65** and **240-66** herein:
- (1) On lots with not less than 10 acres in the Mixed-Use Subzone, an aggregate sign area of up to 400 square feet shall be allowed, provided that the sign area of any single sign does not exceed 200 square feet; and
  - (2) One freestanding sign of up to 200 square feet shall be allowed in the Mixed-Use Subzone, provided that such freestanding sign identifies at least two commercial, retail and/or medical uses within the Mixed-Use Subzone.
- M. Exemption. The uses described in this § **240-38.1** shall be exempt from the residential building permitting limitations established by Article **XI**, §§ **240-110** through **240-122**.

## § 240-39. Shopping Center Redevelopment Overlay District.

[Added 4-24-1996]

### A. Purposes.

- (1) The purpose of this § **240-39** is to permit the renovation and redevelopment of a large-scale integrated retail shopping center on a large site with convenient highway access. The Shopping Center Redevelopment Overlay District is established as a special district which overlays another nonresidential zoning district or districts (including a Groundwater Protection Overlay District).
- (2) The Shopping Center Redevelopment Overlay District permits the redevelopment and expansion of a shopping center subject to the specific regulations and requirements contained in this § **240-39**, which regulations and requirements shall govern even where they are inconsistent with or less restrictive than the other requirements of this chapter. The regulations of this § **240-39** relating to use, building and lot dimensions, development intensity, parking, signage and advisory site plan review shall apply only to a regional shopping center, and not to any other use that is allowed or permitted in the underlying zoning district.
- (3) The provisions of this § **240-39** are designed to assure that all development activities associated with a regional shopping center will be carried out so as to provide for and maintain:
  - (a) Protection of neighboring properties against harmful effects of uses on the development site;
  - (b) Convenient and safe access for fire-fighting and emergency rescue vehicles within the development site and in relation to adjacent streets;
  - (c) Convenience and safety of vehicular and pedestrian movement within the development site and in relation to adjacent streets, properties or improvements;
  - (d) Satisfactory methods of stormwater management and groundwater recharge shall be provided with due regard to the protection of the Town's groundwater resources;
  - (e) Satisfactory methods for storage, handling and disposal of sewage, refuse and other wastes resulting from the normal operations of the establishments on the development site;
  - (f) Convenience and safety of off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishments on the development site;
  - (g) Adequate off-street parking and traffic mitigation measures that will enhance the efficiency of the transportation system taking into consideration the overall Town traffic

needs identified in the Barnstable/Yarmouth Transportation Study prepared by the Town in conjunction with the Town Local Comprehensive Plan;

- (h) Harmonious relationship to the terrain and to existing buildings in the vicinity of the development site; and
  - (i) Attractive and functional design with due regard to the existing conditions of the development site and the use thereof for a regional shopping center, in order to promote the interests of the community.
- B. Location. The boundary of the Shopping Center Redevelopment Overlay District is shown on a map of land entitled "Shopping Center Redevelopment Overlay Zoning District" filed with the Town Clerk, which map, together with all explanatory matter thereon, is hereby incorporated in and made a part of this chapter.
- C. Relationship to underlying districts and regulations.
- (1) The Shopping Center Redevelopment Overlay District shall overlay all underlying districts so that any parcel of land lying in a Shopping Center Redevelopment Overlay District shall also lie in the zoning district or districts in which it is otherwise classified by this chapter.
  - (2) All regulations of the underlying zoning district(s) shall apply within the Shopping Center Redevelopment Overlay District to the extent that they are not inconsistent with the specific provisions of this § **240-39**. To the extent the provisions of this § **240-39** are in conflict with or are inconsistent with other provisions of this chapter, the provisions of this § **240-39** shall govern and prevail even if such other provisions are more restrictive than those set forth in this § **240-39**.
- D. Definitions. The following definitions shall be applicable to land and its use within the Shopping Center Redevelopment Overlay District:

#### **ADVISORY SITE PLAN REVIEW**

The process set forth in § **240-39L** of this chapter, and shall not constitute a development permit within the meaning of the Cape Cod Commission Act (Chapter 716 of the Acts of 1989) or the Regional Policy Plan promulgated pursuant thereto.

#### **AMUSEMENT USES**

The principal use of stores or common areas in a regional shopping center for the operation of a coin-operated video arcade, game room, indoor playground, bowling alley or similar use (but restaurant and theater uses and amusement uses that are accessory to retail uses shall not constitute amusement uses).

#### **GROSS FLOOR AREA --**

The meaning set forth in § **240-128** of this chapter.

#### **GROSS LEASABLE AREA --**

Gross floor area, exclusive of mall areas, stairs, escalators, elevators, utility, storage and equipment rooms, mall offices, exit and service corridors, toilet rooms, maintenance areas, and mezzanine areas not used for the public sale or display of goods.

#### **INITIAL REDEVELOPMENT**

The expansion of existing improvements within the Shopping Center Redevelopment Overlay District which increases the gross floor area of all buildings within the district above that which is in existence on January 1, 1996, by 50,000 square feet of gross floor area or more in the aggregate pursuant to a special permit issued under § **240-39M** hereof.<sup>[1]</sup>

#### **MEZZANINE(S)**

An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than 10% of the gross floor area of the store or area of the building in

which the level or levels are located. Mezzanines which are not used for the public sale or display of goods shall not be treated as an additional story for purposes of calculating maximum building height. Mezzanine space may be used for storage and for backroom office functions incident to the operation of gross floor area within the regional shopping center, but shall not be rented for such purposes to persons not operating gross floor area within the regional shopping center. Mezzanines which are used for the public sale or display of goods shall be treated as gross leasable area.

### REDEVELOPMENT AREA

Land within the boundaries of the Shopping Center Redevelopment Overlay District, which is used or proposed for use as part of a regional shopping center, and encompassing one or more individual lots on which the regional shopping center will be situated.

### REGIONAL SHOPPING CENTER

A concentration of stores and establishments devoted to retail shopping center uses and amusement uses including an enclosed structure (which may consist of several buildings) containing a total of not less than 500,000 square feet of gross floor area and located on a redevelopment area, together with ancillary utility facilities, parking areas and driveways, landscaped areas, and stormwater detention facilities. A regional shopping center may consist of one or more lots and one or more buildings under separate ownership, provided that:

- (1) The lots and buildings are subject to an operating agreement or leasehold arrangements, provided that the areas used in common, including the central enclosed mall area, the parking structures and the exterior parking and circulation areas, will be under integrated management; and
- (2) The separate lots and buildings are developed with a unified approach to architectural and landscape design, pedestrian ingress and egress, parking, truck loading, vehicular entrances and exits, drainage, groundwater recharge and utilities.

### RETAIL SHOPPING CENTER USES

A concentration of retail stores and service establishments, including restaurants, movie theaters and such other uses as are customarily found in a regional shopping center, together with ancillary utility facilities, parking areas and driveways, landscaped areas, and stormwater detention facilities. Regional shopping center uses may include one area devoted to outdoor, tent-type sales of home and garden goods, provided that any such area is operated incident to a retail store having not less than 40,000 square feet of gross floor area and occupies not more than 5,000 square feet of area.

- [1] *Editor's Note: The former definition of "major store," which immediately followed this definition, was repealed 1-17-2019 by Order No. 2019-064.*

#### E. Application of requirements.

- (1) A redevelopment area may consist of more than a single building lot, and in such event the requirements of this chapter shall not be applied to individual building lots, but shall be applied to the entire redevelopment area as if the redevelopment area were a single building lot notwithstanding the fact that the building lots within the redevelopment area may be in different ownership.
- (2) The regional shopping center and other improvements within the redevelopment area may be developed in phases and may be developed and occupied under one or more building permits and occupancy permits.
- (3) The provisions of this § **240-39** shall not apply to any expansion of existing improvements within the Shopping Center Redevelopment Overlay District until the exercise of rights under a special permit issued under § **240-39M** with respect to the initial redevelopment, and any such expansion which does not constitute the initial redevelopment shall be subject to all of the requirements of the underlying zoning district(s) including, without limitation, the

requirement of a special permit for certain uses and structures within the district. Following the exercise of rights under a special permit issued under § **240-39M** with respect to the initial redevelopment, this § **240-39** shall apply to all improvements thereafter constructed within the Shopping Center Redevelopment Overlay District.

F. Permitted and prohibited uses.

- (1) No more than 25% of the gross leasable area within the regional shopping center shall be devoted to uses other than retail shopping center uses, and not more than 75,000 square feet of gross leasable area in a regional shopping center shall be devoted to amusement uses unless a special permit is issued therefor by the Zoning Board of Appeals.
- (2) The following uses are prohibited in the Shopping Center Redevelopment Overlay District:
  - (a) All uses prohibited in § **240-35F(2)** [GP Groundwater Protection Overlay District] of this chapter.
  - (b) Parking and/or storage of transport vehicles for fuel, including but not limited to oil, coal and gas.
  - (c) Parking and/or storage of transport vehicles for toxic and/or hazardous substances.
  - (d) Hotel/motel.
  - (e) Multifamily dwellings.
  - (f) Drive-through restaurant or drive-through bank, except that a drive-through bank shall be permitted in so much of the Shopping Center Redevelopment Overlay District as lies within the underlying Highway Business District, subject to the special permit provisions of § **240-39M** and a drive-through restaurant may be permitted only on that area within the SCROD identified as "Drive-Through Restaurant Sub Zone" as shown on the map entitled "Shopping Center Redevelopment Overlay District Amendment,"<sup>[2]</sup> dated February 20, 2015, subject to the special permit provisions of § **240-39M**.  
[Amended 9-18-2008 by Order No. 2009-08; 5-7-2015 by Order No. 2015-071]  
[2] *Editor's Note: The map is on file in the office of the Town Clerk.*
  - (g) Gasoline and oil filling stations (other than a tire, battery and auto accessories store which is operated incident to a retail store having not less than 40,000 square feet of gross floor area in the regional shopping center and which does not provide for the changing of oil or lubrication of motor vehicles).
  - (h) Casinos and other gambling establishments (other than the incidental sale of lottery tickets as part of a use otherwise permitted in the Shopping Center Overlay District).

G. Bulk and dimensional regulations.

- (1) Land located within the Shopping Center Redevelopment Overlay District and used for a regional shopping center shall be subject to the dimensional controls set forth below:
  - (a) Minimum area of redevelopment area: 50 acres.
  - (b) Minimum lot size (individual building lots): none.
  - (c) Minimum lot frontage (individual building lots): 20 feet.
  - (d) Minimum side, front and rear yards (other than at the perimeter of the redevelopment area): none.
  - (e) Minimum front yard setback (at perimeter of the redevelopment area): 30 feet.  
[Amended 9-18-2008 by Order No. 2009-08]

[1] One hundred feet along Iyannough Road/Route 132 Road except 50 feet along that portion of Route 132/Iyannough Road on that area within the SCROD identified as

"Drive-Through Restaurant Sub Zone."

- [2] One hundred feet along the easterly side of the roadway which would be created if Independence Drive were extended from its existing terminus on the northerly side of Route 132 along its current trajectory across Route 132 and the redevelopment area.
- [3] Within 100 feet of Route 28/Falmouth Road, the minimum setback shall be 20 feet, but there shall be a maximum setback of 50 feet.
- (f) Minimum side and rear yards (at perimeter of redevelopment area): 30 feet.
- (g) Maximum lot coverage as percentage of lot area of redevelopment area: 50%.
- (h) Maximum building height: 42.5 feet or two stories, whichever is lesser.
- (2) Except as specifically stated to the contrary in Subsection **G(1)**, the bulk and dimensional requirements set forth therein shall be applied to a redevelopment lot as if it were one lot, even though it may be comprised of several lots in different ownerships. More than one building may be located on a single lot within the Shopping Center Redevelopment Overlay District.
- (3) Skylights, mechanical penthouses and architectural features not designed for human occupancy (collectively, the "special features") shall be excluded in determining the height of any building within a regional shopping center. However, such special features shall be subject to the following restrictions and limitations:
- (a) Provided the same are approved in the special permit issued pursuant to § **240-39M** hereof, architectural features shall be permitted above each entrance to the regional shopping center in excess of the maximum building height, provided such architectural features do not exceed 60 feet in height, and the length of the architectural features over any single entrance shall not extend over more than 25% of the entire length of the building wall above which such architectural features are located (measured on a building-by-building basis); and
- (b) Rooftop mechanical features (such as heating and air-conditioning units, vents, stacks and mechanical penthouses), rooftop screening elements and skylight features over the food court and over the enclosed mall (collectively, the "rooftop features") shall be permitted to exceed the maximum building height, provided that they remain within the rooftop feature height limitation. A rooftop feature shall be considered to remain within the rooftop feature height limitation if it falls below a sight line running 10° above the horizontal starting from a height of 42.5 feet. Rooftop features may exceed the rooftop feature height limitation only if the special permit described in § **240-39M** so provides. In no case shall a rooftop feature exceed 60 feet in height. Rooftop mechanical features (such as heating and air-conditioning units, vents, stacks and mechanical penthouses) shall in any event be screened by use of parapet walls or similar elements if necessary.  
[Amended 1-20-2005 by Order No. 2005-038]
- H. Maximum increase in gross leasable area. No regional shopping center shall result in more than 1,200,000 square feet of gross floor area within the redevelopment area, measured on an aggregate basis. The maximum gross floor area of 1,200,000 square feet set forth above shall be reduced by 20,000 square feet of gross floor area for every acre by which the total area of the redevelopment area is less than 59 acres. For purposes of this § **240-39**, the floor area of parking structures shall not be treated as gross floor area or gross leasable area.
- I. Limitation on impervious surfaces; buffer strip landscaping.
- (1) No more than 70% of the total redevelopment area shall be rendered impervious by the installation of buildings, structures and paved surfaces, measured on an aggregate basis, unless groundwater mitigation land is provided at a one-to-one ratio for any overage of impervious cover in the redevelopment area. Groundwater mitigation land shall mean land

located within the same or a more restrictive Groundwater Protection District in a zone of contribution to the well fields operated as of January 1, 1996 by the Barnstable Water Company and/or the Barnstable Fire District which land is permanently restricted by or on behalf of the owners of the redevelopment area to be left in an open and natural state. However, even with the dedication of groundwater mitigation land, no more than 82.7% of the total redevelopment area shall be so rendered impervious. Rooftop and surface water drainage systems shall be designed and maintained in accordance with the standards set forth in § **240-39L(4)(j)**. For purposes of this § **240-39I**, roadways (other than interior access drives) built in accordance with municipal specifications (as the same may be modified or waived by the Planning Board) and used as public way(s) or private way(s) shall not be treated as impervious surfaces and shall not be treated as part of the area of the district for purpose of such calculation.

- (2) As a part of the portion of the redevelopment area to be maintained in pervious condition, a landscaped buffer strip of variable width shall be provided and maintained along the redevelopment area's frontage on Route 28, Route 132 and any extension of Enterprise Road which is laid out in conjunction with the redevelopment. Said landscaped buffer strip shall be a minimum of 15 feet in depth from the property line and contain at least 2.5% of the total redevelopment area. The design of this buffer strip may include sidewalks/bikepaths, berms, indigenous planting materials and other ground cover. Cross over access drives and signs provided for herein shall be permitted in the landscaped buffer strip, but parking areas are prohibited. All other roadway frontages shall have a landscaped buffer strip of at least 10 feet.
- J. Parking and loading. A regional shopping center shall be subject to the following minimum off-street parking and loading requirements:
- (1) Required off-street parking for a regional shopping center shall be provided at a ratio of not less than 4.3 parking spaces for each 1,000 square feet of gross leasable area of all buildings located in the regional shopping center. The foregoing parking requirement shall be calculated without regard to the multiple uses that may be contained in the regional shopping center.
  - (2) All off-street parking spaces required by this § **240-39J** shall be located within the redevelopment area, except that parking spaces may be located outside of the redevelopment area on another nonresidentially zoned lot provided (a) such other lot is located within 300 feet of the redevelopment area on which the use for which such spaces are required is located, and (b) such lot is in common ownership with, or subject to a long term lease or easement for the benefit of, all or a portion of the redevelopment area. In addition, parking spaces may be located at such other locations as may be approved by the Zoning Board of Appeals as part of any Traffic Demand Management Plan which shall be incorporated as part of the special permit issued under § **240-39M** hereof.
  - (3) Each off-street parking space shall have minimum dimensions of nine by 18 feet, excluding the driveway to such space. Parking stalls within the Shopping Center Redevelopment Overlay District which are designed at 90° shall have the following minimum dimensions:
    - (a) Ninety-degree parking dimensions:
      - [1] Stall width: nine feet, zero inches.
      - [2] Stall length: 18 feet, zero inches.
      - [3] Aisle width: 24 feet, zero inches.
      - [4] Bay width: 60 feet, zero inches.
    - (b) All parking stalls which are designed at angles other than 90° shall comply with the minimum parking space dimensions set forth in § **240-104** of this chapter. Landscaping shall be provided at the rate of one tree of three-inch caliper per eight spaces, and such trees shall be located within the parking area. Such parking area landscaping areas shall constitute not less than 5% of the land area devoted to grade-level parking fields. Above-

grade parking structures shall be designed so as to provide a visual screen to shield, to the extent practicable, cars parked on the upper level from the view of pedestrians.

K. Signs in the Shopping Center Redevelopment Overlay District. Only the following types of signs shall be permitted in the Shopping Center Redevelopment Overlay District:

(1) Large freestanding exterior signs:

(a) Maximum number: three signs.

(b) Maximum height: not to exceed 22 feet above grade.

(c) Maximum area: not to exceed 170 square feet per side exclusive of structures holding the sign. Reasonable efforts shall be exercised to minimize the size of any such supporting structures.

[Amended 1-17-2019 by Order No. 2019-064]

(2) Wall signs identifying retail stores or restaurants having gross leasable area of greater than 25,000 square feet or having exterior public entrances; the food court; and the regional shopping center, provided that no wall sign shall extend higher than the top of the parapet wall:

(a) Maximum letter height: five feet for signs accessory to anchor and major stores, and four feet for other such signs. This letter height restriction shall not apply to emblems, logos, or other designs associated with the sign display.

(b) Maximum area:

[1] Anchor stores (for each tenant with a gross leasable area of 45,000 square feet or more): The maximum sign area for any one display shall not exceed 200 square feet for the first sign; the maximum sign area for any additional display shall be 150 square feet. There shall only be one sign display per eligible elevation. An additional sign allowance of 30 square feet shall be provided for entrance door and awning signs.

[2] Major stores (for each tenant with a gross leasable area of 12,000 square feet or more): The maximum sign area for any one display shall not exceed 120 square feet. There shall only be one sign display per eligible elevation. An additional sign allowance of 15 square feet shall be provided for entrance door and awning signs.

[3] In-line store (for each tenant with an exterior entrance): The maximum sign area for any one display shall not exceed 50 square feet for tenants with storefronts less than 50 linear feet in length. An additional square foot of sign area shall be allowed for each linear foot of storefront above 50; the maximum sign area for any one display shall not exceed 75 square feet. There shall only be one sign display per tenant. An additional sign allowance of 10 square feet shall be provided for entrance door and awning signs.

[4] Mall entrances: The maximum sign area for any one display shall not exceed 50 square feet. There shall only be one sign per each eligible mall entrance.

(3) Wall signs designating loading areas, service courts, employee entrances and similar areas:

(a) Maximum number: no limit.

(b) Maximum mounting height above ground: eight feet.

(c) Maximum area: six square feet.

(4) Freestanding directional signs indicating access and egress to the site, as well as direction to department stores, services or other areas within the regional shopping center:

- (a) Maximum number: three times the total number of vehicular entrances.
  - (b) Maximum height to top of sign above ground: seven feet.
  - (c) Maximum area: 16 square feet per side.
- (5) Hanging parking structure signs at vehicular entrances to parking structures:
- (a) Maximum number: one per vehicle ramp access point to parking structures.
  - (b) Maximum height: one foot, six inches.
  - (c) Maximum area: 16 square feet per side.
  - (d) In addition, directional and parking area identification signs shall be permitted within the parking structures, and safety/height limitation markings shall be permitted on the exterior of the parking structures.
- (6) Parking lot identification signs.
- (a) Maximum number: one per light post.
  - (b) Maximum size: three square feet per side.
- (7) <sup>[3]</sup>Banners which do not advertise particular stores or articles for sale shall be permitted.
- [3] *Editor's Note: Former Subsection K(7), pertaining to electronic reader boards, which immediately preceded this subsection, was repealed 1-17-2019 by Order No. 2019-064. This order also provided for the redesignation of former Subsection K(8) through (13) as Subsection K(7) through (12).*
- (8) In addition to the signs otherwise permitted under this § **240-39J**, wall signs for freestanding buildings and movie theaters (meaning buildings and movie theaters which are not physically connected to the enclosed mall of the regional shopping center) which are otherwise permitted in the underlying zoning district under this chapter shall be permitted in the Shopping Center Redevelopment Overlay District. In addition, for so long as fewer than two of the freestanding signs described in Subsection **K(11)** are installed, one freestanding exterior sign shall be permitted for freestanding movie theaters, which sign shall have dimensions which meet the size requirements of the underlying zoning district.
- (9) In addition to the wall signs permitted under § **240-39K(2)**, one exterior marquee wall sign for movie theaters located within a regional shopping center shall be permitted with a size of up to 150 square feet.
- (10) In addition to the signs permitted under § **240-39K(1)** hereof, up to two freestanding exterior signs for movie theaters located within a regional shopping center shall be permitted as follows:
- (a) Maximum number: two.
  - (b) Maximum height: 14 feet above grade.
  - (c) Maximum area: not to exceed 175 square feet per side, exclusive of structures holding the sign.
- (11) In addition to the signs permitted under § **240-39K(1)** hereof, one freestanding exterior sign shall be permitted on that area within the SCROD identified as "Drive-Through Restaurant Sub Zone," provided that the maximum height of freestanding signs does not exceed 12 feet above grade and the maximum area of the freestanding signs does not exceed 50 square feet per side, exclusive of the structure holding the sign.

[Added 5-7-2015 by Order No. 2015-071<sup>[4]</sup>

[4] *Editor's Note: This order also renumbered former Subsection K(12) as Subsection K(13).*



- (12) No special permit shall be required for signs that are in conformance with the standards set forth above.

L. Advisory site plan review and provisions.

- (1) Findings. Owing to their physical characteristic and the nature of their operations, a regional shopping center may affect neighboring properties and adjacent sidewalks and streets. It is in the interest of the community to promote functional and aesthetic design, construction and maintenance of a regional shopping center and to minimize any harmful affects on surrounding areas.
- (2) Purposes. The provisions of this section are designed to assure that all development activities associated with a regional shopping center will be carried out in furtherance of the purposes articulated in § **240-39A**, taking into account the existing condition of the redevelopment area, the large-scale character of developments such as the regional shopping center, the customary site layout of regional shopping centers, and the necessity to permit natural light to illuminate the common areas of the regional shopping center (hereinafter referred to as the "design constraints").
- (3) Advisory site plan review/when required. The provisions of this § **240-39L** shall apply to development within the Shopping Center Redevelopment Overlay District in lieu of the site plan review provisions of Article **IX** of this chapter. At least 60 days prior to filing any DRI application with the Cape Cod Commission, the proponent of a regional shopping center shall make an informal filing with the Building Commissioner, in draft form, of such plans and materials relating to the DRI application as the proponent intends to file with the Commission with its DRI application and such relevant plans and materials relating to the MEPA process as are then available. Within 30 days following such informal submission, the Building Commissioner and other members of the Site Plan Review Committee established under Article **IX** of this chapter and such other Town staff as may be designated by the Building Commissioner shall review, comment upon and make recommendations with respect to the plans and materials so submitted, provided that the Building Commissioner shall have the right to extend such thirty-day period by an additional 30 days at the request of the Site Plan Review Committee. In conducting its review the Site Plan Review Committee shall consider the consistency of such plans and materials with the site development standards set forth in Subsection **L(4)** hereof. The informal filing and review described in this Subsection **L(3)** requires no approval and therefore does not constitute a development permit within the meaning of the Cape Cod Commission Act (Chapter 716 of the Acts of 1989) or the Regional Policy Plan promulgated pursuant thereto; however, the Cape Cod Commission shall be invited to have representatives participate in the advisory site plan review process.
- (4) Site development standards.
  - (a) A reasonable effort shall be made to improve, conserve and protect natural features that are of some lasting benefit to the site, its environs and the community at large.
  - (b) Slopes which exceed 10% shall be protected by appropriate measures against erosion, runoff, and unstable soil, trees and rocks. Measures shall be taken to stabilize the land surface from unnecessary disruption. Such stabilization measures shall be the responsibility of the property owner.
  - (c) The placement of buildings, structures, fences, lighting and fixtures on each site shall not interfere with traffic circulation, safety, appropriate use and enjoyment of adjacent properties.
  - (d) At any driveway, a visibility triangle shall be provided in which nothing shall be erected, placed, planted or allowed to grow so as to materially impede vision from within motor vehicles between a height of three feet and eight feet above the average center-line grades of the intersecting street and driveway, said triangle being bounded by the intersection of the street line and the edges of a driveway an a line joining points along said lines 20 feet distant from their projected intersection.

- (e) Adequate illumination shall be provided to parking lots and other areas for vehicular and pedestrian circulation. All illumination shall be directed and/or shielded so as not to interfere with traffic beyond the perimeter of the site.
- (f) All areas designed for vehicular use shall be paved with a minimum of either a 2 1/2 inches bituminous asphalt concrete, a six-inch portland cement concrete pavement, or other surface, such as brick or cobblestone, as approved by the Town Engineer.
- (g) All parking spaces shall be arranged and clearly marked in accordance with the parking lot design standards contained in § 240-39J herein. Signs and pavement markings shall be used as appropriate to control approved traffic patterns.
- (h) The provisions of § 240-52 of this chapter shall not apply to land within the Shopping Center Redevelopment Overlay District. Instead, exterior landscaping of a regional shopping center shall be subject to review in connection with the advisory site plan review process described herein.
- (i) All utility service transmission systems, including but not limited to water, sewer, natural gas, electrical and telephone lines, shall, whenever practicable, be placed underground. Electric, telephone, cable TV, and other such utilities shall be underground, except for transformers, electric switching boxes or similar equipment and gas meters, which may be above ground.
- (j) All surface water runoff from structures and impervious surfaces shall be disposed of on site, but in no case shall surface water drainage be across sidewalks or public or private ways. In no case shall surface water runoff be drained directly into wetlands or water bodies (except for drainage structures in place as of the effective date of this § 240-39). All drainage systems shall be designed to minimize the discharge of pollutants by maximizing appropriately designed vegetated drainage channels and sedimentation basins that allow for adequate settling of suspended solids and maximum infiltration (with due regard to the design constraints). Dry wells, leaching pits and other similar drainage structures may be used only where other methods are not practicable. Subject to ambient surcharge conditions, roof runoff shall be recharged to the ground via a system of dry wells and/or infiltration systems. Nontoxic roof materials shall be used to minimize the leaching of toxic materials to the groundwater. To minimize water utilization, all new plumbing fixtures shall be designed to meet water conservation measures as required under the State Building and Plumbing Codes. All such drainage structures shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants. All calculations shall be for a twenty-five-year storm and shall be reviewed by the Town Engineer. The materials submitted shall include provision for an appropriate maintenance program for such drainage structures to be implemented and maintained by the proponent. The materials submitted shall show adequate measures to mitigate pollution of surface or groundwater to minimize erosion and sedimentation. All drainage shall be designed so that all runoff shall be disposed of on site, groundwater recharge is maximized, and neighboring properties will not be adversely affected.
- (k) The materials submitted shall describe estimated average daily and peak hour vehicle trips to be generated by the site and traffic flow showing adequate access to and from the site and adequate circulation within the site taking into account the Barnstable/Yarmouth Transportation Study. The proponent of a regional shopping center will include in such materials reasonable measures to lower traffic demand to the regional shopping center such as, by way of example only, working with other major retailers along the 132 corridor to promote bus and shuttle bus activity, encouraging carpooling among employees, and/or similar measures, which materials shall be referred to as the "Traffic Demand Management Plan." Reasonable efforts shall be made to provide vehicular and pedestrian connections within the redevelopment area to adjoining properties devoted to retail use.

M. Special permit provisions.

## (1) Special permit for regional shopping center.

- (a) No building permit or occupancy permit shall be issued for any expansion of a regional shopping center which increases the gross floor area of the regional shopping center above that existing on the effective date of this § **240-39** by more than 50,000 square feet of gross floor area unless the Zoning Board of Appeals has issued a special permit approving such use in accordance with the provisions of this § **240-39M**. In addition, no building permit or occupancy permit shall be issued for a drive-through bank or drive-through restaurant unless the Zoning Board of Appeals has issued a special permit or a modification of a special permit issued under this section, approving such use, subject to the provisions of this § **240-39M**.

[Amended 9-18-2008 by Order No. 2009-08; 5-7-2015 by Order No. 2015-071]

- (b) A special permit for a regional shopping center may provide for phased development (and, if applicable, a projected phasing plan shall be provided to the Board of Appeals as part of the special permit process under § **240-39M**). A special permit for a regional shopping center shall become void two years from the date of issue unless any construction work contemplated thereby (or first phase thereof, if applicable) shall commence and proceed in good faith continuously to completion, or, if no construction work is contemplated by the special permit, the use authorized thereby is commenced.
- (c) Any work done in deviation from a special permit granted pursuant to this § **240-39M** shall be a violation of this chapter, unless such deviation is approved in writing by the Zoning Board of Appeals. However, a special permit may be granted based upon plans showing one or more permissible building areas and/or permissible parking structure areas, in which buildings and other structures are to be located, rather than with the locations of the buildings and other structures finally established. Provided the boundaries of such permissible building areas and/or permissible parking structure areas are approved by the Zoning Board of Appeals in connection with the special permit, once the special permit is granted, no separate approval of the Zoning Board of Appeals will be required for the actual location of the buildings or improvements within such permissible building areas and/or permissible parking structure areas [provided that no material change to the design or materials described in § **240-39M(2)(a)** shall be made without the approval of the Zoning Board of Appeals.] The Zoning Board of Appeals may amend or modify a special permit upon the application of the developer of a regional shopping center and, if the Zoning Board of Appeals determines that such amendment or modification is minor in nature, such amendment or modification may be approved without a hearing upon the submission of plans and information that may, in the discretion of the Zoning Board of Appeals, be less extensive than the plans and information required in this § **240-39M**. Amendments or modifications determined by the Zoning Board of Appeals not to be minor in nature shall require a public hearing.
- (d) The purpose of the special permit for a regional shopping center is to assure that the development of a regional shopping center is carried out in a manner which is (1) consistent with the purposes set forth in § **240-39A** hereof and the site development standards set forth in § **240-39L(4)** hereof, (2) consistent with the terms and conditions of any DRI permit issued by the Cape Cod Commission and the certificate of the Secretary of Environmental Affairs on the final environmental impact report, (3) with due regard given to the Design Guidelines for Cape Cod prepared by the Cape Cod Commission in light of the design constraints, and (4) consistent with such additional reasonable conditions as may be imposed by the Zoning Board of Appeals as are not inconsistent with the foregoing. The Zoning Board of Appeals shall grant a special permit for a regional shopping center upon its determination that the standards for the issuance of such special permit set forth in this Subsection **M(1)(d)** have been complied with, giving due regard to the design constraints.

- (2) Required contents of special permit application. The application for a special permit under this § **240-39M** shall include:

- (a) Building elevation plans for all exterior facades of buildings and structures, at a scale of 1/16 inch equals one foot, or such scale as may be required by the Zoning Board of Appeals for detail drawings, indicating surface materials and colors, together with not less than three representative cross sections.
  - (b) A tabulation of the areas of the proposed site elements, including buildings (footprints and gross leasable area and gross floor area), parking structures and surface parking areas (square footage and number of parking spaces), stormwater management facilities, and landscaped areas (square footage, number of trees and other plantings).
  - (c) Updated versions of the materials submitted to the Building Commissioner in connection with the advisory site plan review process described in § **240-39L** above.
  - (d) Any request for gross leasable area in excess of the use limitations set forth in § **240-39F(1)**.
  - (e) Any request to permit rooftop features to exceed the rooftop feature height limitation set forth in § **240-39G(3)(b)**.
  - (f) All materials relating to any request to permit off-site parking under § **240-39J(2)**.
  - (g) A description of the operating agreement and/or leasehold agreements contemplated in the definition of "regional shopping center."
  - (h) Additional information as may be required by the Zoning Board of Appeals as reasonably necessary to making the determinations required by this section.
- (3) Required procedures for special permit.
- (a) At least six copies are required of all plans, drawings and written information. Submissions shall be delivered to the Zoning Board of Appeals.
  - (b) The Zoning Board of Appeals may solicit the advice of any other Town agency or department it deems necessary to properly make the determinations required by this section.
  - (c) In issuing a special permit under this § **240-39M**, the Zoning Board of Appeals shall give due regard to, and shall not be inconsistent with the decisions and recommendations of the Cape Cod Commission as set forth in any DRI permit or similar approval.
  - (d) The Zoning Board of Appeals shall also include as a condition of its special permit the performance of any written commitments made by the developer of a regional shopping center to the Zoning Board of Appeals, the Planning Board or the Town Council intended to reduce or limit the impacts, financial or otherwise, of the regional shopping center on the Town. Such conditions shall be based on the written information furnished to the Zoning Board of Appeals by the Planning Board and Town Council. Such conditions shall be binding on the applicant for such special permit provided they are consistent with the provisions of Section 15 of Chapter 716 of the Acts of 1989 (the Cape Cod Commission Act).
  - (e) The Zoning Board of Appeals may include as a condition of its special permit that, prior to the issuance of a certificate of occupancy for the regional shopping center, the Building Commissioner shall be provided with evidence that the operating agreement and/or leasehold arrangements contemplated in the definition of "regional shopping center" are in place.
  - (f) If the proposed improvements which are the subject of an application for a special permit under this § **240-39M** have not been subject to the review of the Cape Cod Commission because at the time of such application the Cape Cod Commission or the DRI process has been abolished, then the proposed improvements shall be subject to site plan review under Article **IX** of this chapter.

## § 240-40. Adult Use Overlay District.

[Added 6-4-1998]

- A. District established. An Adult Use Overlay District is hereby established, and shall be considered as superimposed over any other districts established by this chapter, and is shown as an overlay on the Official Zoning Map established pursuant to § 240-6, Zoning Map, herein.
- B. Adult use. Within the Adult Use Overlay District, and only within the Adult Use Overlay District, an adult use may be permitted, provided that a special permit is first obtained from the Zoning Board of Appeals, subject to the following conditions of approval:
- (1) The special permit shall be issued to the owner of the adult use and shall not transfer with a change in ownership of the business and/or property.
  - (2) The special permit shall lapse after two years, unless a shorter term is specified by the Zoning Board of Appeals. Upon receipt of a valid application, the Zoning Board of Appeals may grant another special permit, provided that the Board finds that all conditions of this § 240-40 herein have been complied with, and all conditions of approval of the Zoning Board of Appeals.
  - (3) The special permit shall not be renewed if any of the following has taken place on or in proximity to and associated with the premises, as provided for in Subsection **B(2)** above:
    - (a) Unlawful sexual activity.
    - (b) Gambling.
    - (c) Drug use.
    - (d) Violent crimes.
    - (e) Offenses against children.
    - (f) Repeated public disturbances requiring intervention by the police.
    - (g) Any other illegal activities.
  - (4) Violation of any of the conditions of approval of the special permit shall be grounds for nonrenewal of the special permit as provided for in Subsection **B(2)** above.
  - (5) No special permit shall be issued to an owner convicted of violating MGL Ch. 119, § 63, (Inducing or abetting delinquency of a child) or MGL Ch. 272 § 28, (Matter harmful to minors, etc.), or similar laws in other states.
  - (6) Where necessary to protect adjacent uses, the Zoning Board of Appeals may require buffering by fencing, vegetation or other screening methods.
  - (7) No adult use shall be allowed within a building containing residential use, or upon a lot with residential use. No adult use shall be located within 500 feet of a residence.
  - (8) Where the adult use is not governed by the Licensing Board, the following conditions shall apply:
    - (a) A manager responsible for the operation of the establishment shall be designated by the owner, if the owner is not the manager. The manager shall register with the Building Commissioner. No manager shall be designated who has been convicted of violating MGL Ch. 119, § 63, (Inducing or abetting delinquency of a child) or MGL Ch. 272, § 28, (Matter harmful to minors, etc.) or similar laws in other states
    - (b) The owner and/or manager of the establishment shall be responsible for knowing what is taking place with respect to the patrons in all parts of the establishment at any given time.

- (c) The Zoning Board of Appeals may establish the hours of operation.
  - (d) There shall be screening of windows and doors to prevent the public's view of the interior from any public or private right-of-way.
  - (e) The interior of an adult bookstore, adult video store, or adult paraphernalia store shall be well lit; and there shall be no closed booths.
- (9) The interior of an adult use nonlive entertainment establishment shall provide the following:
- (a) An anteroom or other content-neutral space which will identify the adult use through the use of content-neutral signage.
  - (b) All adult materials will be segregated from nonadult use nonlive entertainment materials.
  - (c) Written cautions will be made denying access to minors to the adult sections of the establishment.
  - (d) The purchase point of adult use nonlive entertainment materials shall be segregated from the purchase point of nonadult use nonlive entertainment materials.
  - (e) Adult use nonlive entertainment purchases or rentals shall be bagged with an opaque material.
- C. Preexisting adult uses. Any adult use that was in existence as of the first date of publication of the notice of public hearing on the zoning amendment inserting this section regulating adult uses may continue to operate in the same location, without material change in scale or content of the business, provided that the owner complies with the provisions of this section requiring a special permit, including all relevant conditions imposed thereon.
- D. Prohibited uses. Nothing in this chapter is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violated any Town ordinance or statute of the commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness, or obscene or harmful matter, or the exhibition or public display thereof.

## § 240-40.1. Former Grade 5 School Planned Unit Development Overlay District.

[Added 9-2-2004 by Order No. 2004-128]

- A. Purpose.
- (1) The purpose of the Former Grade 5 School Planned Unit Development District is to encourage flexibility in the design and development of land within the district in order to promote its most appropriate use; to facilitate the adequate and economical provision of streets, utilities and public spaces; and to preserve the natural and scenic qualities of open areas.
  - (2) This development district is intended to permit diversification in the location of structures and uses and improve circulation facilities and other site qualities while ensuring adequate standards relating to public health, safety and welfare and convenience both in the use and occupancy of buildings and facilities.
- B. Procedure. The owner or owners or lessees of tracts of land consisting of five acres or more in the Former Grade 5 School Planned Unit Development Overlay District may submit to the Planning Board a request for a Special Permit to allow for a plan of development and use of such tracts meeting the requirements set forth below:
- (1) The Planning Board shall be the special permit granting authority and shall follow the procedures for issuing special permits as provided for in § **240-125C** herein, specifically

substituting the words "Planning Board" for the words "Zoning Board of Appeals."

- (2) Lot area and lot frontage requirements may be reduced, provided the overall density is not reduced, and yard requirements need only be applied in relationship to the tract boundaries.
- (3) Bulk regulations shall be as follows:

Zoning Districts	Minimum Yard Setbacks							Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	(feet)					
				Front	Side	Rear			
FG-5 PUD	43,560	20	--	50	50	50	38	50 <sup>1</sup>	

Notes:

<sup>1</sup> Less any required setback.

- (4) More than one building is permitted on tracts held by one owner or in common ownership.
  - (5) A site plan in accordance with the Town of Barnstable site plan review regulations<sup>[1]</sup> indicating the planned location of buildings and their use, off-street parking areas, driveways, easements, walks, the location, type and height of walls, and the extent of landscaping or other treatment for the protection of adjacent properties is required.
    - [1] *Editor's Note: See Art. IX, Site Plan Review.*
  - (6) A copy of any deed restrictions intended to be recorded shall be submitted.
- C. Permitted uses with issuance of special permit for planned unit development. The permitted uses shall include: residential uses such as garden apartments, townhouses, multifamily housing; office uses such as medical and professional offices; assisted-living developments; museum uses; recreational uses; open space uses; private educational uses; higher educational uses; and mixed-use developments incorporating any of the above, including food service as an accessory use to the principal uses listed above.
- D. Standards for reviewing and approving planned unit developments. Before any action on any of the plans for a planned unit development, a site plan and any supplemental plans shall be submitted to the Planning Board for study and review. The Planning Board shall report its recommendations for approval or disapproval, together with the reasons therefor and any additional requirements, within 20 days of receipt of a site plan. Reasonable requirements may be recommended by the Planning Board for the protection of adjoining residential property. The Planning Board shall approve the planned unit development only if it finds that the planned unit development satisfies all of the following standards:
- (1) General standards.
    - (a) The planned unit development shall be consistent with the Town of Barnstable Comprehensive Plan.
    - (b) The planned unit development shall provide for an effective and unified treatment of the development possibilities on the project site making appropriate provision for the preservation of scenic features and amenities of the site and the surrounding areas.
    - (c) The planned unit development shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the site.
  - (2) Design standards.

- (a) All buildings in the layout and design shall be an integral part of the development and have convenient access to and from adjacent uses.
  - (b) Individual buildings shall be related to each other in design, masses, materials, placement and connections to provide a visually and physically integrated development.
  - (c) Treatment of the sides and rear of all buildings within the planned unit development shall be comparable in amenity and appearance to the treatment given to street frontages of these same buildings.
  - (d) The design of buildings and the parking facilities shall take advantage of the topography of the project site where appropriate, to provide separate levels of access.
  - (e) All buildings shall be arranged as to avoid undue exposure to concentrated loading or parking facilities wherever possible and shall be so oriented as to preserve visual and audible privacy between adjacent buildings.
  - (f) All buildings shall be arranged as to be accessible to emergency vehicles.
- (3) Landscape design standards.
- (a) Landscape treatment for plazas, roads, paths, service and parking areas shall be designed as an integral part of a coordinated landscape design.
  - (b) Primary landscape treatment shall consist of shrubs, ground cover, and street trees, and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Landscape materials selected should be appropriate to the growing conditions of the Town of Barnstable's environment.
- (4) Circulation system design standards.
- (a) There shall be an adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways, off-street parking and loading space.
  - (b) Road, pedestrian walks and open space shall be designed as an integral part of an overall site design. They shall be properly related to existing and proposed buildings, and appropriately landscaped.
  - (c) There shall be an adequate amount, in a suitable location, of pedestrian walks and landscaped spaces to discourage pedestrian use of vehicular ways and parking spaces and to separate pedestrian walks and public transportation loading places from general vehicular circulation facilities.
  - (d) Buildings and vehicular circulation open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic.
  - (e) Landscaped, paved and comfortably graded pedestrian walks shall be provided along the lines of the most intense use, particularly from building entrances to street, parking areas and adjacent buildings.
  - (f) The location and design of pedestrian walks should emphasize desirable views of new and existing development in the area.
  - (g) Encourage the maximum separation of private automobiles and service vehicles through the use of separate service lanes.
  - (h) Materials and design of paving, lighting fixtures, retaining walls, fences, curbs, benches, etc., shall be of good appearance, easily maintained, and indicative of their function.
- (5) Parking and loading design standards.
- (a) Parking facilities shall be landscaped and screened from public view to the extent necessary to eliminate unsightliness and monotony of parked cars.



- (b) Parking facilities shall be designed with careful regard to orderly arrangement, topography, landscaping and ease of access, and shall be developed as an integral part of an overall site design.
- (c) Any above-grade loading facility should be screened from public view to the extent necessary to eliminate unsightliness.
- (d) Outdoor storage shall not be permitted.

## Article IV. Supplemental Provisions

### § 240-41. Vision clearance on corner lots.

In residential districts, on corner lots, no fence, wall or structure, planting or foliage more than three feet in height above the plan of the established grades of the streets shall be allowed in any part of a front or side yard herein established, that is included within the street lines at points which are 20 feet distant from their point of intersection measured along said street lines which will materially obstruct the view of a driver of a vehicle approaching a street intersection.

### § 240-42. Planning Board standards/certain subdivisions.

The Planning Board, as part of its review of subdivisions within 500 feet of the major arteries known as Routes 28, 132, 149 and West Main Street, is hereby authorized to:

- A. Prescribe, in distance and composition, a vegetation buffer strip between said major arteries and a proposed subdivision.
- B. Locate streets within a proposed subdivision so that:
  - (1) Ingress and egress onto the aforementioned major arteries is safe, efficient and convenient;
  - (2) A minimum number of roads intersect any such artery. Roads intersecting a major artery on the same side of the artery should, if possible, be not less than 500 feet apart between side lines. Roads intersecting a major artery on the opposite sides of such an artery should, if possible, be not less than 150 feet between center lines.

## Article V. Accessory Uses

### § 240-43. Incidental and subordinate nature of accessory uses.

Within the zoning districts established herein, accessory uses or accessory buildings are permitted, provided that any such use or building is customarily incidental to, subordinate to and on the same lot as the principal use it serves except as otherwise provided for herein.

### § 240-44. Accessory uses permitted with special permit.

The following accessory uses are permitted, provided that a special permit is first obtained from the Board of Appeals:

- A. In residential zoning districts, accessory uses and structures on a lot adjoining or immediately opposite and across a road from the lot on which the principal use it serves is located, provided that both lots are retained in identical ownership with respect to both fee and nonfee interests.

- B. Uses accessory to permitted scientific research or scientific development or related production only if the Board finds that such accessory use does not substantially derogate from the public good. Such accessory use need not be located on the same lot as the principal use it serves.
- C. Other accessory uses requiring special permit authorization are provided for within the various zoning districts established herein.

## § 240-44.1. Land-based wind energy conversion facilities (WECFs).

[Added 6-14-2007 by Order No. 2007-082]

- A. Purpose and intent. It is the express purpose of this section to accommodate distributed wind energy conversion facilities in appropriate land-based locations, while minimizing any adverse visual, safety and environmental impacts of the facilities. The section enables the review of wind energy conversion facilities by the Town's special permit granting authority, clarifying the criteria for siting such a facility. This section is intended to be used in conjunction with other regulations adopted by the Town, including historic district regulations, site plan review and other local ordinances designed to encourage appropriate land use and environmental protection. Further, it is the express intent of this section that any special permit granted hereunder run with the land and that any subsequent owner of said land be bound by the terms and conditions of said special permit.
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

### **CLEAR AREA**

The distance from the lowest point of the blade tip to the ground.

### **HEIGHT**

Height is measured from the grade at the base of the tower to the top of the fixed tower (moveable blades are not included).

### **LAND-BASED**

Wholly located on upland including any guy wires as may be required.

### **SPECIAL PERMIT GRANTING AUTHORITY (SPGA)**

Shall be the Planning Board, for this section.

### **WIND ENERGY CONVERSION FACILITY (WECF)**

All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, all transmission, storage, collection and supply equipment, substations, transformers, site access, service roads and machinery associated with the use. A wind energy conversion facility may consist of one or more wind turbines.

### **WIND-MONITORING OR METEOROLOGICAL (TEST OR MET) TOWERS**

Tower used for supporting anemometer, wind vane and other equipment to assess the wind resource at a predetermined height above the ground.

### **WIND TURBINE**

A device that converts kinetic energy of the wind into rotational energy to turn an electrical generator shaft.

- C. District regulations.

(1) Use regulations.

(a) All wind energy conversion facilities or wind-monitoring towers shall require a building permit and may be permitted only as an accessory use to permitted uses in all zoning

districts.

- (b) Wind energy conversion facility and wind-monitoring or meteorological towers. The construction of any wind energy conversion facility or wind-monitoring/meteorological tower shall be permitted in all zoning districts, subject to issuance of a special permit and provided the proposed use complies with all dimensional and special permit regulations set forth in § **240-125C** (unless waived by the SPGA). Any subsequent change or modification of wind energy equipment shall be subject to review by the Building Commissioner.
- (2) Dimensional requirements.
- (a) Type. Tilt-up towers, fixed-guyed towers, freestanding towers or other designs may be considered for approval by the SPGA. Towers may not be attached to any residence or habitable structures.
  - (b) Setback. The base of any WECF shall be set back from any property line or road layout line by not less than 120% of the proposed height of the tower if abutting residentially zoned properties and 80% of the proposed height of the tower, if abutting nonresidentially zoned properties. Guy wires or any WECF related construction not wholly below grade, as may be required by the proposed design, shall be set back at least 20 feet from property lines, and 30 feet from road layout lines if located on, or adjacent to, residentially zoned property. If located on nonresidentially zoned property and not abutting residentially zoned property, guy wire setbacks may be reduced to five feet. Other setbacks shall conform to the yard setbacks of the zone in which the subject property is located. The SPGA may allow the setback to be reduced as part of the special permit process if the project proponent can demonstrate that additional height is needed and that the additional benefits of the higher tower outweigh any increased adverse impacts.
- D. Special permit regulations. The SPGA shall grant a special permit only if it finds that the proposal complies with the provisions of this Zoning Ordinance (unless waived) and is consistent with the applicable criteria for granting special permits.
- (1) General. Proposed wind energy conversion facilities shall be consistent with all applicable local, state and federal requirements, including, but not limited to, all applicable electrical, construction, noise, safety, environmental and communications requirements.
    - (a) Demonstrated utility. The proponent shall demonstrate that the proposed WECF efficiently generates electrical power.
    - (b) Maintenance. A written maintenance plan shall be submitted with the application for a special permit for review and approval by the SPGA and shall be made a condition of said special permit.
  - (2) Design standards.
    - (a) Visual impact. The proponent shall demonstrate through project siting and proposed mitigation that the wind energy conversion facility minimizes any impact on the visual character of surrounding neighborhoods and the community. This may include, but not be limited to, information regarding site selection, turbine design, buffering, lighting. All electrical conduits shall be underground.
    - (b) Color. Wind energy conversion facilities shall be painted nonreflective muted colors that blend with the sky, without graphics or other decoration.
    - (c) Equipment shelters. All equipment necessary for monitoring and operation of the wind energy conversion facilities should preferably be contained within the turbine tower. If this is infeasible, ancillary equipment may be located outside the tower, provided it is contained either within an underground vault, or enclosed within a separate structure or behind a year-round landscape or vegetated buffer.

(d) Lighting and signage.

- [1] Wind turbines shall be lighted only if required by the Federal Aviation Administration (FAA). The proponent shall provide a copy of the FAA's determination to establish the required markings and/or lights for the structure.
- [2] Lighting of equipment structures and any other facilities on site (except lighting required by the FAA) shall be shielded from abutting properties.
- [3] No signage allowed.

(e) Guy wires. Guy wires as may be utilized in the construction of the tower shall be left totally unadorned. Nothing shall be hung from or attached to said wires. To prevent unintended contact by persons who may be on-site, landscaping or other approved methods may be implemented. Exception: On nonresidentially zoned properties, not abutting residential property, guy wires may be wrapped with a colored sleeve only, to prevent unintended contact. Such sleeve shall extend to a height not greater than 10 feet above grade.

(3) Environmental standards.

(a) Noise.

- [1] The wind energy conversion facility and associated equipment shall conform to the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations (310 CMR 7.10). A source of sound will be considered to be violating these regulations if the source:
  - [a] Increases the broadband sound level by more than 10 dB(A) above ambient; or
  - [b] Produces a pure tone condition: when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by three decibels or more.
- [2] "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from DEP. The ambient noise level shall be measured at the property line when the WECF is located on a lot adjacent to residentially zoned property. Otherwise, the special permit granting authority, in consultation with the Department, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.
- [3] Upon complaint of an abutter, ambient and maximum permitted decibel measurements shall be performed by an agent designated by the SPGA. The report shall be submitted to the SPGA for review. The fee for this service shall be paid by the complainant unless the maximum permitted decibel level has been exceeded in which case the owner of the system shall pay the fee.
- [4] If the maximum decibel readings are exceeded, the installation shall be considered a nuisance. The nuisance violation must be corrected within 90 days from notification of the violation, and if the violation cannot be corrected, the wind energy system shall be removed or relocated at the expense of the owner.

(b) Shadowing/flicker. Wind energy conversion facilities shall be sited in a manner that does not result in significant shadowing or flicker impacts. The proponent has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses either through siting or mitigation.

(c) Safety standards.

- [1] No hazardous materials or waste shall be discharged on the site of any wind energy conversion facility. If any hazardous materials or wastes are to be used on site, there

shall be provisions for full containment of such materials or waste.

[2] Climbing access to tower shall be limited by placing climbing apparatus no lower than 10 feet from the ground.

[3] The clear area shall be no less than 10 feet.

[4] The wind turbine shall conform to FAA safety standards, as amended.

(4) Condemnation.

(a) Upon a finding by the Building Commissioner that the WECF has been abandoned or has been left in disrepair or has not been maintained in accordance with the approved maintenance plan, the owner of said WECF shall be notified in writing by certified mail that the WECF shall be brought up to standard. If required repairs or maintenance are not accomplished within 45 days, the WECF shall be deemed condemned and shall be removed from the site within 90 days thereafter at the expense of the property owner. The aforementioned periods of time may be extended at the request of the owner and at the discretion of the Building Commission. "Removed from site" shall mean:

[1] Removal of the wind turbine and tower, all machinery, equipment, equipment shelters, security barriers and all appurtenant structures from the subject property;

[2] Proper disposal of all solid or hazardous materials and wastes from the site in accordance with local and state solid waste disposal regulations;

[3] Restoration of the location of the wind energy conversion facility to its natural condition, except that any landscaping, grading or below-grade foundation may remain in the after condition.

(b) If an applicant fails to remove a wind energy conversion facility in accordance with this section of this chapter, the Town shall have the authority to enter the subject property and physically remove the facility. The SPGA may require the applicant to provide a form of surety (i.e., post a bond, letter of credit or establish an escrow account or other) at the SPGA's election at the time of construction to cover costs of the removal in the event the Town must remove the facility. The amount of such surety shall be equal to 150% of the cost of compliance with this section. The applicant shall submit a fully inclusive estimate of the costs associated with removal. The amount shall include a mechanism for a cost of living adjustment every five years.

## § 240-44.2. Ground-Mounted Solar Photovoltaic Overlay District.

[Added 10-7-2010 by Order No. 2011-006<sup>[1]</sup>]

### A. Purpose.

(1) This section promotes the creation of new large-scale, ground-mounted solar photovoltaic installations 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 for providing adequate financial assurance for the eventual decommissioning of such installations. This section ordinance is adopted pursuant to the Commonwealth of Massachusetts Green Communities Act.

(2) The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale, ground-mounted solar photovoltaic installations.

B. Applicability. This section applies to large-scale (250 kW), ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

- C. District established. A Ground-Mounted Solar Photovoltaic Overlay District (GMSPOD) is hereby established, and shall be considered as superimposed over any other districts established by this chapter, and is shown as an overlay on the Official Zoning Map established pursuant to § **240-6**, Zoning Map
- D. Definitions. These definitions shall apply to § **240-44.2** exclusively:

#### **AS-OF-RIGHT SITING**

The ground-mounted solar photovoltaic installation may proceed without the need for a special permit, variance, amendment, waiver, or other local discretionary approval. As-of-right development is subject to Article **IX**, Site Plan Review. As-of-right solar photovoltaic installations that are consistent with the Zoning Ordinance and applicable state and federal law can be reasonably regulated and approved by the Building Commissioner.

#### **GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION**

A large-scale solar photovoltaic (PV) system that is structurally mounted on the ground, not roof-mounted, and has a nameplate capacity of at least 250 kW DC.

#### **OFF-GRID SYSTEM**

A solar photovoltaic installation where all energy generated on the installation site is consumed on that site and does not send any energy into the electrical grid for distribution.

#### **RATED NAMEPLATE CAPACITY**

The maximum rated output of electric power production of the photovoltaic system in direct current (DC).

- E. Application and review.
  - (1) Ground-mounted, large-scale solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo site plan review pursuant to Article **IX**, Site Plan Review, prior to construction, installation or modification as provided in this section. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts.
  - (2) Required documents. In addition to the requirements of § **240-102**, Contents of site plan, the project proponent shall provide the following documents:
    - (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, screening vegetation or structures. The square footage of each disturbed area shall be identified on a plan, and details of any site alteration, including number and species of trees to be removed, shall be provided.  
[Amended 8-17-2017 by Order No. 2018-04]
      - [3] Blueprints or drawings of the solar photovoltaic installation signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
      - [4] One- or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
      - [5] Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
      - [6] Name, address, and contact information for proposed system installer;

- [7] Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
  - [8] The name, contact information and signature of any agents representing the project proponent; and
- (b) Documentation of actual or prospective access and control of the project site (See also Subsection **G** below.);
  - (c) An operation and maintenance plan (See also Subsection **H** below.);
  - (d) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a Zoning Map with the parcel(s) identified is suitable for this purpose);
  - (e) Description of financial surety that satisfies Subsection **N(3)** below.
- F. Site control. The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.
  - G. Operation and maintenance plan. The project proponent shall submit a plan for the operation and maintenance of the ground-mounted solar photovoltaic installation, which shall include specific measures for maintaining safe access to the installation, a stormwater management plan, and general procedures for and frequency of operational maintenance of the installation.
  - H. Utility notification. No ground-mounted solar photovoltaic installation shall receive a building permit until an executed interconnect agreement with EVERSOURCE, the utility company operating the electrical grid, has been submitted to the Building Commissioner. Off-grid systems are exempt from this requirement.  
[Amended 8-17-2017 by Order No. 2018-04]
  - I. Dimensional requirements. Ground-mounted solar photovoltaic installations are subject to the front, side and rear yard setbacks as set forth in the underlying zoning district(s).
  - J. Design standards.
    - (1) Lighting. Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as accessory structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.
    - (2) Signage. Signs on large-scale, ground-mounted solar photovoltaic installations shall comply with Article **VII**, Sign Regulations. A sign shall be required to identify the owner and provide a twenty-four-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising.
    - (3) Accessory structures. All structures accessory to ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. To avoid adverse visual impacts, all such accessory structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other, multiple accessory structures shall be clustered to the greatest extent feasible and views of such structures to residential properties and roadways shall be screened with landscaping.
  - K. Utility connections. Reasonable efforts, as determined by site plan review, shall be made to place all utility connections from the solar photovoltaic installation 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.

L. Safety and environmental standards.

- (1) Emergency services. The large-scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
- (2) 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 photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.  
[Amended 8-17-2017 by Order No. 2018-04]
  - (a) Land clearing is prohibited within 800 feet from the outer boundary of any Zone I protective radius around a public water supply well or wellfield established by 310 CMR 22.
  - (b) Land clearing in excess of two contiguous acres in connection with any single installation is prohibited.
  - (c) No such installation shall be segmented or broken into separate ownerships so as to avoid the prohibitions of Subsection **L(2)(a)** and **(b)** above.

M. Monitoring and maintenance.

- (1) Solar photovoltaic installation conditions. The large-scale, ground-mounted solar photovoltaic installation 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 site plan review. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation.
- (2) Modifications. All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require site plan review approval.

N. Abandonment or decommissioning.

- (1) Removal requirements. Any large-scale, ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with this section shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Building Commissioner 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 revegetation of the site as necessary to minimize erosion. The Building Commissioner 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 photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the large-scale, ground-mounted solar photovoltaic installation 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.

- (3) Financial surety. Proponents of large-scale, ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal and disposal in the event the Town must remove the installation and remediate the landscape, in an amount and in a form acceptable to the Town Attorney but in no event to exceed more than 125% of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for pro rating removal costs as they may be affected by inflation or changes to disposal regulations.

- [1] *Editor's Note: Section 3 of this order reads as follows: "A building permit shall be issued by the Building Commissioner within one year from the date an application submitted is deemed complete by the Building Commissioner. Failure to issue a building permit within one year shall not result in a constructive grant."*

## § 240-45. Off-street storage of trailers.

[Amended 2-22-1996 by Order No. 95-194]

A mobile home may be stored in a garage or other accessory building or on the rear half of a lot owned or occupied by the owner of the mobile home. The location of the mobile home shall comply with the yard requirements of the zoning district in which it is located.

## § 240-46. Home occupation.

[Added 8-17-1995 by Order No. 95-195]

- A. Intent. It is the intent of this section to allow the residents of the Town of Barnstable to operate a home occupation within single-family dwellings, subject to the provisions of this section, provided that the activity shall not be discernible from outside the dwelling; there shall be no increase in noise or odor; no visible alteration to the premises which would suggest anything other than a residential use; no increase in traffic above normal residential volumes; and no increase in air or groundwater pollution.
- B. After registration with the Building Commissioner, a customary home occupation shall be permitted as of right subject to the following conditions:
- (1) The activity is carried on by the permanent resident of a single-family residential dwelling unit, located within that dwelling unit.
  - (2) The activity is a type customarily carried on within a dwelling unit.
  - (3) Such use is clearly incidental to and subordinate to the use of the premises for residential purposes.
  - (4) Such use occupies no more than 400 square feet of space.
  - (5) There are no external alterations to the dwelling which are not customary in residential buildings, and there is no outside evidence of such use.
  - (6) The use is not objectionable or detrimental to the neighborhood and its residential character.
  - (7) No traffic will be generated in excess of normal residential volumes.
  - (8) The use does not involve the production of offensive noise, vibration, smoke, dust or other particulate matter, odors, electrical disturbance, heat, glare, humidity or other objectionable

effects.

- (9) There is no storage or use of toxic or hazardous materials, or flammable or explosive materials, in excess of normal household quantities.
  - (10) Any need for parking generated by such use shall be met on the same lot containing the customary home occupation, and not within the required front yard.
  - (11) There is no exterior storage or display of materials or equipment.
  - (12) There are no commercial vehicles related to the customary home occupation, other than one van or one pickup truck not to exceed one-ton capacity, and one trailer not to exceed 20 feet in length and not to exceed four tires, parked on the same lot containing the customary home occupation.
  - (13) No sign shall be displayed indicating the customary home occupation.
  - (14) If the customary home occupation is listed or advertised as a business, the street address shall not be included.
  - (15) No person shall be employed in the customary home occupation who is not a permanent resident of the dwelling unit.
  - (16) Customary home occupations shall not include such uses similar to, and including the following:
    - (a) Barber- and beauty shops.
    - (b) Commercial stables or kennels.<sup>[1]</sup>  
[1] *Editor's Note: See Ch. 376, Stables.*
    - (c) Real estate or insurance office.
    - (d) The sale of retail or wholesale merchandise from the premises.
    - (e) The sale of antique or secondhand goods.
    - (f) Service or repair of vehicles, and gasoline or diesel powered machinery.
    - (g) Contractors storage yards.
    - (h) Veterinary services.
    - (i) The manufacture of goods using heavy machinery.
    - (j) Medical or dental practice.
    - (k) Fortune-telling or palm reading.
- C. Home occupation by special permit. A home occupation may be permitted in the RC-1 and RF Single-Family Zoning Districts, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § **240-125C** herein, and subject to the specific standards for such conditional uses as required in this section:
- (1) All of the requirements of Subsection **B(1)** through **(12)** above.
  - (2) There is no more than one nonilluminated wall sign not exceeding two square feet in area, listing only the occupants' name and occupation.
  - (3) Not more than one nonresident of the household is employed.
  - (4) Home occupations shall not include the uses listed in Subsection **B(16)** above.

- (5) The Zoning Board of Appeals may permit the home occupation to be located within an accessory structure located on the same lot as the single-family residential dwelling unit.
- (6) Approval of site plan review is obtained.
- (7) The special permit shall be issued to the applicant only at his or her residence, and shall not be transferable to another person, or to another location.

## § 240-47. Shared elderly housing.

[Added 4-27-2000]

The Zoning Board of Appeals may grant special permits to allow for the use of structures as shared housing to provide care and shelter for persons with special needs due to age or disability. Said special permits shall be issued only with respect to owner-occupied single-family residences to be occupied by not more than six persons not less than 65 years of age or in approved instances persons of lesser age in need of special care, in addition to the family residents in the dwelling, and shall be conditioned upon the maintenance of proper licensed status as a shared residence under the laws of the commonwealth, and upon such other requirements as the Zoning Board of Appeals deems appropriate with respect to safety, parking, screening and other amenities designed to mitigate the impact of the use upon the neighborhood, and may be conditioned as to time and ownership in the discretion of the Board.

### § 240-47.1. Family apartments.

[Added 11-18-2004 by Order No. 2005-026; amended 10-7-2010 by Order No. 2011-010; 3-1-2018 by Order No. 2018-053]

The intent of this section is to allow within all residential zoning districts one temporary family apartment occupied only by the property owner or a member(s) of the property owner's family as accessory to a single-family residence to provide families the ability to live together as a family unit, but not to allow for a separate dwelling for rental purposes to non-family members. A family apartment may be permitted, provided that there is compliance with all the criteria, conditions and procedural requirements herein.

- A. As of right. A family apartment shall be allowed as of right, provided that it complies with Subsection **C** below and satisfies the following criteria:
  - (1) The apartment unit shall not exceed 50% of the square footage of the existing single-family dwelling and shall be limited to no more than two bedrooms.
  - (2) Occupancy of the apartment shall not exceed two family members; occupancy limitations shall not apply to children ages 18 and under.
  - (3) The family apartment shall be located within a single-family dwelling or connected to the single-family dwelling in such a manner as to allow for internal access between the units. The apartment must comply with all applicable zoning requirements for the zoning district in which it is located.
- B. By special permit. The Zoning Board of Appeals may allow by special permit, subject to the provisions of § **240-125C** herein, the following waivers from the requirements of Subsection **A** above:
  - (1) A family apartment unit greater than 50% of the square footage of the dwelling.
  - (2) A family apartment unit with more than two bedrooms.
  - (3) Occupancy of a family apartment unit by greater than two adult family members.

- (4) A family apartment unit within a detached structure, with a finding that the single-family nature of the property and of the accessory nature of the detached structure are preserved.
- C. Conditions and procedural requirements. Prior to the creation of a family apartment, the owner of the property shall make application for a building permit with the Building Commissioner providing any and all information deemed necessary to assure compliance with this section, including, but not limited to, scaled plans of any proposed remodeling or addition to accommodate the apartment, signed and recorded affidavits reciting the names and family relationship among the parties, and a signed family apartment accessory use restriction document.
- (1) Certificate of occupancy. Prior to occupancy of the family apartment, a certificate of occupancy shall be obtained from the Building Commissioner. No certificate of occupancy shall be issued until the Building Commissioner has made a final inspection of the apartment unit and the single-family dwelling for regulatory compliance and a copy of the family apartment accessory use restriction document recorded at the Barnstable Registry of Deeds is submitted to the Building Division.
  - (2) Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that there shall be no rental of the principal dwelling or family apartment unit to any non-family members, shall be signed and submitted to the Building Division.
  - (3) At no time shall the single-family dwelling or the family apartment be sublet or subleased by either the owner or family member(s). The single-family dwelling and family apartment shall only be occupied by those persons listed on the recorded affidavit, which affidavit shall be amended when a change in the family member occupying either unit occurs.
  - (4) When the family apartment is vacated, or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use as an apartment shall be terminated. All necessary permit(s) must be obtained to remove either the cooking or bathing facilities (tub or shower) from the family apartment, and the water and gas service of the utilities removed, capped and placed behind a finished wall surface; or a building permit must be obtained to incorporate the floor plan of the apartment unit back into the principal structure.

## § 240-47.2. Accessory dwelling units (ADUs).

[Added 7-15-2021 by Order No. 2021-174]

- A. Purpose and intent. The intent of permitting accessory dwelling units (ADUs) is to:
- (1) Increase the number of dwelling units available for year-round rental in Town while remaining within our current wastewater capacity limitations;
  - (2) Adapt single-family residential properties so they are supportive of residents at a variety of stages in their life cycle;
  - (3) Encourage greater diversity and support of all populations with particular attention to young adults and senior citizens; and
  - (4) Encourage a more economic and efficient use of the Town's housing supply while maintaining the appearance and character of the Town's single-family neighborhoods; and
  - (5) Provide homeowners with a means of obtaining rental income to defray housing costs.
- B. Procedural requirements.
- (1) An ADU that conforms to the requirements contained herein shall be permitted as an accessory use to a lawful single-family dwelling use, except that no ADU shall be permitted on a lot at the same time either an affordable accessory apartment exists on that lot pursuant

to Chapter 9, Article II, §§ 9-12 through 9-16, of the General Ordinances of the Code of the Town of Barnstable or as a family apartment exists on that lot pursuant to § 240-47.1.

- (2) Prior to issuance of a building permit for an ADU, site plans, floor plans and elevations shall be submitted showing the proposed interior and exterior changes to existing buildings or new buildings and improvements on a lot associated with a proposed ADU.
  - (3) The construction of any accessory dwelling unit must be in conformity with the federal, state, and local laws and regulations, including all historic, and Old King's Highway requirements if applicable.
- C. Use and dimensional requirements. The Building Commissioner may issue a building permit authorizing the installation and use of an accessory dwelling unit within a lawful existing or new single-family dwelling to which the ADU is accessory, or in a new or existing detached building accessory to and on the same lot as the principal dwelling subject to the following:
- (1) No more than one ADU may be created per lot. This provision is not subject to variance.
  - (2) If the primary entrance of an ADU is not proposed to be shared with that of the principal dwelling, such entrance shall be less visible from the street view of the principal dwelling than the main entrance of the principal dwelling.
  - (3) An ADU shall be designed so that, to the maximum extent practical, the appearance of the property on which it is to be located remains that of a single-family residential property. Any addition or new construction shall be consistent in design with the principal single-family dwelling, considering the following: architectural details, roof design, building spacing and orientation, door and window location, and building materials. Any person aggrieved by the determination of a Town official with respect to a determination under this subsection may appeal said determination to the Zoning Board of Appeals.
  - (4) The ADU shall contain no more than two bedrooms. ADUs, in accordance with the definition, shall have a maximum habitable floor area that is not larger than 1/2 of the habitable floor area of the principal single-family dwelling unit (exclusive of floor area that converted to the ADU), or 900 square feet, whichever is smaller. ADUs with more than two bedrooms and/or a maximum habitable floor area greater than 900 square feet may be permitted by special permit from the Zoning Board of Appeals. Garages, unfinished attics and basements, common entries, porches and decks shall not be included in the floor area calculations. [Amended 7-15-2021 by Order No. 2021-175]
  - (5) Occupancy of the ADU shall not exceed two persons; occupancy limitations shall not apply to children ages 18 and under. Occupancy of an ADU by more than two persons over the age of 18 may be permitted by special permit from the Zoning Board of Appeals.
  - (6) Once an ADU has been added to a single-family dwelling or lot, the accessory dwelling unit shall not be enlarged beyond the square footage allowed by this section.
  - (7) All parking for the ADU shall be off street.
  - (8) The Board of Health must have documented to the Building Commissioner that sewage disposal will be satisfactorily provided for in accordance with the provisions of Title 5 and Board of Health regulations, including provisions for an appropriate reserve area on the site. The principal dwelling unit and accessory dwelling unit shall meet all wastewater requirements for the combined number of bedrooms/wastewater flow on the lot. If the property is served by municipal sewer, the Department of Public Works shall certify adequate capacity is available to serve the additional unit.
  - (9) The rights and requirements of this section hereby transfer upon the sale of a property containing an ADU built under the provisions of this section.
  - (10) An ADU and the principal dwelling to which it is accessory may be rented only in accordance with the terms of this section.

(11) An ADU shall be used only as a rental, except that the owner of the property may reside in the ADU while renting the principal dwelling. The rental period for an ADU and for a principal dwelling shall not be shorter than 12 consecutive months. Either the principal dwelling or ADU, but not both, may be rented at any given time.

(12) Any commercial use, with the exception of permitted home occupations, shall not be allowed on a property on which there is an ADU.

## Article VI. Off-Street Parking Regulations

### § 240-48. Purpose.

It is the purpose of this article that all new, expanded or intensified uses within the Town provide adequate off-street parking.

### § 240-49. Applicability.

No use shall be intensified, except for single-family detached dwellings, without providing adequate off-street parking as provided herein.

### § 240-50. Computation.

Existing parking spaces may be counted to meet the minimum off-street parking requirements for an intensified use only if it can be demonstrated that they are not used as of right by existing uses and are exclusively available as of right for said proposed intensification.

### § 240-51. Location of parking spaces.

[Amended 11-15-2001 by Order No. 2002-029; 7-21-2016 by Order No. 2016-166]

- A. All off-street parking spaces required by this article shall be located on the same lot as the use for which such spaces are required, except that in nonresidential districts, parking spaces may be located on another lot within 300 feet of, and in the same zoning district as, the use for which such spaces are required.
- B. Parking facilities, including those governed by § 240-24.1.11. The site development standards in §§ 240-24.1.11A(4)(d) and 240-24.1.10, Hyannis Parking Overlay District, may operate parking lots in other locations and propose shuttle service to transport patrons from these remote lots to their desired destination. Such proposals shall be subject to site plan review.

### § 240-52. Design and screening standards.

[Amended 3-11-1999 by Order No. 99-056]

- A. Each off-street parking space shall have minimum dimensions of nine feet by 20 feet excluding the driveway to such space.
- B. Drainage facilities for each parking area shall be designed and constructed to contain stormwater runoff on the premises.
- C. Parking areas for five or more cars shall be designed with enough maneuvering space so that vehicles need not back onto a public way.

- D. No parking lot shall be illuminated so as to cause glare for motorists, pedestrians or neighboring premises.

### § 240-53. Landscape requirements for parking lots.

- A. In all Single Family Residential Districts, where a legal use or a combination of legal uses requires the provision of five or more parking spaces pursuant to § 240-56, Schedule of Off-Street Parking Requirements, the following requirements shall apply:

- (1) All the requirements of § 240-53, Landscape Requirements of Parking Lots, Subsections C, D, E and F below; and
- (2) A landscaped setback shall be provided from the surfaced area of a parking lot and all entrance and exit drives to the road lot line, a distance equal to the required front yard building setback requirement, or a maximum of 50 feet, whichever is lesser. Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the required front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

- B. In all office and commercial districts, a parking lot shall conform to the following requirements:

- (1) The surfaced area of a parking lot and all entrance and exit drives shall be set back from the side and rear lot lines, by a landscaped buffer, as follows:  
 [Amended 6-28-20001 by Order No. 2001-036; 7-19-2001 by Item Nos. 2001-037, 2001-038, 2001-039; 11-15-2001 by Order No. 2002-029]

**Landscape Buffer Setbacks (in feet)  
to Parking Lots and Drives**

<b>Zoning District</b>	<b>Side</b>	<b>Rear</b>
B-1 Business	5	5
HO Highway Office	10	20
MA-1 Business	—	5
MA-2 Business	5	5
O-1, O-2, O-3 Office	5	5
OR Office Residential	5	10
PR Professional Residential	5	5
All other office and commercial districts	10	10
Uses requiring 5 or more spaces in single-family residential districts	10	10

- (2) A ten-foot minimum, landscaped perimeter buffer shall be maintained between a building and the surfaced area of a parking lot or drive, except at entrances, building loading and utility locations. A walkway may be located within the landscaped perimeter buffer, provided that the landscape area is not reduced to less than 40% of the area of the perimeter buffer.
- (3) Screening from residential districts: Where a parking lot containing five or more spaces abuts a residential district, or is located across the road from a residential district, it shall be screened as follows: (a) retention or planting of a sufficient area of natural vegetation to

provide a dense screen; and/or (b) a dense hedge providing year-round screening, and/or (c) where vegetative screening is not practical, a fence, with not more than 50% open space between the panels. Such screening shall be maintained in good condition at all times, and no advertising shall be placed upon the screening. In an Historic District, fences and hedges may be subject to other regulation.

- C. In all office and commercial districts, at least 10% of the interior of a parking lot with 21 or more parking spaces shall be landscaped. Planting along the perimeter of a parking area shall not be considered as part of the 10% interior landscaping. Interior landscaped islands shall be distributed throughout the parking lot. At least one tree with a minimum three-inch caliper or larger shall be provided per eight spaces or any portion thereof, located within interior landscaped islands. Existing naturally occurring trees in good condition located in landscaped islands shall be credited towards this requirement only in those areas where the existing trees are located. No landscaped island shall have an overall width of less than six feet, except that in parking lots with 51 or more parking spaces, the overall width of islands shall be no less than 10 feet. A walkway may be located within an interior landscaped island, provided that the walkway is separated from the surfaced area of the drive or parking lot by a minimum of four feet of landscaped area. The interior landscape requirements of Subsection **D** herein shall not apply to parking lots used for sale and/or display of motor vehicles.
- D. In all industrial districts, and in marine business districts, a parking lot with 21 or more parking spaces shall comply with the requirements of Subsections **B(2)** and **(3)** and **C** and **E** herein, except where a parking lot is also used for loading, material storage, or parking of trucks, boat storage and other equipment associated with the following uses: light industry, warehouse and distribution, contractor service establishments and commercial marinas.  
[Amended 7-19-2001 by Order No. 2001-099]
- E. Where landscaped setbacks to parking areas, landscaped buffers to buildings, and landscaped islands within parking areas are required in Subsections **B**, **C** and **D** above, the following requirements shall apply:
- (1) Existing natural trees and shrubs shall be retained within landscaped islands, and side and rear yard landscaped buffers to parking lots and drives wherever possible and supplemented with other landscape materials, in accordance with accepted landscape practices. Specimen trees shall be retained and, if practical, relocated within the site where necessary. Where natural vegetation cannot be retained, these areas shall be landscaped with a combination of low-maintenance grasses, trees and shrubs commonly found on Cape Cod. A list of recommended plant materials is on file with the Town Clerk and may also be obtained from the Planning Department. Plant materials shall be of sufficient size and density to create an attractive appearance. Brick or stone mulch shall not be used in place of ground covers in landscaped islands. Where mulch is used, it shall be in such a manner that it will not wash into leaching catch basins located in a parking lot, or adjacent roadway.
  - (2) All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article **IX** herein. No occupancy certificate shall be issued until the landscape plan has been implemented according to an approved site plan, except that the Building Commissioner may issue an occupancy certificate prior to installation of landscape materials, provided that the applicant posts security with the Town for 150% of the estimated cost of installation and plant materials.
- F. The preceding requirements of this § **240-53** shall not apply to parking lots constructed and in use prior to March 11, 1999, which conformed to all applicable regulations when established, except whenever there is:
- (1) An expansion of an existing parking lot containing 21 or more parking spaces; and/or
  - (2) An alteration of a structure, or a change or extension of a use created prior to March 11, 1999, which increases the parking requirements by five or more spaces according to the standards of § **240-56**, Schedule of Off-Street Parking Requirements;



The entire parking lot shall be brought into compliance with § 240-53 herein; and the front yard landscaped setback requirement, if any, in accordance with the applicable zoning district bulk regulations. For the purpose of this subsection only, a development containing several different business enterprises sharing a common parking lot or lots shall be considered to be one use.

- (3) Reduction of parking and/or landscape buffers for parking lots created prior to March 11, 1999. The number of parking spaces required in § 240-56 may be reduced by the number of spaces lost to the installation of landscape buffers and traffic islands. Alternatively or in addition thereto, landscape buffers and islands may be reduced sufficient to ensure the creation of a functional, attractive parking lot, subject to approval of site plan review. This provision shall only apply to parking lots subject to § 240-53F herein.  
[Amended 3-11-1999 by Order No. 99-056]

## § 240-54. Location of parking lot in relationship to buildings.

[Amended 3-11-1999 by Order No. 99-056]

Parking lots shall be located to the rear or side of a building unless such location would have an adverse environmental impact or is infeasible due to configuration of the site.

## § 240-55. Conflicting provisions.

Any specific provision in any other section of this chapter relating to parking shall prevail over the provisions of this section.

## § 240-56. Schedule of Off-Street Parking Requirements.

[Amended 11-5-1988 by Art. 1]

The following standards represent the minimum parking requirements to be applied as provided for herein:

Use	Required Spaces
Attached dwelling units (D.U.)	1.5/D.U.+ 1 visitor space/10 required D.U. spaces
Guesthouse, lodging house, group accommodation, bed-and-breakfast	1.2/bedroom
Hotel/motel guest units	1.2/guest unit + 1/every 2 employees on maximum shift
Nursing homes/hospitals	1/every 3 beds
Industry, warehousing, storage, distribution, wholesaling	1/700 sq. ft. gross floor area or 1/every 1.3 employees on maximum shift, whichever is greater
Retail, consumer service	1/200 sq. ft. gross floor area + 1/separate enterprise
Office, professional, administrative, banks	1/300 sq. ft. gross floor area + 1/separate suite
Restaurants, licensed common victualer or purveyor of food ready to be consumed on or off premises	1/every 3 seats + 1/every 2 employees + 5/take-out area
Places of public assembly	1/every 3 persons capacity
Bowling alley	4/alley
Tennis, handball and racquetball courts	3/court, except 0 when a single court is located as accessory to a single-family dwelling
Laundromats	1/every 4 machines

**Use**

Gas/service stations

All other uses

**Required Spaces**

3/service bay or 1/100 sq. ft. gross floor area, whichever is greater

As determined by the Building Commissioner

**§ 240-57. Circumstances warranting reduction of requirements.**

[Amended 11-5-1988 by Art. 1]

The Zoning Board of Appeals may reduce the requirements of this article by the granting of a special permit only if lesser off-street parking is shown to be adequate given such special circumstances as:

- A. Use of a common parking area by different uses having different peak hours of demand.
- B. Age or other characteristics of occupants which reduce auto usage.
- C. Characteristics of use invalidating normal methods of calculating parking demand.
- D. Supplementary parking provided off premises.

**§ 240-58. Reduction of parking within the MA-1 and MA-2 Business Districts.**

[Added 7-19-2001 by Item Nos. 2001-037, 2001-038, 2001-039; amended 11-15-2001 by Order No. 2002-029]

- A. Within the MA-1 and MA-2 Business Districts, a permitted use can be changed to another permitted use, and a use can be intensified, without increasing the required off-street parking requirements of § **240-56**, Schedule of Off-Street Parking Requirements, herein, provided that as of September 15, 2001, there is:
  - (1) No increase in gross square footage of the building; and
  - (2) No reduction in existing parking spaces required pursuant to § **240-56**; and
  - (3) There is no added outdoor use requiring the provision of parking according to § 204-56, except that no parking spaces shall be required for outdoor dining on both public and private property; except
  - (4) That in the MA-1 Business District, the following requirements shall apply to apartments:
    - (a) One parking space per one-bedroom apartment unit;
    - (b) Two parking spaces per apartment unit with two bedrooms.
- B. Within the MA-1 Business District, parking spaces shall be provided for new and/or expanded building area, and for new and/or expanded outdoor uses, as follows:
  - (1) Fifty percent of the spaces required under § **240-56** for all uses other than apartments.
  - (2) Parking spaces requirements for apartments shall be according to Subsection **A(4)** above.
- C. The Zoning Board of Appeals may by special permit, further reduce the parking required within the MA-1 Business District as follows:
  - (1) Off-site parking. Parking requirements may be satisfied if an off-street municipal parking lot of 20 spaces or more exists within 500 feet of the proposed use.

## Article VII. Sign Regulations

### § 240-59. Statement of intent.

The provisions of this article establish the comprehensive regulations, conditions and limitations under which signs are permitted in the Town of Barnstable. It is intended that these regulations shall be held to be the minimum regulations necessary for the protection of the visual environment of the Town and the public safety, convenience and welfare and shall be narrowly construed and strictly applied in favor of the public interest to those ends.

### § 240-60. Definitions.

As used in this article, the following terms shall have the meanings indicated:

#### **ABANDONED SIGN**

A sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product or activity and/or for which no legal owner can be found.

#### **ANIMATED SIGN**

Any sign which uses movement or change of lighting to depict action or to create a special effect or scene.

#### **AREA (OF A SIGN)**

(See § 240-62 herein).

#### **BANNER**

A sign made of fabric or any nonrigid material with no enclosing framework.

#### **BILLBOARD**

(See "off-premises sign.")

#### **BUILDING COMMISSIONER**

The Building Commissioner of the Town of Barnstable or his designee.

#### **BUILDING SIGN**

A sign affixed to and wholly supported by an exterior wall of a building or structure.

#### **BUSINESS AREA SIGNS**

An off-premises sign intended to direct the motoring public to specific commercial areas only, and not to include individual businesses.

#### **CANOPY OR ARCADE SIGN**

A wall-mounted sign attached to or constructed on the face of a permanent roofed structure covering an area customarily used for pedestrian circulation.

#### **CHANGEABLE-COPY SIGN**

A sign that is designed so that characters, letters or illustrations can be changed or rearranged either manually or automatically without altering the face or the service of the sign.

#### **CONSTRUCTION SIGN**

A temporary sign identifying an architect, contractor, subcontractor, material supplier or others participating in the construction on the property on which the sign is located.

#### **DIRECT LIGHTING**

Illumination by means of an external source.

**DIRECTIONAL/INFORMATION SIGN**

An on-premises sign identifying a premises or activity conducted upon such premises, and providing direction for the safe and efficient flow of vehicular or pedestrian traffic to such activity or premises. Directional signs shall include signs marking entrances, exits, parking areas, loading areas or other operational features of the premises.

**DISCONTINUED SIGN**

(See "abandoned sign.")

**DOUBLE-FACED SIGN**

A sign with two faces or panels, neither of which is visible at the same time and are directly back to back as opposed to a V-shaped sign.

**ELECTRONIC MESSAGE CENTER**

A sign on which the copy changes automatically on a lampbank or through mechanical means, e.g., electrical or electronic time-and-temperature units.

**EXTERNALLY ILLUMINATED SIGN**

A sign whose illumination is derived entirely from an external artificial source.

**FACADE**

The entire building front, including the parapet.

**FLASHING SIGN**

A sign which contains an intermittent or sequential flashing light source used primarily to attract attention. This does not include changeable-copy signs, animated signs or signs which, through reflection or other means, create an illusion of flashing or intermittent light. (Compare "animated sign.")

**FREESTANDING SIGN**

A sign supported upon the ground by poles or braces and not attached to any building.

**FRONTAGE**

The length of the property line of any one premises along a public right-of-way on which it borders.

**GOVERNMENT SIGN**

Any temporary or permanent sign erected and maintained by the Town, county, state or federal government for traffic direction or for designation of or direction to any school, hospital, historic site or public service, property or facility.

**HEIGHT (OF A SIGN)**

The vertical distance measured from the highest point of the sign to the average ground grade beneath the sign.

**IDENTIFICATION SIGN**

A sign whose copy is limited to the name and address of the building, institution or person and/or activity or occupation being identified.

**ILLEGAL SIGN**

A sign which does not meet the requirements of this chapter and which has not received legal nonconforming status.

**INDIRECT LIGHTING**

Illumination by means of a concealed light source, whereby all incandescent or fluorescent devices are shielded from view by opaque or translucent materials, and including reflected lighting.

**INTERNALLY ILLUMINATED SIGN**

Illumination by means of a light source completely enclosed by the sign panel(s).

### **INTERMITTENT LIGHTING**

(See "flashing sign.")

[1]

### **MAINTENANCE (OF A SIGN)**

The cleaning, painting, repair or replacement of defective parts of a sign in a manner that does not alter the basic copy, design or structure of the sign.

### **MENU SIGNS**

The menu normally presented at tableside.

### **MULTIPLE-FACED SIGNS**

Signs containing more than two faces or panels.

### **NEON SIGN**

A neon sign is made of glass tubes filled with an inert gas, such as neon or argon, electrified to produce illumination. This provision is an exception to § **240-24.1.10A(6)**.

[Added 6-20-2013 by Order No. 2013-133]

### **NONCONFORMING SIGN**

Sign which was erected legally, but which does not comply with subsequently enacted regulations.

### **OFF-PREMISES SIGN**

A sign structure advertising an establishment, merchandise, service or entertainment which is not sold, provided, manufactured or furnished at the property on which said sign is located, e.g., "billboards," "outdoor advertising" or "off-site signs."

### **ON-PREMISES SIGN**

A sign which pertains to the use of the premises on which it is located and maintained.

### **OPEN/CLOSED SIGN**

A sign indicating whether a business is open or closed. A business in the HVB may display a neon open/closed sign, as defined herein, indicating whether it is open or closed. Open/closed signs are not counted towards the amount of signage allowed.

[Added 6-17-2010 by Order No. 2010-123; amended 6-20-2013 by Order No. 2013-133]

### **OPEN HOUSE DIRECTIONAL SIGN**

A temporary sign to be displayed only for real estate open house events staffed by real estate professionals such as brokers or agents. Such directional signs shall not exceed 24 inches by 24 inches in size, may be two-sided and shall display a directional arrow in addition to any other sign display.

[Added 5-5-2011 by Order No. 2011-046]

### **OPEN HOUSE SIGN**

A temporary sign to be displayed only for real estate open house events where real estate professionals such as brokers or agents are present at the open house. Such signs shall not exceed 24 inches by 24 inches in size and may be two-sided A-frame or panel signs.

[Added 5-5-2011 by Order No. 2011-046]

### **PAINTED WALL SIGN**

A sign which is applied with paint or similar substance on the face of a wall; such sign shall be considered a wall sign for calculation purposes.

### **PORTABLE SIGN**

Any sign designed to be moved easily and not permanently affixed to the ground or to a structure or building.

**PRIVATE WAY**

For the purposes of this Article **VII**, a private way shall be considered a public way. (See "public way.")

**PROJECTING SIGN**

A sign other than a flat wall sign which is attached to and projects from a building wall or other structure not specifically designed to support the sign and is not parallel to the structure to which it is attached.

**PUBLIC SERVICE INFORMATION SIGN**

Any sign intended exclusively to promote items of general interest to the community, such as time, temperature, date, atmospheric conditions, news or travel control.

**PUBLIC WAY**

Any roadway over which everyone has rights to pass, including Town ways and private ways.

**REAL ESTATE SIGN**

A temporary sign advertising real estate upon which the sign is located as being for rent, lease or sale.

**ROOF SIGN**

Any sign erected upon a roof and wholly or partially supported by the sign structure placed upon the roof.

**ROTATING SIGN**

Any sign or device which has any visible moving part, visible revolving part, or visible mechanical movement but not including methods of changing copy.

**SIGN**

Any permanent or temporary structure, light, letter, word, model, banner, pennant, insignia, trade flag, representation or any other device which is used to advertise, inform or attract the attention of the public and which is designed to be seen from outside a building, including all signs in windows or doors but not including window displays of merchandise.

**SPECIAL EVENT SIGN**

A temporary sign advertising or pertaining to any civic, patriotic or special event of general public interest taking place within the Town.

**STREET BANNER SIGN**

Any banner which is stretched across and hung over a public right-of-way.

**SUBDIVISION IDENTIFICATION SIGN**

A freestanding or wall sign identifying a recognized subdivision, condominium complex or residential development.

**TEMPORARY SIGN**

A sign not constructed or intended for long-term use.

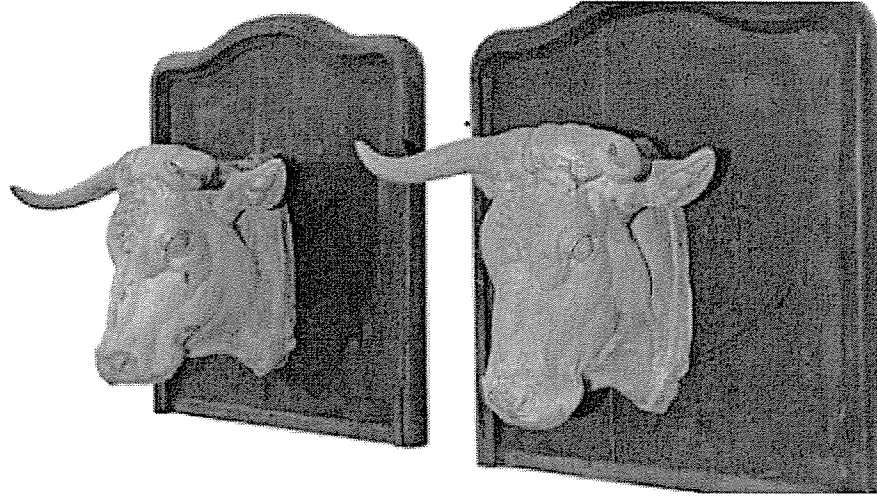
**TRADE FIGURE OR SYMBOL**

A three-dimensional representation of a business that is used to indicate the type of merchandise or services offered by the business. Trade figures or symbols shall be still and silent. Business trade figures are not counted towards the amount of signage allowed.

[Added 6-17-2010 by Order No. 2010-123]

**Trade Figure or Symbol Example Butcher Shop**

## Trade Figure or Symbol Example Butcher Shop



### TRADE FLAG

Any sign consisting of lightweight fabric that is affixed to a pole displaying letters, designs or icons exemplary of the business displaying the flag. Such images shall be consistent with the historical heritage and character of village or neighborhood in which it is displayed.

[Added 6-17-2010 by Order No. 2010-123; amended 5-5-2011 by Order No. 2011-047]

### UNDER-CANOPY SIGN

A directional sign suspended beneath a canopy, ceiling, roof or marquee.

### V-SHAPED SIGN

A sign with two faces or panels not supported by one common structural member and which faces are not back-to-back.

### WALL SIGN

A sign attached parallel to and extending not more than 18 inches from the wall of a building, including painted signs, individual lettered signs, cabinet signs and signs on a mansard.

### WINDOW SIGN

A sign installed inside a window and intended to be viewed from the outside.

[1] *Editor's Note: The definition of "location hardship sign," added 6-17-2010 by Order No. 2010-123, which immediately followed, was repealed 11-7-2019 by Order No. 2020-020.*

## § 240-61. Prohibited signs.

The following signs shall be expressly prohibited in all zoning districts, contrary provisions of this chapter notwithstanding:

- A. Any sign, all or any portion of which is set in motion by movement, including pennants, banners or flags, with the exception of trade flags pursuant to § **240-72** and at the entrance to subdivisions where developed and undeveloped lots are offered for initial sale and official flags of nations or administrative or political subdivisions thereof.

[Amended 6-17-2010 by Order No. 2010-123; 5-5-2011 by Order No. 2011-046; 5-5-2011 by Order No. 2011-047]

- B. Any sign which incorporates any flashing, moving or intermittent lighting. Such signs include LED (light emitting diode) signs; LED border tube signs, including any sign that incorporates or consists solely of a LED border tube lighting system; and simulated neon signs which are extremely bright backlit signs using fluorescent lamps and neon colored inks or translucent vinyl for lettering and display.

[Amended 6-17-2010 by Order No. 2010-123]

- C. Any display lighting by strings or tubes of lights, including lights which outline any part of a building or which are affixed to any ornamental portion thereof, except that temporary traditional holiday decorations of strings of small lights shall be permitted between November 15 and January 15 of the following year. Such temporary holiday lighting shall be removed by January 15.
- D. Any sign which contains the words "Danger" or "Stop" or otherwise presents or implies the need or requirement of stopping or caution, or which is an imitation of, or is likely to be confused with any sign customarily displayed by a public authority.
- E. Any sign which infringes upon the area necessary for visibility on corner lots.
- F. Any sign which obstructs any window, door, fire escape, stairway, ladder or other opening intended to provide light, air or egress from any building.
- G. Any sign or lighting which casts direct light or glare upon any property in a residential or professional residential district.
- H. Any portable sign, with the exception of A-frame signs expressly permitted herein, including any sign displayed on a stored vehicle, except for temporary political signs.  
[Amended 6-17-2010 by Order No. 2010-123; 11-7-2019 by Order No. 2020-020]
- I. Any sign which obstructs the reasonable visibility of or otherwise distracts attention from a sign maintained by a public authority.
- J. Any sign or sign structure involving the use of motion pictures or projected photographic scenes or images.
- K. Any sign attached to public or private utility poles, trees, signs or other appurtenances located within the right-of-way of a public way.
- L. A sign painted upon or otherwise applied directly to the surface of a roof.
- M. Signs advertising products, sales, events or activities which are tacked, painted or otherwise attached to poles, benches, barrels, buildings, traffic signal boxes, posts, trees, sidewalks, curbs, rocks and windows regardless of construction or application, except as otherwise specifically provided for herein.
- N. Signs on or over Town property, except as authorized by the Building Commissioner for temporary signs for nonprofit, civic, educational, charitable and municipal agencies.
- O. Signs that will obstruct the visibility of another sign which has the required permits and is otherwise in compliance with this chapter.
- P. Off-premises signs except for business area signs as otherwise provided for herein.
- Q. Any sign, picture, publication, display of explicit graphics or language or other advertising which is distinguished or characterized by emphasis depicting or describing sexual conduct or sexual activity as defined in MGL Ch. 272, § 31, displayed in windows, or upon any building, or visible from sidewalks, walkways, the air, roads, highways, or a public area.

## § 240-62. Determination of area of a sign.

- A. The area of the sign shall be considered to include all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed.
- B. The area of signs painted upon or applied to a building shall include all lettering, wording and accompanying designs or symbols together with any background of a different color than the finish material or the building face.



- C. When a sign consists of individual letters or symbols attached to or painted on a surface, wall or window, the area shall be that of the smallest rectangle which encompasses all of the letters and symbols.
- D. Only one side of a double-faced sign shall be counted in computing the area of that sign.
- E. For the purposes of these regulations, the area of a building face or wall shall be calculated by using a height of no more than 10 feet from the ground multiplied by the width of the building front.

## § 240-63. Signs in residential districts.

[Amended 2-20-1997]

In residential districts, only the following signs are permitted:

- A. One sign displaying the street number and identifying the premises not to exceed two square feet in area. The street number must be approved by the Engineering Department in conformance with the Town's regulations governing numbering of buildings.<sup>[1]</sup>  
[1] *Editor's Note: See Ch. 51, Buildings, Numbering of.*
- B. One sign no larger than four square feet in area shall be allowed which displays the name of the house or the name of the family residing therein.
- C. One sign not to exceed two square feet in area shall be permitted for a professional office or home occupation for which a special permit or variance has been granted by the Board of Appeals.
- D. One temporary sign not to exceed four square feet in area advertising property for sale, lease or rent. Such signs must be removed within 10 days of transfer of title or signing of lease or rental agreement.
- E. Where a legal nonconforming business exists within a residential district, one sign may be permitted by the Building Commissioner if it is determined that the appearance, placement, size and lighting of the proposed sign will not be detrimental to the residential character or visual quality of the area. In no instance shall such signs exceed eight feet in height or eight square feet in area.
- F. Permits may be posted at construction sites as required by state or Town regulations, except that in no instance shall they be attached to trees or utility poles.
- G. One identification sign not to exceed 12 square feet in area may be permitted at any public entrance to a subdivision or multifamily development.
- H. Illuminated signs within residential zones require the approval of the Building Commissioner, and may be permitted if the applicant can demonstrate that the proposed illumination will not intrude upon adjacent residential areas, will not be illuminated except during actual hours of business, and will not cause traffic hazards.
- I. One identifying sign for lodging houses, bed-and-breakfast or similar identification not to exceed four square feet in area.

## § 240-64. Signs in Medical Services District.

[Amended 7-14-2005 by Order No. 2005-100]

- A. One sign giving the name of the occupant or other identification of a permitted use in a professional residential zone may be permitted. Such signs shall be no more than 12 square feet in area and shall not extend more than eight feet above the ground.
- B. Any illuminated sign must comply with the provisions of § 240-63 herein.

## § 240-65. Signs in B, UB, HB, HO, S&D, SD-1 and GM Districts.

[Amended 8-15-1991; 7-15-1999; 6-20-2013 by Order No. 2013-133; 4-27-2017 by Order No. 2017-100]

- A. Each business may be allowed a total of two signs.
- B. The maximum height of any freestanding sign will be 10 feet, except that a height of up to 12 feet may be allowed by the Building Commissioner if it is determined that the additional height will be in keeping with the scale of the building and will not detract from the appearance or safety of the area and will not obscure existing signs that conform to these regulations and have a Town permit.
- C. The area of all signs for each individual business establishment shall not exceed 10% of the area of the building facade associated with the business establishment that contains the establishment's primary customer entrance or 100 square feet, whichever is the lesser amount. In instances where multiple business establishments share a customer entrance on the same facade, the total square footage for all signs of all business establishments attached to each facade shall not exceed 10% of the total area of the facade associated with the business establishments that contains the establishments' shared customer entrance or 100 square feet, whichever is the lesser amount.  
[Amended 4-17-2014 by Order No. 2014-047]
- D. Only one freestanding sign is allowed per business, which may not exceed half the allowable size as permitted in this section.
- E. One projecting overhanging sign may be permitted per business in lieu of either a freestanding or wall sign, provided that the sign does not exceed six square feet in area, is no higher than 10 feet from the ground at its highest point and is secured and located so as to preclude its becoming a hazard to the public. Any sign projecting onto Town property must have adequate public liability insurance coverage, and proof of such insurance must be provided to the Building Commissioner prior to the granting of a permit for such sign.
- F. Incidental business signs indicating the business, hours of operation, credit cards accepted, business affiliations, "sale" signs and other temporary signs shall be permitted so long as the total area of all such signs does not exceed four square feet and is within the allowable maximum square footage permitted for each business.
- G. When a business property is located on two or more public ways, the Building Commissioner may allow a second freestanding sign, so long as the total square footage of all signs for a single business does not exceed the provisions of this section.
- H. When two or more businesses are located on a single lot, only one freestanding sign shall be allowed for that lot, except as provided in this section, in addition to one wall or awning sign for each business. If approved by the Building Commissioner, the one freestanding sign can include the names of all businesses on the lot.
- I. One awning or canopy sign may be permitted per business in lieu of the allowable wall or freestanding sign, subject to approval by the Building Commissioner.
- J. In addition to the allowable signs as specified in this section each restaurant may have a menu sign or board not to exceed three square feet.
- K. In lieu of a wall sign, one roof sign shall be permitted per business, subject to the following requirements:
  - (1) The roof sign shall be located above the eave, and shall not project below the eave, or above a point located 2/3 of the distance from the eave to the ridge.
  - (2) The roof sign shall be no higher than 1/5 of its length.

## § 240-65.1. Signs in BA Districts.

[Added 6-20-2013 by Order No. 2013-133]

### A. Business identification signs.

- (1) Each business establishment is allowed two signs.
- (2) The area of all signs for each individual business establishment shall not exceed 10% of the area of the building facade associated with the business establishment that contains the establishment's primary customer entrance or 100 square feet, whichever is the lesser amount.
- (3) In instances where multiple business establishments share a customer entrance on the same facade, the following requirements shall apply:
  - (a) The total square footage for all signs of all business establishments attached to each facade shall not exceed 10% of the total area of the facade associated with the business establishments that contains the establishments' shared customer entrance or 100 square feet, whichever is the lesser amount.
  - (b) In instances where a building facade with a shared customer entrance does not have a ground-floor window belonging to each and all business establishments within the building, the following additional requirements shall apply:
    - [1] Business establishments with a window on the ground floor of the building facade that includes a shared customer entrance shall be allowed one sign attached to that building facade.
    - [2] Up to two directory signs shall be allowed for all businesses within the building. That sign may have multiple panels for each business tenant within the building. The total size of the directory sign(s) shall not exceed 20 square feet.
- (4) Additional standards for each sign type. In addition to the number and size limitations of Subsection (A), signs shall be subject to the following requirements. The most restrictive requirement shall apply.
  - (a) Wall signs.
    - [1] The maximum size of a wall sign shall not exceed 50 square feet.
  - (b) Projecting signs.
    - [1] The maximum size of a projecting sign shall not exceed six square feet.
    - [2] The sign may be double-faced.
    - [3] The bottom of a projecting sign shall be a minimum of 8 feet from grade and the height of the projecting sign shall not exceed 12 feet where the sign projects over a pedestrian walkway.
    - [4] The projecting sign must be secured and located so as to preclude it from becoming a hazard to the public.
    - [5] Each business establishment may only have one projecting sign on a facade.
    - [6] Any sign projecting over Town property must have adequate public liability insurance coverage. Proof of such insurance must be provided to the Building Commissioner prior to the granting of a permit for such sign.

### (c) Roof signs.

- [1] The maximum size of a roof sign shall not exceed 20 square feet.
  - [2] A roof sign shall be no higher than 1/5 of its length.
  - [3] The roof sign shall be located above the eave, and shall not project below the eave, or above a point located 2/3 of the distance from the eave to the ridge.
- (d) Freestanding signs.
- [1] One freestanding sign is allowed on each lot where the building is set back a minimum of five feet from the property line.
  - [2] The sign may be double-faced.
  - [3] The maximum size and height of freestanding signs shall be as follows:
    - [a] For properties that contain one business establishment, a freestanding sign shall not exceed four square feet in area and seven feet in height.
    - [b] For properties that contain two or more business establishments, a freestanding sign shall not exceed eight square feet in area and 10 feet in height.
    - [c] For properties that are located in the portion of the BA District south of Osterville-West Barnstable Road and north of Pond Street, a freestanding sign shall not exceed 20 square feet in area and 12 feet in height.
  - [4] When a lot is located on two or more public ways, the Building Commissioner may allow a second freestanding sign, provided the second freestanding sign also conforms to the requirements of Subsection **A(4)(d)[3]** above.
- (e) Awning signs.
- [1] Signage may be displayed on a maximum of two awnings per facade per business establishment.
  - [2] For the purposes of this section, two awnings with signage on the same facade shall constitute one sign.
  - [3] When a business establishment elects to put signage on two awnings on the same facade pursuant to Subsection **A(4)(e)[2]** above, that business establishment shall be limited to one of the following additional signs:
    - [a] One wall sign, not to exceed six square feet in area; or
    - [b] One projecting sign, subject to the requirements of Subsection **A(4)(b)**; or
    - [c] One freestanding sign, subject to the requirements of Subsection **A(4)(d)**.
  - [4] Lettering on an awning sign shall not exceed six inches in height.
  - [5] Any logo, symbol, graphic, or image incorporated into an awning sign shall not exceed two square feet.
- (5) Special permit for dimensional relief. Within the BA Zoning District, the Special Permit Grant Authority (SPGA) may provide relief subject to the provisions of § **240-125C** herein, from the size and dimensional requirements of § **240-65.1A**. The grant of any special permit for dimensional relief within the BA District shall require the SPGA to make the following findings:
- (a) There are unique features affecting the property or structure containing the business establishment that make it distinctly different in character from other development in the district. Such features may include, but are not limited to, the visibility of a structure or primary customer entrance from a public way, the size of the structure containing the

business establishment, orientation of the structure on the lot, access to the structure, or the number of tenants located on a single lot.

- (b) The proposed sign is consistent with the visual character of surrounding neighborhood and the community.
- B. Identification signs. Identification signs shall not count toward the total number of signs allowed for a business establishment in § **240-65.1A**.
- (1) Identification signs for secondary customer entrances.
    - (a) Each business establishment with a second customer entrance on a second facade oriented to a public way, parking lot, or publicly used walkway is allowed one identification sign.
    - (b) The area of the sign shall not exceed 5% of the area of the building facade associated with the business establishment that contains the establishment's secondary customer entrance or 20 square feet, whichever is the lesser amount.
    - (c) The identification sign shall be limited to either a wall sign, projecting sign, or awning sign, subject to the requirements set forth in § **240-65.1A(4)** above.
    - (d) The sign shall be attached to the building facade containing the second customer entrance.
    - (e) In instances where the multiple business establishments share a secondary customer entrance, identification signs shall be subject to the requirements of § **240-65.1A(3)**, except that size limitations of Subsection **B(1)(c)** above shall apply.
  - (2) Identification signs for delivery or service entrances.
    - (a) Each business establishment is allowed one identification sign attached to a building facade oriented to a public way, parking lot, or publicly used walkway, providing that such facade has a delivery or service entrance serving that business establishment.
    - (b) The identification sign shall be a wall sign located near the delivery or service entrance.
    - (c) The maximum size of an identification sign shall not exceed two square feet.
- C. Trade signs and temporary signs. These signs shall be permitted in addition to the signs permitted in Subsections **A** and **B** above. All trade signs and temporary signs shall be made of high-quality materials and kept clean and properly maintained so as to avoid peeling, rusting or other forms of decay.
- (1) Menu signs.
    - (a) Each restaurant or food-service establishment may have one menu sign not to exceed three square feet.
    - (b) The menu sign shall be attached to the building.
  - (2) A-frame menu boards.
    - (a) A-frame menu boards are permitted for restaurants and other food service establishments.
    - (b) One A-frame menu board sign per establishment is permitted.
    - (c) The maximum size of the A-frame menu board shall not exceed two feet by three feet. The sign may be double-sided.
    - (d) The sign must be A-frame style, and the frame must be made out of solid wrought-iron and may incorporate a chalkboard.

- (e) Where the A-frame menu board is proposed on private property, proof shall be submitted demonstrating to the satisfaction of the Building Commissioner that explicit written permission has been given by the owner of the property proposed for locating the A-frame menu board.
- (f) Where the A-frame menu board is proposed on Town property, the following additional criteria shall be met:
  - [1] Proof of receipt of a license from the Town Manager or designee for the sign at the proposed location.
  - [2] Proof of insurance consistent with this license from the Town Manager or designee shall be provided to the Building Commissioner prior to placing any approved sign.
- (g) A-frame menu boards may not be used in conjunction with trade figure/symbols, open/closed signs or menu signs.
- (h) A-frame menu boards must comply with the following performance standards:
  - [1] Shall be secured as necessary so as not to create nuisance or hazard to pedestrians, motorists or business patrons under any conditions.
  - [2] Shall not obstruct safe passage or impede accessibility on the sidewalk.
  - [3] Shall not obstruct views to another business or business sign.
  - [4] Shall be professionally made and well maintained. Hand-lettered signs shall not incorporate informal, irregular hand lettering.
  - [5] Shall not be illuminated.
  - [6] Shall not have lights, banners, flags or similar objects placed on or adjacent to the sign.
  - [7] Shall be placed on the sidewalk leading to the public business entrance.
  - [8] Shall be removed at the close of business each day.
  - [9] Shall not be displayed outside of business hours.
- (3) Trade figure or symbols.
  - (a) One trade figure or symbol per business establishment is permitted.
  - (b) The trade figure or symbol shall represent the business and/or its services and shall be based on historic trade representations.
  - (c) Trade figures or symbols shall comply with the following requirements:
    - [1] The trade figure or symbol shall be placed at the public entrance immediately abutting the building front or affixed to the front facade of the building in which the business is located. Trade figures or symbols may also be incorporated into a freestanding sign.
    - [2] The maximum size of any trade figure or symbol shall be three cubic feet.
    - [3] The trade figure or symbol shall be secured as necessary so that it does not create nuisance or hazard under any conditions to pedestrians, motorists or business patrons.
    - [4] The trade figure or symbol shall not obstruct safe passage or impede accessibility on the sidewalk and shall not obstruct views to another business or business sign.
    - [5] Trade figures or symbols may not be used in conjunction with A-frame menu boards.

- (d) Proof shall be submitted demonstrating to the satisfaction of the Building Commissioner that explicit written permission has been given by the owner of the property proposed for locating the trade figure or symbol.
  - (e) Where the trade figure or symbol is proposed on Town property, the following additional criteria shall be met:
    - [1] Proof of receipt of a license from the Town Manager or designee for the sign at the proposed location.
    - [2] Proof of insurance consistent with this license from the Town Manager or designee shall be provided to the Building Commissioner prior to placing any approved trade figure or symbol.
  - (4) Open/closed signs.
    - (a) Each business establishment is allowed one open/closed sign on each building facade oriented to a street or parking lot, providing that such facade has a customer entrance serving that business establishment.
    - (b) The open/closed sign shall either be attached at the customer entrance, in a display window or door of the building in which the business is located or attached to a freestanding sign. Open/closed signs may also be incorporated into a trade figure or A-frame menu board.
    - (c) The maximum size of an open/closed sign shall not exceed 22 inches by 14 inches.
  - (5) Incidental business signs.
    - (a) Incidental business signs indicating the business, hours of operation, credit cards accepted, and business affiliations shall be permitted so long as the total area of all signs does not exceed one square foot.
    - (b) "Sale" signs and other temporary signs shall be permitted so long as the total area of all such signs does not exceed three square feet.
  - (6) Trade flags. Trade flags are prohibited in the BA District.
- D. Illumination, design and materials.
- (1) No neon or LED signs are permitted in the BA District.
  - (2) Internally illuminated signs are prohibited in the BA District.
  - (3) The lettering, shape, and color employed in a sign shall be compatible with the form, color, and materials of the building housing the business establishment that the sign is identifying. Signs for different businesses within the same building or for multiple business establishments in multiple buildings on the same property shall be of harmonious style and design.
  - (4) Wall signs, projecting signs, roof signs, and freestanding signs shall be made primarily of wood, PVC composite, medium-density or high-density overlay plywood or HDPE sign board.

## § 240-66. Signs in industrial districts.

The provisions of § 240-65 herein shall apply, except that the total square footage of all signs, while normally not to exceed 100 square feet, may be allowed up to 200 square feet if the Building Commissioner finds that larger signs are necessary for the site and are within the scale of the building and are otherwise compatible with the area and in compliance with the provisions and intent of these regulations.

## § 240-67. Signs in CVD, OM, HG, TD, VB-A, WBVBD and MMV Districts.

[Amended 6-1-2006 by Order No. 2006-136; 7-16-2009 by Order No. 2009-137; 6-17-2010 by Order No. 2010-122; 9-8-2011 by Order No. 2011-138]

The provisions of § **240-65** herein shall apply except that:

- A. The maximum allowable height of all signs is eight feet, except that the Building Commissioner may allow up to 12 feet if he finds that such height is necessary for the site and is compatible with the appearance, scale and character of the area.
- B. The maximum square footage of all signs shall be 50 square feet or 10% of the building face, whichever is less.
- C. The maximum size of any freestanding sign shall be 10 square feet, except that the Building Commissioner may grant up to 24 square feet if he finds that the size is necessary for the site and that the larger size is in scale with the building and does not detract from the visual quality or character of the area.

## § 240-68. Signs in MB-A1, MB-A2, MB-B and HD Districts.

[Amended 7-14-2005 by Order No. 2005-100]

The provisions of § **240-65** herein shall apply except that:

- A. The maximum allowable height of signs shall not exceed eight feet.
- B. Freestanding signs shall not exceed 24 square feet in area.
- C. The total square footage of all signs shall not exceed 50 square feet.

## § 240-69. Gasoline station signs.

- A. In addition to the two allowable signs as specified in § **240-65** herein each gas pump may have signage not to exceed 12 inches by eight inches indicating the name or type of gasoline and its price and other information as may be required by federal, state or Town regulation.
- B. Each gas station or garage may divide the one allowable attached wall sign into no more than four separate signs affixed to and parallel to the wall indicating the separate operations or departments of the business, provided that the total area of the separate signs shall not exceed maximum permitted areas specified in § **240-65** herein.
- C. If the business is an approved inspection station, it may additionally have a sign indicating that fact as part of its permitted building or freestanding sign, except that the total square footage of all signs must not exceed the maximum permitted in § **240-65** herein.
- D. Temporary or portable signs of any and every type are specifically prohibited.

## § 240-70. Shopping center signs.

Each business in a shopping center is allowed one attached building sign and one portion of a common freestanding sign. If the shopping center has two or more public entrances which are at least 500 feet apart, a second freestanding sign may be permitted if the Building Commissioner finds that an additional sign is necessary, will not represent a visual hazard, and will not detract from the visual quality or character of the area.



## § 240-71. Signs HVB District.

[Amended 11-15-2001 by Order No. 2002-029; 7-14-2005 by Order No. 2005-100]

The provisions of § **240-65** herein shall apply except that:

- A. The maximum allowable height of all signs on buildings shall be 12 feet, and the maximum height of a freestanding sign shall be eight feet.
- B. The maximum square footage of all signs shall be 50 square feet or 10% of the building face, whichever is less.
- C. The maximum size of any freestanding sign shall be 12 square feet.
- D. Temporary street banners may be permitted in the HVB Business District only, for the purpose of informing the general public of community events and activities, with approval of the Town Manager. Street banners shall be hung in prescribed locations, securely fastened to buildings, maintain a minimum height of 16 feet above the street, be constructed of durable materials, used solely for community events in the district, and remain in place for no more than three weeks prior to the event and be removed within one week after the event.
- E. Open/closed sign, business trade figure or symbol, or A-frame sign: Subject to § **240-85**, Permit required; identification stickers.  
[Added 6-17-2010 by Order No. 2010-123; amended 5-5-2011 by Order No. 2011-047; 11-7-2019 by Order No. 2020-020]
  - (1) Open/closed sign. A business may display a sign to identify and/or direct patrons to their business, provided that the following standards are met:
    - (a) The open/closed sign is attached, at the public entrance, in a display window or door of the building in which the business is located.
    - (b) Only one open/closed sign per business establishment is permitted per frontage.
    - (c) An open/closed sign may not be used in conjunction with a trade flag or business trade figure or symbol.
    - (d) The dimensions of any open/closed sign shall not exceed 22 inches by 14 inches.
  - (2) Trade figure or symbol. A business may use a three dimensional representation of their business, providing that the following criteria are met:
    - (a) The business trade figure or symbol is placed at the public entrance immediately abutting the building front or is affixed to the front facade of the building in which the business is located. Such figures or symbols shall not be located on Town property.
    - (b) The business trade figure or symbol represents the business and/or its services and is based on historic trade representations.
    - (c) Only one business trade figure or symbol per business establishment is permitted.
    - (d) A business trade figure or symbol may not be used in conjunction with an open/closed sign or a trade flag.
    - (e) The dimensions of any business trade figure or symbol shall not exceed two feet by three feet by four feet.
    - (f) The business trade figure or symbol shall be secured as necessary so that it does not create nuisance or hazard under any conditions to pedestrians, motorists or business patrons.

- (g) The business trade figure or symbol shall not obstruct safe passage or impeded accessibility on the sidewalk and shall not obstruct views to another business or business sign.
  - (h) Proof shall be submitted demonstrating to the satisfaction of the Building Commissioner that explicit written permission has been given by the owner of the property proposed for locating the trade figure or symbol.
- (3) A-frame sign. These signs are allowed in the HVB District, subject to the following criteria and performance standards.
- (a) Criteria.
    - [1] One A-frame sign is permitted per each business.
    - [2] Evidence demonstrating to the satisfaction of the Building Commissioner that explicit written permission has been given by the owner(s) of the property proposed for placing the sign.
    - [3] Where the A-frame sign is proposed on Town property, the following additional criteria shall be met:
      - [a] Proof of receipt of a license from the Town Manager or designee for the sign at the proposed location.
      - [b] Proof of insurance consistent with this license from the Town Manager or designee shall be provided to the Building Commissioner prior to placing any approved sign.
  - (b) Performance standards.
    - [1] A-frame signs:
      - [a] Shall not exceed eight square feet per side and four feet in height.
      - [b] Shall be secured as necessary so as not to create nuisance or hazard to pedestrians, motorists or business patrons under any conditions.
      - [c] Shall not obstruct safe passage or impede accessibility on the sidewalk.
      - [d] Shall not obstruct views to another business or business sign.
      - [e] Shall be professionally made, professionally painted and well maintained. Hand-lettered signs shall not incorporate informal, irregular hand lettering.
      - [f] Shall not be illuminated.
      - [g] Shall not have lights, banners, flags or similar objects placed on or adjacent to the sign.
      - [h] Shall be placed on the sidewalk leading to the public business entrance.
      - [i] Shall be removed at the close of business each day.
      - [j] Shall not be displayed outside of business hours.

## § 240-72. Trade flags.

[Added 5-5-2011 by Order No. 2011-047]

Trade flags may be displayed by a business use located in a nonresidential zoning district or trade flags may be displayed by a preexisting nonconforming business use along the portion of Phinneys

Lane from Attucks Lane to Kidd's Hill Road and along Route 6A from Sandwich/Barnstable line to the Barnstable/Yarmouth line. Trade flags are subject to § 240-85 and to the following:

- A. Trade flags shall not be displayed in conjunction with location hardship signs, open/closed signs, or trade figure or symbol.
- B. Trade flags are not counted towards the amount of signage allowed.
- C. Trade flags shall be attached at the primary public entrance, to the facade of the building in which the business is located.
- D. One trade flag per business establishment is permitted. For structures with common entrances leading to multiple business establishments, only one trade flag is allowed per common entrance.
- E. The dimensions of any trade flag shall not exceed three feet by five feet.<sup>[2]</sup>

[2] *Editor's Note: Former Subsection F, regarding trade flags in the BA District, which immediately followed this subsection, was repealed 6-20-2013 by Order No. 2013-133.*

- [1] *Editor's Note: Former § 240-72, Signs in B-1, O-1, O-2, and O-3 Districts, as amended, was repealed 7-14-2005 by Order No. 2005-100.*

## § 240-73. Construction signs.

- A. When a building permit has been issued for the construction, alteration or repair of a structure, and all other required permits have been obtained, contractors or architects shall display a sign on the site while approved work is going on.
- B. No contractor or architect shall display more than one sign on any building at any given time.
- C. No sign shall be larger than 24 square feet in area, nor more than five feet tall.
- D. The total area of all construction signs displayed at a site at any given time shall not exceed 24 square feet.

## § 240-74. Temporary signs.

Temporary signs and special sale signs may be permitted in all districts subject to the following requirements:

- A. The total area of all temporary signs allowed in this section shall not exceed 20% of the glass area of the window in which the sign is placed.
- B. Special event and/or temporary signs, flags or banners belonging to a not-for-profit organization, civic organization or church:  
[Added 5-7-2009 by Order No. 2009-074]
  - (1) Prior to installation, shall be registered with and approved by the Building Commissioner for a specific property owned or leased to a not-for-profit, civic organization or church.
  - (2) Shall be displayed only during permitted hours of operation and shall be removed once operations cease each day.
  - (3) Shall not obstruct pedestrian and/or vehicular traffic or be otherwise considered, at the discretion of the Building Commissioner or public safety officials, to be a public safety risk.
  - (4) Shall not exceed four feet in width and five feet in length.
  - (5) Shall remain subject to approvals of all applicable historic boards or commissions.
- C. Real estate signs.

[Added 5-5-2011 by Order No. 2011-046]

(1) Open house signs:

- (a) Shall only be placed for display 60 minutes before and shall be removed within 60 minutes after the open house event.
- (b) Shall not obstruct pedestrian and/or vehicular traffic or be otherwise considered, at the discretion of the Building Commissioner or public safety officials, to be a public safety risk.
- (c) Shall not be placed in any area that obstructs or otherwise intrudes into areas containing memorials or monuments. Open house signs are prohibited on a traffic island where such memorials or monuments are located.

(2) Open house directional signs:

- (a) Shall only be placed for display 60 minutes before and shall be removed within 60 minutes after the open house event.
- (b) Shall only be displayed to assist motorists in finding an open house that is concurrently displaying an open house sign.
- (c) Shall not obstruct pedestrian and/or vehicular traffic or be otherwise considered, at the discretion of the Building Commissioner or public safety officials, to be a public safety risk.
- (d) Shall not be placed in any area that obstructs or otherwise intrudes into areas containing memorials or monuments. Open house signs are prohibited on a traffic island where such memorials or monuments are located.

(3) Subdivision off-premises directional signs:

- (a) Shall be displayed only during period of time when developed or undeveloped lots in the subdivision are offered for initial sale by the developer and shall be removed once such initial sales are complete.
- (b) In accordance with § 240-85, prior to installation, shall be permitted by the Building Commissioner for the specific subdivision. Evidence of ownership, lease or other arrangement allowing installation and display at the proposed location shall be provided to the Building Commissioner with the sign permit application.
- (c) Shall not obstruct pedestrian and/or vehicular traffic or be otherwise considered, at the discretion of the Building Commissioner or public safety officials, to be a public safety risk.
- (d) Shall be located within reasonable proximity to the boundary of the subdivision.
- (e) Shall not exceed three feet by five feet.
- (f) Shall remain subject to approvals of all applicable historic boards or commissions.

## § 240-75. Directional or safety signs.

In addition to other allowable signs, directional, warning or traffic signs necessary for the safety and direction of residents, employees, customers and visitors may be allowed as follows:

- A. Such signs shall not exceed one square foot in area, nor be more than three feet high.
- B. No more than four such signs will be allowed per site.

- C. The Building Commissioner may grant exceptions from the provisions of this subsection on a case-by-case basis if he finds that the site requires more or larger or higher directional or safety signs, and that such signs will not conflict with the visual quality and character of the area nor lead to clutter or confusion.

## § 240-76. Business area signs.

Business area signs may, at the discretion of the Building Commissioner, be permitted off-premises in remote areas, provided that the owner of record of the land on which the sign is placed has given written permission and that such signs shall be no more than eight square feet in area and shall identify the business area only, and not individual businesses.

## § 240-77. Movie houses and places of entertainment.

- A. Movie houses and places of entertainment may use one of their signs as a display sign indicating movie titles, their ratings, the time(s) of showing, or in the case of places of entertainment, the names of current and/or next-appearing performers so long as they meet all dimensional requirements.
- B. When a movie house or place of entertainment is one of two or more businesses on a single lot, the Building Commissioner may allow two freestanding signs, one of which may be a display sign, so long as the total area of both signs combined does not exceed the maximum square footage allowed in § 240-65 herein.

## § 240-78. Illumination.

[Amended 11-15-2001 by Order No. 2002-029]

- A. Illuminated signs will normally not exceed fifty-foot lamberts (or equivalent measurement) of intensity. Additional intensity may be permitted by the Building Commissioner if it is determined that additional intensity is necessary and that it will not detract from the visual quality or character of the area.

[Amended 7-14-2005 by Order No. 2005-100]

- (1) Internally illuminated signs shall not be permitted in the Hyannis Village Zoning Districts.
- B. The light from any sign shall be so shaded, shielded or directed or shall be maintained at a sufficiently low level of intensity and brightness so that it shall not adversely affect neighboring premises or the safe vision of operators of vehicles moving on public roads and highways.
- C. All illuminated signs shall be so shaded, shielded or directed that they will not reflect or shine on or into residential structures to an extent that would constitute a nuisance or a disruption of the residential character of the area.

## § 240-79. Signs in Old King's Highway Historic District.

- A. The dimensional requirements of these regulations shall apply to all portions of the Town.
- B. Within the boundaries of the Old King's Highway Historic District, the Historic District's Regional Committee shall exercise the duties of the Building Commissioner for the purposes of these regulations, except that the Building Commissioner shall be informed of all actions taken by the Regional Committee.

- C. The Building Commissioner and the Chairman of Regional Committee shall consult with each other frequently regarding the administration of these regulations, and shall work together to establish common sign and architectural standards whenever possible.

## § 240-80. Relocating or changing signs.

- A. Any sign that is moved to another location, either on the same or other premises shall require a permit.
- B. Any change in the width, length, height, color, wording, materials, illumination or clearance between the bottom of the sign and the ground, other than authorized in the permit, will require a new permit prior to making any such changes.

## § 240-81. Transfer of permits prohibited.

Permits cannot be transferred, and the new owner of a business for which there are permitted signs must request a permit for those signs, which shall be granted if all signs are found to be in compliance with these regulations.

## § 240-82. Protection of subsequent purchasers.

Any vendor or lessor who sells or leases any real property which includes a nonconforming sign or signs has a duty to disclose to his vendee or lessee the time remaining in the amortization or transition period applicable to the sign or signs in question.

## § 240-83. Illegal signs.

- A. Order to remove. Following the procedures described in these regulations for abandoned signs, the Building Commissioner can establish an order of removal for illegal signs which may then be removed by the Building Commissioner following due procedures of law, with costs assessed to the permit holder or property owner.
- B. New signs at sites of illegal signs. No sign permit shall be granted for a new sign to be located on a building or on a lot where one or more illegal signs exist.

## § 240-84. Abandoned signs.

- A. Signs which have been abandoned due to a closing of a business, a change in business name or for any other reason which renders the sign not applicable to the property involved shall be removed by the permit holder or the owner of the building or premises within 14 days from the date of the action that caused the sign to be considered abandoned.
- B. A condition of approval for all sign permits shall be that permit holders or owners of the building or premises shall, at his or her own expense, remove all abandoned signs.
- C. New signs for a building or property on which an abandoned sign is located shall not be approved until the abandoned sign is removed.
- D. The Building Commissioner shall determine when a sign is abandoned. Notice shall be sent to the permit holder and to the property owner prior to administrative action.

## § 240-85. Permit required; identification stickers.

- A. All signs regulated by this chapter require a permit from the Building Commissioner, with the exception of residential signs described in § 240-63A and B herein, so long as the house number has been approved by the Engineering Department.
- B. Failure to obtain a permit shall make the sign illegal and subject to the penalty provisions of § 240-86 herein.
- C. All signs regulated by this chapter shall be marked with an identification sticker supplied by the Building Commissioner. Failure to display this sticker as issued by the Town shall constitute a violation of these regulations and be subject to the provisions of § 240-86 herein.

## § 240-86. Violations and penalties.

- A. The Building Commissioner may issue citations for violations of these regulations.
- B. A failure to respond to properly issued citations or the issuance of three or more citations for a sign shall be construed as a major violation subject to a fine of not more than \$100. Each day that such violation continues shall constitute a separate offense.
- C. Continued violation, even with payment of penalties, for a period of 60 days, shall be grounds for removal of the sign(s) in question, following the procedures for illegal signs.
- D. Applicants for signs who have previously had penalties for illegal signs may be required to post a deposit of not more than \$500 per sign for new permits. The Building Commissioner shall review the sign one year from the issuance of a permit and either issue a certificate of compliance, release the deposit, or order necessary corrective action utilizing the deposited funds, with any remaining funds and a full accounting of monies spent returned to the applicant.

## § 240-87. Safety and maintenance.

- A. All signs, together with their supporting structures, must be kept properly maintained, repaired, and in proper condition. All signs and the grounds about them shall be kept free from all rubbish and other objectionable material.
- B. Failure to comply with these provisions shall be grounds for a citation.
- C. If the Building Commissioner finds that a sign is unsafe or otherwise improperly maintained, he shall issue a written notice to that effect to the permit holder and the property owner. If the specified conditions are not corrected, the Building Commissioner is authorized to remove or repair the sign, all costs of which shall be assessed to the permit holder or property owner, including an administrative fee of \$50. If public safety is involved, the Building Commissioner may take immediate action.

## § 240-88. Appeals.

Any individual aggrieved by a decision of the Building Commissioner may appeal to the Barnstable Board of Appeals, as provided under Chapter 40A of the General Laws.

## § 240-89. Enforcement.

[Amended 10-17-2002]

- A. The provisions of these regulations shall be enforced by the Building Commissioner.
- B. Citations, as specified in § 240-85 may be issued by the Building Commissioner.

## Article VIII. Nonconformities

[Amended 11-7-1987 by Art. 8; 11-2-1995 by Order No. 95-198]

### § 240-90. Intent.

It is the intent of this section to protect property rights of owners of preexisting legally created nonconforming lots, uses and buildings or structures and to provide regulation of changes or expansion of preexisting nonconforming structures, building and uses.

### § 240-91. Nonconforming lot.

- A. Separate lot exemption. Any increase in area, frontage, width, yard or depth requirement of this chapter shall not apply to a lot for single- or two-family residential use which at the time of recording or endorsement:
- (1) Was not held in common ownership with any adjoining land; and
  - (2) Had a minimum of 5,000 square feet of area and 50 feet of frontage or the minimum frontage requirement for the zoning district in which it is located; and
  - (3) Conformed to the existing zoning if any when legally created; and
  - (4) Was separately owned at the time of every zoning change which made it nonconforming.
- B. Common lot protection.
- (1) Any increase in the area, frontage, width, yard or depth requirement of this chapter shall not apply for a period of five years from the effective date of the change, to a lot for single- or two-family residential use that:
    - (a) Is held in common ownership with not more than two adjoining lots; and
    - (b) Had a minimum of 7,500 square feet in area and 75 feet of frontage or the minimum frontage requirement for the zoning district in which it is located; and
    - (c) Was recorded or endorsed on a plan that conformed to zoning when legally created; and
    - (d) Conformed to applicable zoning requirements as of January 1, 1976.
- C. The protection afforded by Subsection **B** shall become vested upon the sale or transfer of the lot so protected into ownership separate from that of adjoining lots or the building thereon of a residence.  
[Amended 1-20-2005 by Order No. 2005-039]
- D. Approval-not-required plan protection. Any change in uses permitted under this chapter shall not apply to any lot created by a plan endorsed by the Planning Board as a plan not requiring approval under the Subdivision Control Law for such period of three years from the date of endorsement, as provided by MGL Ch. 40A, § 6.
- E. Subdivision plan protection. Any change in this chapter shall not apply to land shown on a plan under the Subdivision Control Law by a duly submitted and endorsed definitive subdivision plan, or a preliminary plan followed within seven months by a definitive plan, for such period of eight years from the date of endorsement, as provided by MGL Ch. 40A, § 6. Any legally created lot with a recorded release from covenant of the Planning Board that has been sold or transferred into separate ownership and control from any adjoining lots within eight years from the endorsement of the original subdivision plan shall be exempt from any dimensional or bulk zoning changes and shall not lose its status as a single buildable lot under zoning.



- F. Merged lots. Except as otherwise provided herein, lawfully nonconforming lots that are adjoining and held in common ownership, or under the control of the same owner, shall be treated so as to conform so far as possible with the minimum area requirement of the zoning district in which they are located. No lot so merged, or portion thereof, may be changed or transferred in any manner that will increase the degree of nonconformity unless a special permit has first been obtained from the Zoning Board of Appeals. No such special permit may create any additional buildable lot(s).
- G. Resource Protection Overlay District.  
[Amended 10-26-2000]
- (1) Any increase in area, frontage, width, yard or depth requirements of the Resource Protection Overlay District shall not apply to a lot for single- or two-family residential use which immediately prior to November 16, 2000, either:
- (a) Conformed to the applicable bulk requirements of this chapter immediately prior to November 16, 2000: or
- (b) Immediately prior to (on the effective date of this chapter,) was protected from the applicable bulk requirements of this subsection by the provisions of § 240-91A, B, C, D, or E of this chapter.
- (2) This protection afforded by this subsection shall be permanent.
- H. Developed lot protection; demolition and rebuilding on nonconforming lots. Preexisting legal nonconforming lots which have been improved by the construction of a single- or two-family residence which conformed to all provisions of the zoning ordinance or bylaw at the time of construction shall be entitled to completely demolish the old residence and construct thereon a new residence in accordance with the following.  
[Added 11-18-2004 by Order No. 2005-025<sup>[1]</sup>]
- (1) As-of-right. The proposed demolition and rebuilding shall be permitted as-of-right on a preexisting legal nonconforming lot that contains a minimum of 10,000 square feet of contiguous upland, provided that the Building Commissioner determines that all of the following criteria are met:
- (a) The proposed new structure conforms to all current use and setback requirements of the zoning district it is located in;
- (b) The proposed construction conforms to the following requirements of lot coverage, floor area ratio and building height:
- [1] Lot coverage by all buildings and all structures shall not exceed 20% or the existing lot coverage, whichever is greater;
- [2] The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished and rebuilt, whichever is greater; and
- [3] The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 1/2 stories. The building height, in feet, shall be defined as the vertical distance from the average grade plane to plate.
- (c) Further expansion of the rebuilt structure must conform to Subsection **H(1)(b)** above.
- (2) As of right: merged lots each containing a minimum area of 43,560 square feet of contiguous upland. Where, immediately prior to November 16, 2000, two legally created contiguous lots each containing a minimum area of 43,560 square feet of contiguous upland were: (a) located in the Resource Protection Overlay District and (b) held in common ownership and (c) improved by the construction of one single-family residence, including accessory structures which occupied both lots, each said 43,560 square foot lot may be treated under these provisions as two separate buildable lots, provided that each of said lots conformed to all the

bulk regulations of the zoning ordinance immediately prior to November 16, 2000, and as long as the other requirements of § **240-91H(1)(a)** through **(c)** above are satisfied.

[Added 5-7-2009 by Order No. 2009-099]

- (3) By special permit. If the proposed demolition and rebuilding cannot satisfy the criteria established in Subsection **H(1)** above, then the Zoning Board of Appeals may allow the demolition and rebuilding by special permit, provided that the Board finds that:
- (a) If the proposed new dwelling does not comply with Subsection **H(1)(a)** above, then the proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building; and  
[Amended 2-17-2005 by Order No. 2005-058]
  - (b) All the criteria in Subsection **H(1)(b)[1], [2]** and **[3]** above are met.
  - (c) The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.
  - (d) This section shall only apply to Subsection **H(2)** to the extent that the proposed demolition and rebuilding cannot satisfy the criteria established in Subsection **H(1)** above and shall not be available for relief from any of the other provisions of Subsection **H(2)**.  
[Added 5-7-2009 by Order No. 2009-099]
- [1] *Editor's Note: This order also redesignated former Subsection H(2) as Subsection H(3).*

## § 240-92. Nonconforming buildings or structures used as single- and two-family residences.

A preexisting nonconforming building or structure that is used as a single- or two-family residence may be physically altered or expanded only as follows:

- A. As of right. If the Building Commissioner finds that:
  - (1) The proposed physical alteration or expansion does not in any way encroach into the setbacks in effect at the time of construction, provided that encroachments into a ten-foot rear or side yard setback and twenty-foot front yard setback shall be deemed to create an intensification requiring a special permit under Subsection **B** below; and
  - (2) The proposed alteration or expansion conforms to the current height limitations of this chapter.
- B. By special permit. If the proposed alteration or expansion cannot satisfy the criteria established in Subsection **A** above, the Zoning Board of Appeals may allow the expansion by special permit, provided that the proposed alteration or expansion will not be substantially more detrimental to the neighborhood than the existing building or structure.

## § 240-93. Nonconforming buildings or structures not used as single- or two-family dwellings.

- A. As of right.
  - (1) The normal and customary repair and maintenance of a preexisting nonconforming building or structure not used as a single or two-family dwelling is permitted as of right.
  - (2) The alteration and expansion of a preexisting nonconforming building or structure, housing a conforming use, is permitted as of right, provided that the alteration or expansion does not increase or intensify the degree of the preexisting nonconformity of the building or structure,

and that the alteration or expansion conforms in all other respects with all applicable requirements of this chapter.

- B. By special permit. Alterations or expansions in a preexisting nonconforming building or structure that do not meet the provisions of Subsection **A** shall be permitted only by a special permit from the Zoning Board of Appeals. In granting such special permit, the Board must find that the proposed repairs, alterations and/or expansion are not substantially more detrimental to the surrounding neighborhood. If the building or structure houses a nonconforming use, the provisions of § **240-94** shall also apply.

## § 240-94. Nonconforming use.

[Amended 3-11-1999 by Order No. 99-056]

A preexisting nonconforming use shall be limited in the extent it may expand or intensify. A preexisting nonconforming use may be changed to a principal permitted use as of right. A preexisting nonconforming use may be changed to a conditional use by special permit as provided for within the zoning district in which it is located, or to another nonconforming use as provided for herein.

- A. Change of a nonconforming use to another nonconforming use. A preexisting nonconforming use may be changed to another nonconforming use only by special permit from the Zoning Board of Appeals. In granting a special permit for the change of a nonconforming use, the Board must find that the proposed nonconforming use is no more detrimental to the neighborhood and that all of the following requirements are met:
- (1) The applicant has received all necessary approvals from the Board of Health.
  - (2) The proposed nonconforming use:
    - (a) Requires no more parking than the previous use;
    - (b) Does not generate more traffic than the previous use, as measured by the Institute of Transportation Engineers Trip Generation Handbook or other sources acceptable to the Zoning Board of Appeals, nor does it cause Town expenditures to address traffic mitigation measures;
    - (c) Does not result in an increase of on-site and off-site noise, dust, and odors;
    - (d) Does not result in an increase in the hours of operation or in the number of tenants or employees;
    - (e) Does not expand the gross floor area of the nonconforming use, except as may be provided in § **240-93B**, nor does it increase the number of nonconforming uses on a site;
    - (f) Is on the same lot as occupied by the nonconforming use on the date it became nonconforming; and
    - (g) Is not expanded beyond the zoning district in existence on the date it became nonconforming.
- B. Expansion of a preexisting nonconforming use. A preexisting nonconforming use shall not be expanded and/or intensified except by special permit from the Zoning Board of Appeals. In granting a special permit for expansion of a preexisting nonconforming use, the Board must find that the proposed expansion, and/or intensification will not be more detrimental to the neighborhood and that the following requirements are met:
- (1) Any proposed expansion of the use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties.

- (2) The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming.
- (3) The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming.
- (4) At the discretion of the Zoning Board of Appeals, improvements may be required in order to reduce the impact on the neighborhood and surrounding properties including but not limited to the following:
  - (a) Greater conformance of signage to the requirements of Article **VII**;
  - (b) The addition of off-street parking and loading facilities;
  - (c) Improved pedestrian safety, traffic circulation and reduction in the number and/or width of curb cuts;
  - (d) Increase of open space or vegetated buffers and screening along adjoining lots and roadways. The applicant shall demonstrate maximum possible compliance with § **240-53**, Landscape Requirements for Parking Lots, Subsection **F**, if applicable.
  - (e) Accessory uses or structures to the principal nonconforming use may be required to be brought into substantial conformance with the present zoning.

## § 240-95. Reestablishment of damaged or destroyed nonconforming use, building or structure.

- A. The reestablishment of a lawful preexisting nonconforming use and/or building or structure which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted as of right, provided that the Building Commissioner has determined that all the following conditions are met:
  - (1) The reconstruction or repair will not increase the gross floor area or height of the building or structure beyond that which previously existed, nor increase the footprint of the structure;
  - (2) If the building's location on the lot is to be changed, it will change in a manner that will result in greater compliance with the bulk regulations established in the zoning district in which it is located; and
  - (3) The reconstruction or repair will not constitute an expansion or intensification of any nonconforming use.
  - (4) In the case of any use in which it would otherwise be required, the site plan review process has been followed.
- B. The preexisting nonconforming use and/or structure or building shall be discontinued unless a building permit has been applied for within two years from the date of damage or destruction, and construction is continuously pursued to completion.

## § 240-96. Variance situations.

Situations which exist pursuant to the duly authorized grant of a variance from the terms of this chapter as provided for in § 240-125B(3) and (5) shall not constitute nonconformities for the purposes of this chapter.

## § 240-97. Abandonment; nonuse.

Any lawful preexisting nonconforming use or building or structure or use of land which has been abandoned or not used for three years shall not thereafter be reestablished. This section shall not apply in cases of damage or destruction governed by § 240-95.

## Article IX. Site Plan Review

[Added 11-7-1987 by Art. 1]

### § 240-98. Findings.

Developments designed to be used for business and professional offices, commercial establishments, industrial facilities, medical-service facilities, public recreational facilities and multiple-family dwellings, together with their associated outdoor areas for vehicular movement and parking, invite and accommodate varying degrees of open and continuous use by the general public. Owing to their physical characteristic and the nature of their operations, such developments may affect neighboring properties and adjacent sidewalks and streets. It is in the interest of the community to promote functional and aesthetic design, construction and maintenance of such developments and to minimize any harmful effects on surrounding areas.

### § 240-99. Purposes.

The provisions of this article are designed to assure that all development activities regulated by this article will be carried out so as to provide for and maintain:

- A. Protection of neighboring properties against harmful effects of uses on the development site;
- B. Convenient and safe access for fire-fighting and emergency rescue vehicles within the development site and in relation to adjacent streets;
- C. Convenience and safety of vehicular and pedestrian movement within the development site and in relation to adjacent streets, properties or improvements;
- D. Satisfactory methods for drainage of surface water to and from the development site;
- E. Satisfactory methods for storage, handling and disposal of sewage, refuse and other wastes resulting from the normal operations of the establishment(s) on the development site;
- F. Convenience and safety of off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment(s) on the development site; and
- G. Harmonious relationship to the terrain and to existing buildings in the vicinity of the development site.

### § 240-100. Scope of application.

The provisions of this article shall apply to:

- A. Any construction, demolition, grading, clearing or other land development activity, except for improvements made as shown on a definitive subdivision plan approved by the Planning Board of the Town of Barnstable and minimal clearing necessary to accomplish soil test borings, percolation tests and similar site testing and investigation.
- B. Establishment of any new use or new construction of any building or structure, including any grading or land development activity except detached single-family and two-family dwellings and

permitted accessory structures thereto.  
[Amended 10-7-1993 by Order No. 94-015]

- C. Any alteration, expansion, reconstruction or modification to the existing condition(s) of a structure or any change of use which would necessitate the provision of additional off-street parking, additional lot area or any other site alteration in order for such structure or use as so changed to comply with all requirements of this chapter.
- D. The construction or creation of any new parking lot or the expansion or redesign of any existing parking lot.  
[Amended 2-22-1996 by Order No. 95-194]
- E. The erection of any freestanding sign, except not to include directional signs.

## § 240-101. Site plan approval required.

- A. No building permit or occupancy permit shall be issued for any activity or use within the scope of § 240-100 herein unless a site plan has been approved therefor.
- B. No activity within the scope of § 240-100 herein shall be carried out without an approved site plan therefor. Any work done in deviation from an approved site plan shall be a violation of this chapter, unless such deviation is approved in writing by the Building Commissioner as being of no significant detriment to the achievement of any of the purposes set forth in § 240-99 herein.

## § 240-102. Contents of site plan.

- A. The site plan shall include one or more appropriately scaled maps or drawings of the property, drawn to an engineer's scale, clearly and accurately indicating such elements of the following information as are pertinent to the development activity proposed:
  - (1) Legal description, Planning Board subdivision number (if applicable), Assessors' Map and parcel number and address (if applicable) of the property.
  - (2) Name, address and phone number of the property owner and applicant, if different than the property owner.
  - (3) Name, address, and phone number of the developer, contractor, engineer, other design professional and agent or legal representative.
  - (4) Complete property dimensions, area and zoning classification of property.
  - (5) Existing and proposed topographical contours of the property taken at two-foot contour intervals by a registered engineer or registered land surveyor.
  - (6) The nature, location and size of all significant existing natural land features, including, but not limited to, tree, shrub, or brush masses, all individual trees over 10 inches in caliper, grassed areas, large surface rock in excess of six feet in diameter and soil features.
  - (7) Location of all wetlands or water-bodies on the property and within 100 feet of the perimeter of the development activity.
  - (8) The location, grade and dimensions of all present and/or proposed streets, ways and easements and any other paved surfaces.
  - (9) Engineering cross sections of proposed new curbs and pavements, and vision triangles measured in feet from any proposed curb cut along the street on which access is proposed.
  - (10) Location, height, elevation, interior and exterior dimensions and uses of all buildings or structures, both proposed and existing; location, number and area of floors; number and type

of dwelling units; location of emergency exits, retaining walls, existing and proposed signs.

- (11) Location of all existing and proposed utilities and storage facilities including septic systems and any storage materials, truck loading and parking areas, tanks, garbage dumpsters and recyclable storage materials.
  - (12) Proposed surface treatment of paved areas and the location and design of drainage systems with drainage calculations prepared by a registered civil engineer.
  - (13) Complete parking and traffic circulation plan, if applicable, showing location and dimensions of parking stalls, dividers, bumper stops, required buffer areas and planting beds.
  - (14) Lighting plan showing the location, direction and intensity of existing and proposed external light fixtures.
  - (15) A landscaping plan showing the location, name, number and size of plant types, and the locations and elevation and/or height of planting beds, fences, walls, steps and paths.
  - (16) A location map or other drawing at appropriate scale showing the general location and relation of the property to surrounding areas including, where relevant, the zoning and land use pattern or adjacent properties, the existing street system in the area and location of nearby public facilities.
  - (17) Location within an Historical District and any other designation as an historically significant property, and the age and type of each existing building and structure on the site which is more than 50 years old.
  - (18) Location of site with regard to the GP Groundwater Protection Overlay District and WP Well Protection Overlay District as shown on the Official Zoning Map, § **240-6A**, Identification of Zoning Map.  
[Amended 9-17-1998 by Order No. 99-012]
  - (19) Location of site with regard to flood areas regulated by § **240-34** herein.
  - (20) Location of site with regard to areas of critical environmental concern as designated by the Commonwealth of Massachusetts, Executive Office of Environmental Affairs.
- B. Additional information may be required by the Building Commissioner or his designee, as reasonably necessary, to make determinations required by this article.

## § 240-103. Site development standards.

[Amended 11-15-2001 by Order No. 2002-029]

- A. A reasonable effort shall be made to conserve and protect natural features that are of some lasting benefit to the site, its environs and the community at large.
- B. Slopes which exceed 10% shall be protected by appropriate measures against erosion, runoff, and unstable soil, trees and rocks. Measures shall be taken to stabilize the land surface from unnecessary disruption. Such stabilization measures shall be the responsibility of the property owner.
- C. The placement of buildings, structures, fences, lighting and fixtures on each site shall not interfere with traffic circulation, safety, appropriate use and enjoyment of adjacent properties.
- D. At any driveway, a visibility triangle shall be provided in which nothing shall be erected, placed, planted or allowed to grow so as to materially impede vision from within motor vehicles between a height of three feet and eight feet above the average center-line grades of the intersecting street and driveway, said triangle being bounded by the intersection of the street line and the edges of a driveway and a line joining points along said lines 20 feet distant from their projected intersection.

- E. Adequate illumination shall be provided to parking lots and other areas for vehicular and pedestrian circulation. In no case shall freestanding illumination devices be installed to a height exceeding 15 feet in a residential district.  
[Amended 11-7-2019 by Order No. 2020-021]
- (1) Any outdoor lighting shall be directed on site only.
  - (2) Light fixtures shall have a total cutoff of all light at less than 90° and a beam cutoff of less than 75°. Attached building or wall pack lighting should be screened by the building's architectural features or contain a forty-five-degree cutoff shield.
  - (3) For commercial or mixed use developments, trespass of light at the property boundary shall not exceed 0.1 footcandle. Where commercial or mixed use developments abut a residential district, trespass of light at that boundary shall not exceed 0.05 footcandle. For developments that are exclusively residential, trespass of light at property boundaries shall not exceed 0.05 footcandle. At driveways, lighting may be up to 0.5 footcandle at the property line adjacent to a roadway. Electric service for lighting on posts or poles shall be placed underground.
  - (4) In no case shall exterior or outdoor lighting cause glare that impacts motorists, pedestrians or neighboring premises.
- F. All areas designed for vehicular use shall be paved with a minimum of either a three-inch bituminous asphalt concrete, a six-inch portland cement concrete pavement, or other surface, such as brick, cobblestone or gravel, as approved by the Town Engineer.
- G. All parking spaces shall be arranged and clearly marked in accordance with the parking lot design standards contained in § **240-104** herein. Signs and pavement markings shall be used as appropriate to control approved traffic patterns.
- H. All utility service transmission systems, including but not limited to electrical, telephone, cable and other communication lines, shall, whenever practicable, be placed underground or moved behind buildings.
- I. All surface water runoff from structures and impervious surfaces shall be disposed of on site, but in no case shall surface water drainage be across sidewalks or public or private ways. In no case, shall surface water runoff be drained directly into wetlands or water bodies. Drainage systems shall be designed to minimize the discharge of pollutants by providing appropriately designed vegetated drainage channels and sedimentation basins that allow for adequate settling of suspended solids and maximum infiltration. Dry wells, leaching pits and other similar drainage structures may be used only where other methods are not practicable. All such drainage structures shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants. All calculations shall be for a twenty-year storm and shall be reviewed by the Town Engineer.
- J. In addition to the provisions of this section, all other applicable requirements of this chapter shall be complied with.
- K. Storage areas. Exposed storage areas, machinery, garbage dumpsters, recyclable storage, service areas, truck loading areas, utility buildings and structures shall be screened from view of abutting properties and streets using planting, fences and other methods compatible with this chapter. Garbage dumpsters shall be located in designated areas, and where feasible, shared with other uses.
- L. Craigville Beach District implementing regulation: additional site development standards.  
[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]
- (1) Stormwater management. Within the Craigville Beach District, for nonresidential uses including nonresidential parking lots, all new development, expansions, modifications, alterations and changes in use shall obtain the approval of the Building Commissioner for a stormwater management plan that meets the following requirements:



- (a) Stormwater management and erosion controls shall use best management practices, low-impact designs and other adaptive management practices that at a minimum accommodate the twenty-four-hour, twenty-five-year storm event and, to the maximum extent feasible, conform to the Massachusetts Stormwater Management Standards adopted pursuant to 310 CMR 10.05(6)(k), Policy, and guidelines as set forth in the Massachusetts Stormwater Handbook; and
  - (b) A long-term operation, inspection and maintenance plan that ensures stormwater management systems will function as designed.
- (2) Planting and vegetation management. Within the Craigville Beach District, for nonresidential uses including nonresidential parking lots, all new development, expansions, modifications, alterations and changes in use shall obtain the approval of the Building Commissioner for a planting and vegetation management plan that incorporates the use of native and drought-resistant plantings that minimize the need for irrigation and the use of pesticides and chemical fertilizers. Drip irrigation should be used as an alternative to spray irrigation for establishing plantings and maintaining plantings under extreme drought conditions.

## § 240-104. Minimum parking lot design standards.

(Editor's Note: See drawings at the end of this chapter.)

## § 240-105. Required procedures for site plan review.

- A. At least six copies are required of all site plan sheets, drawings and written information. Submissions shall be delivered to the Building Department.
- B. Within five working days of receiving a site plan, the Building Commissioner or his designee shall distribute copies of the site plan to the Department of Planning and Development, the Department of Public Works and the Board of Health.
- C. Upon receipt of a site plan from the Building Commissioner or his designee, the agencies as noted in Subsection **B** shall respond in writing, by notations on the site plan, or both, as to the propriety of the proposed development, within the context of each agency's jurisdiction. Such response shall be made to the Building Commissioner or his designee within 10 working days of each agency's receipt of the site plan.
- D. The Building Commissioner or his designee may solicit the advice of any other Town agency or department he deems necessary to properly make the determinations required by this article.
- E. Site plans shall be reviewed for consistency with zoning and other applicable regulations and standards, and within 20 working days of receiving a site plan, the Building Commissioner or his designee, shall notify the applicant of any approval, conditional approval or disapproval, stating reasons.
- F. One copy of the approved site plan shall be provided each to the applicant, the Department of Planning and Development, the Department of Public Works and the Board of Health. One copy of the approved site plan shall remain in the records of the Building Department.
- G. Upon completion of all work, a letter of certification, made upon knowledge and belief according to professional standards, shall be submitted to the Building Commissioner or his designee by a registered engineer or registered land surveyor, as appropriate to the work involved, that all work has been done substantially in compliance with the approved site plan, except that the Building Commissioner or his designee may certify compliance.

## Article X. Personal Wireless Communication

[Added 6-3-1999 by Order No. 99-074A]

## § 240-106. Purpose and intent.

It is the intent of this article to provide for the location and siting of wireless service communication facilities and their accessory structures in accordance with the Telecommunications Act of 1996, to provide for the orderly provision of facilities; ensure public safety; and to minimize adverse visual impacts upon both residential and nonresidential areas.

## § 240-107. Requirements for all personal wireless facilities in all zoning districts.

- A. Installation and construction of all personal wireless service facilities, including but not limited to antennas, mounts, equipment shelters and structures, shall be subject to Article IX Site Plan Review, and shall require issuance of a building permit.
- B. The applicant shall provide site plan review with evidence that they are a licensed carrier, authorized by the Federal Communications Commission (FCC) to construct and operate personal wireless services, and that the proposed transmitters are FCC regulated and approved.
- C. The structure to which any mount or antenna is attached is a legally built structure under zoning, or a preexisting, legal nonconforming structure.
- D. If the location is within a designated historic district, the applicant shall secure a certificate of appropriateness, to the extent required.
- E. Structural components including guy wire anchors and equipment shelters shall comply with all required setbacks of the zoning district.
- F. Any equipment or base receiver station, not located within an existing building or underground vault, shall be designed to fit in with traditional Cape Cod architecture styles and materials, or shall be screened from view.

## § 240-108. Antennas permitted by special permit in all zoning districts.

[Amended 8-1-2013 by Order No. 2013-126]

Except where permitted as of right in § **240-109** below, in all zoning districts, an antenna mounted or located on any existing building, structure or communications tower may be permitted by special permit from the Zoning Board of Appeals, provided that no antenna exceeds the height of the existing structure by more than 12 feet, unless the Board finds that additional height is necessary to provide coverage, and the additional height will not be visually intrusive upon the surrounding area.

## § 240-109. Antennas permitted as of right in all zoning districts.

[Amended 8-1-2013 by Order No. 2013-126]

Antennas permitted as of right in all zoning districts shall be as follows:

- A. Co-location of antennas and customary appurtenant equipment on an existing communications tower lawfully permitted for the purpose of supporting FCC-licensed antennas, subject to compliance with § **240-107** and the following standards:
  - (1) The antenna shall not increase the height of the communications tower.

- (2) The antenna shall not extend out from the tower more than technically necessary for proper operation.
  - (3) The applicant shall submit a structural analysis, prepared and stamped by a registered professional engineer licensed to practice in the Commonwealth of Massachusetts, demonstrating that the communications tower has sufficient structural capacity for the installation. The analysis shall include information about all antenna installations on the tower.
  - (4) Ground-mounted accessory equipment shall be located within an existing equipment shelter or an area fully screened in accordance with § 240-107F.
- B. An antenna and/or tower used in accordance with the terms of an amateur radio service license issued by the Federal Communications Commission provided that any facility tower is not licensed or used for any commercial use, subject to all the requirements of § 240-8, Exempt uses.
  - C. Television and radio antennas, including satellite dishes not exceeding a diameter of four feet, for personal use, accessory to a residential use, or to provide entertainment for a single business such as a restaurant.
  - D. An antenna completely enclosed within an existing structure other than a communications tower, provided that the associated equipment or base transceiver station is located within an underground vault, or within an existing building or addition thereto, other than an equipment or base receiver shelter.
  - E. An antenna located upon the roof of an existing building or structure other than a communications tower, provided that the antenna does not exceed a height of 12 feet, and provided that the equipment shelter is set back from the roof edge a distance equal to the height of the equipment shelter
  - F. An antenna located on a water tower belonging to a public water supply utility, by permission of the water utility, not to exceed the height of the water tower by more than 12 feet, except that the Zoning Board of Appeals may by special permit increase the height of the antenna up to 20 feet where the location of the water tower and design of the antenna is such that it will not be visually intrusive upon the surrounding area.
  - G. Antennas located on existing utility stanchions, not to exceed a height of 12 feet above the utility stanchions, located within a Commonwealth Electric Company easement, with permission of the landowner to location and maintenance of an equipment or base receiver station shelter, or submission of recorded easement language demonstrating the right to install an equipment or base receiver station for a wireless communication facility.

## Article XI. Growth Management

[Added 7-19-2001 by Order No. 2001-118<sup>[1]</sup>]

- [1] *Note: The following Growth Management Ordinance is a DCPC (District of Critical Planning Concern) implementing regulation. The DCPC was approved by the Barnstable Assembly of Delegates on September 5, 2001; and the Cape Cod Commission gave its final approval on September 20, 2001. The Commission also approved this ordinance (originally approved by the Barnstable Town Council on July 19, 2001) as the implementing regulation on September 20, 2001. This implementing ordinance became a part of the Zoning Ordinance on September 21, 2001.*

### § 240-110. Authority.

This article is adopted under the authority of the Home Rule Amendment, Article 89 of the Constitution of the Commonwealth, the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended, MGL Ch. 40A, Ch. 41 §§ 81L through 81GG, and Ch. 111.

## § 240-111. Purposes.

- A. The purpose of this article is to ensure that a harmonious pattern and predictable rate of development occurs in Barnstable, which protects the health, safety and welfare of current and future Barnstable residents. The consequences of the historical and current patterns and rates of development in Barnstable such as our historic inability to fund our capital needs and the further degradation of our environmental assets are described in the Local Comprehensive Plan. The rate of residential development in Barnstable is determined by and should not exceed the ability of the Town to provide adequate infrastructure and to protect the natural environment. In addition, this development rate is intended to further the legitimate commonwealth and local interests in the provision of a fair share of housing that is affordable to persons with both low and moderate incomes. This development rate will also guard against potential increases in the growth rate, which could adversely affect the Town's environmental resources, economy and land values.
- B. This article establishes a development rate adequate to ensure that the Town, with prudent reliance on local and other financial sources and in compliance with the revenue generating guidelines of Proposition 2 1/2, can and will provide infrastructure and operate in a manner which provides current and future Barnstable residents with an adequate and responsible level of Town services, as defined by relevant, commonly accepted professional standards. This article also establishes a development rate adequate to ensure that the Town has the ability to implement its affordable housing goals, as set forth in the Barnstable Local Comprehensive Plan as updated by the Barnstable Affordable Housing Plan dated January 31, 2001.<sup>[1]</sup>
- [1] *Editor's Note: See Ch. 9, Affordable Housing.*
- C. It is anticipated by this article that during the time until buildout occurs, the Town will strive to upgrade its infrastructure to keep pace with its total population, as outlined in the Capital Improvements Plan and consistent with the growth rate established by this article. This includes the preparation of a long-term capital plan and a commitment to make contributions, as practical, to infrastructure and to the established Capital Trust Fund as appropriate to fund infrastructure, promote affordable housing and protect the environment.

## § 240-112. Definitions.

For the purposes of this Article **X** only, the following terms shall have the following meanings:

### **AFFORDABLE DWELLING UNIT**

A residential dwelling unit:

- A. Subject to a valid Chapter 40B comprehensive permit and meeting the requirements of the Commonwealth's Department of Housing and Community Development (the "DHCD") to be counted as affordable in the state count toward the 10% goal, as that goal may be amended by the General Court (the "affordable goal"); or
- B. Otherwise meeting the affordability requirements of the DHCD as evidenced by receipt of a certificate of affordability, as defined below.

### **AFFORDABLE PERMIT**

A building permit to construct an affordable dwelling unit.

### **BUILDING PERMIT**

A permit to construct an affordable or market rate residential dwelling unit, issued pursuant to the State Building Code, state law and local ordinances and regulations. When a single structure is proposed to accommodate three or more residential dwelling units, the issuance of the first building permit shall authorize construction of the entire structure; however, only three dwelling units shall receive a certificate of occupancy per building permit issued.

**CERTIFICATE OF AFFORDABILITY**

A certificate issued by the Barnstable Office of Community Development authorizing an applicant to apply for a building permit to construct an affordable dwelling unit. A certificate shall issue for all units that meet the requirements of the DHCD to be counted as affordable in the state count toward the affordable goal.

**CALENDAR YEAR**

January 1 through December 31 of a given year.

**DATE OF FILING**

The date of the Building Department's date and time stamp on a fully completed application to construct a new residential dwelling unit.

**MARKET PERMIT**

A building permit to construct a market-rate residential dwelling unit.

**PERSON**

An individual, corporation, business trust, estate, trust, partnership, association, joint venture, two or more persons having a joint or common interest, or any legal entity.

**RESIDENTIAL DWELLING UNIT**

A single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation. The term "residential dwelling unit" shall not include family apartments, group homes and congregate facilities, hotels, motels, and other uses that are not considered residential for purposes of zoning, as determined by the Town Attorney.

[Amended 2-28-2008 by Order No. 2008-089]

**SUBSTANTIAL FINANCIAL INTEREST**

A one-percent or greater legal or equitable interest. A person is deemed to have a substantial financial interest in an application for a building permit in which that person has a current, or had within the last 12 months a one-percent or greater legal or equitable interest in the real property that is the subject of the building permit application.

**TOWN MANAGER**

The Town Manager or his designee(s).

**§ 240-113. Effective date and applicability.**

- A. Effective date. The provisions of this article shall take effect upon the termination of the limited moratorium establishing a lottery system for the issuance of building permits, as established through the District of Critical Planning Concern nomination under the provisions of Sections 10 and 11 of the Cape Cod Commission Act.
- B. Applicability. This article applies to all new residential construction, including new structures and expansions, changes or alterations of existing structures that result in an increase in residential dwelling units, as that term is defined in § **240-112** above. It is intended that the cap established by this article shall apply to both market-rate units and affordable units. The development of additional dwelling units protected by MGL, Ch. 40A, § 6 shall be subject to the delays imposed by this growth management article; provided, however, this article is not intended to diminish the ability ultimately to construct a dwelling unit.

**§ 240-114. Rate of residential development.**

A. Affordable growth rate. Subject to adjustments provided in this Article **XI**, the Building Commissioner shall issue building permits for construction of additional affordable dwelling units only if the aggregate of permits issued therefor will not result in authorizing construction, within each consecutive calendar year, of greater than 36 additional affordable dwelling units (the "annual affordable distribution"). In the event the Building Commissioner is required pursuant to a Chapter 40B comprehensive permit to issue affordable permit(s) in excess of the annual affordable distribution, or the Town Manager authorizes issuance of affordable permit(s) pursuant to a certificate of affordability in excess of the annual affordable distribution, future annual affordable distribution(s) shall be decreased by the same number, as necessary. In the event the Building Commissioner does not issue all of the affordable permits made available through an annual affordable distribution, as adjusted, the next calendar year annual affordable distribution shall be increased by the amount of remaining affordable permits.

B. Market growth rate.

(1) Subject to adjustments provided in this Article **XI**, the Building Commissioner shall issue building permits for construction of additional market rate residential dwelling units only if the aggregate of permits issued therefor will not result in authorizing construction, within each consecutive calendar year, of greater than 96 market permits (the "annual market distribution"). In the event the Building Commissioner is required to issue market permit(s) in excess of the annual market distribution pursuant to Subsection **D**, Adjustments, below, future annual market distribution(s) shall be decreased by the same number, as necessary.

(2) In order to lessen the impact of this article at the time of its adoption, this article:

(a) Contains the following graduated scale for implementation of the target growth rate:

<b>Graduated Annual Market Distribution Schedule</b>	
Year	Market Permits
2002	132
2003	126
2004	108
2005 and forward	96 = target annual market distribution

(b) And provides a hardship exemption procedure (§ **240-117**).

(3) Transition year 2001. The following provisions shall remain in effect from the effective date of this article through December 31, 2001:

(a) The Building Commissioner shall issue building permits for construction of additional market-rate and affordable residential dwelling units only if the aggregate of permits issued will not result in authorizing construction, within the 2001 calendar year, of greater than 183 building permits.

(b) No person shall submit a building permit application within 10 days from the date of their last building permit application in which they have a substantial financial interest, and no person shall submit more than three building permit applications per month in which they have a substantial financial interest. In a given month, no person or entity shall receive more than three building permits in which the person or entity has a substantial financial interest.

(c) During calendar year 2001 no person shall receive more than 30 building permits in which they have a substantial financial interest. Any person issued 30 or more building permits in calendar year 2001 permits in which they have a substantial financial interest shall, upon receipt of the 30th building permit, immediately withdraw all pending building permit application(s); said withdrawn application(s) may be resubmitted consistent with the terms of the preceding subsection.

- C. Chapter 40B permits. It is the intention of the Town to phase the development of all residential dwelling units constructed under the provisions of Chapter 40B. Within Chapter 40B comprehensive permit developments, those units that are included in the DHCD tally of affordable units counted toward the affordable goal, as determined by the Town, shall apply for affordable permits. Those units that are not included in the DHCD count toward the affordable goal, as determined by the Town, shall apply for market permits.
- D. Adjustments. The following activities shall result in the adjustment of annual affordable and market distributions, as the case may be:
- (1) Revocation and abandonment. Building permits issued on or after July 1, 2000, but revoked or subsequently abandoned under the provisions of the State Building Code shall be added to the next annual distribution. Building permits issued pursuant to this article shall be exercised in a continuous and expeditious manner. Construction shall commence within six months of issuance of a building permit; provided, however, that the Building Commissioner shall grant one six-month extension upon request.
  - (2) Single lot protection. A building permit to construct a market-rate single-family dwelling unit on a lot in single ownership, to be owned and occupied by the owner of that parcel of land, applied for but not issued within 24 months from the date of filing shall be issued, and future annual market distributions shall be decreased by the same amount, if necessary.
  - (3) Other required permits. Permits required to be issued under Chapter 40B or by a final court or administrative order shall be issued as required, and future annual affordable and/or market distributions, as the case may be, shall be decreased by the same amount, if necessary.
  - (4) Borrowing against future distributions. In the event that no market permits are available to be issued in a given month, the Building Commissioner shall issue six market permits in that month and shall decrease subsequent annual market distribution(s) by the same number.

## § 240-115. Issuance of residential building permits.

- A. The Building Commissioner shall issue building permits for construction of additional residential dwelling units only if permit issuance complies with the requirements of this section.
- (1) Building permits shall be issued on a monthly basis. Prior to issuing market permits within each month, the Building Commissioner shall determine the number of market permits remaining available within the annual market distribution and shall increase or decrease the number of available market permits consistent with any adjustments required by § 240-114D above. The Building Commissioner shall then divide the number of available market permits by the number of months remaining in the calendar year, which shall be the number of market permits issued within that month. Fractions shall be rounded down to the nearest whole number and added to subsequent monthly calculations.
  - (2) Prior to issuing affordable permits within each month, the Building Commissioner shall determine the number of affordable permits remaining available within the annual affordable distribution and shall increase or decrease the number of available affordable permits consistent with any adjustments required by § 240-114A and D above. The Building Commissioner shall then divide the number of available affordable permits by the number of months remaining in the calendar year, which shall be the number of affordable permits issued within that month. Fractions shall be rounded down to the nearest whole number and added to subsequent monthly calculations.
  - (3) In the event that no affordable or market permits are available to be issued in a given month, only those permits requiring issuance or authorized for issuance pursuant to § 240-114A and D above shall be issued until any adjustments result in additional available permits or the next annual distribution becomes available.

- B. Limitations and transferability of building permits. The following restrictions shall apply to the submission of building permit applications and the issuance of building permits:
- (1) Within any calendar year, no person shall submit to the Building Department more than 20 building permit applications in which such application(s) that person has a substantial financial interest;
  - (2) No person shall submit a building permit application within 10 days from the date of their last building permit application in which that person has a substantial financial interest, and no person shall submit more than three building permit applications per month in which that person has a substantial financial interest. In a given month, no person or entity shall receive more than three building permits in which the person or entity has a substantial financial interest.
  - (3) During any calendar year no person shall receive more than 20 building permits in which that person has a substantial financial interest.
  - (4) Any applicant authorized to receive a building permit under this article may transfer said building permit to another lot owned by the same applicant. This provision shall not be deemed to extend the time period for exercising a building permit.
- C. Application and issuance of affordable permits.
- (1) In order to be deemed complete, applications for affordable permits shall include a valid certificate of affordability or shall include a copy of a valid Chapter 40B comprehensive permit providing that the unit constructed will meet the requirements of the DHCD to be counted as affordable in the state count toward the affordable goal.
  - (2) Affordable permits shall be issued based upon the date of filing. Applications filed prior in time shall be issued a building permit prior to subsequently filed applications.
- D. Market permit issuance. Market permits shall be issued based upon the date of filing. Applications filed prior in time shall be issued a building permit prior to subsequently filed applications.

## § 240-116. Exemptions.

The following uses shall be exempt from the residential building permit limitations established by this article:

- A. Municipal uses;
- B. Affordable housing dwelling units created pursuant to Chapter 9, Affordable Housing, Article II, Accessory Apartments and Apartment Units, of the Code of the Town of Barnstable;
- C. Senior continuing care retirement community units created under § 240-29 of the Code of the Town of Barnstable;  
[Added 2-28-2008 by Order No. 2008-089]
- D. Multifamily dwellings (apartments) for active adult or assisted living created under § 240-21A(9)(j) of the Code of the Town of Barnstable;  
[Added 5-19-2016 by Order No. 2016-146<sup>[1]</sup>  
[1] *Editor's Note: This order also provided for the redesignation of former Subsections D and E as Subsections E and F, respectively.*
- E. Nonresidential development; and
- F. Reconstruction, extension, alteration, modification, and upgrade of an existing dwelling unit that does not result in the creation of a new residential dwelling unit.
- G. Development permitted under the Multifamily Affordable Housing Residential District.



[Added 2-4-2021 by Order No. 2021-059]

## § 240-117. Hardship procedure.

The Town Manager shall establish a procedure for holding hearings and rendering decisions on whether to grant an exemption from the provisions of this article, in whole or in part, to relieve a substantial hardship, financial or otherwise.

## § 240-118. Determination of buildability.

The Town Manager shall establish a procedure for issuance of determinations of buildability to establish the residential development potential of a lot or lots. Such procedure shall include consultation with the Planning Board if such lot or lots are included in an approved subdivision or approval-not-required plan. Other boards and officials may be consulted to determine potential limitations on development.

## § 240-119. Violations and penalties.

Any person who knowingly violates the provisions of this article shall be prosecuted to the fullest extent of the law. Fraud and conspiracy in connection herewith shall remain separate offenses.

## § 240-120. Review of provisions.

The Town Council shall review this article within one year of adoption and every three years thereafter, and may review this article upon achieving its goal of supplying 10% affordable housing, to determine whether adjustments are necessary for the public health, safety or welfare.

## § 240-121. Scope and validity.

Nothing in this article shall nullify or exempt any property or use from any other provisions of this chapter or other Town regulations. The invalidity of any section or provision of this article shall not invalidate any other section or provision hereof, nor shall it invalidate any building permit, occupancy permit or special permit issued in reliance on said section or provision prior to the determination of its invalidity.

## § 240-122. Severability.

If for any reason the proposed District of Critical Planning Concern nomination under consideration by the Barnstable County government fails, the provisions of this article shall become effective under the authority of the Home Rule Amendment, Article 89 of the Constitution of the Commonwealth, MGL Ch. 40A, and Ch. 41, §§ 81L through 81GG.

# Article XII. Registered Recreational Marijuana Cultivators, Research Facilities and Testing Laboratories

[Added 9-6-2018 by Order No. 2019-015<sup>[1]</sup>]

[1] *This order also redesignated former Articles XII through XIV as Articles XII through XV.*

## § 240-122.1. Registered recreational marijuana cultivators, research facilities and testing laboratories.

### A. Purpose; applicability; use; prohibited marijuana establishments

- (1) Purpose. To provide for the location of registered recreational marijuana cultivators, research facilities and independent testing laboratories, as defined herein, in accordance with Chapter 55 of the Acts of 2017 and M.G.L. c.94G, the Humanitarian Medical Use of marijuana Act. M.G.L. c.94C, App. § 1-1, et. seq., as amended by Chapter 55 of the Acts of 2017, M.G.L. c.94I, to be enacted pursuant to Chapter 55 of the Acts of 2017, and Cannabis Control Commission Regulations 935 CMR 500.00 governing Adult Use of marijuana, in locations within the MS Medical Services District and the GM Gateway Medical District suitable for lawful marijuana cultivation, research and Independent Testing and to minimize adverse impacts of marijuana cultivation, research facilities and independent testing laboratories on adjacent properties, residential neighborhoods, historic sites, schools and other locations where minors congregate by regulating the siting, design, placement, security, modification and removal of marijuana cultivators, research facilities and independent testing laboratories.
- (2) Applicability. The cultivation, processing, packaging, and transfer of marijuana products; conducting of research regarding marijuana products; and testing of marijuana or cannabis is prohibited unless licensed by all applicable Massachusetts licensing authorities and permitted under this article.
- (3) Use. Within the MS Medical Services District and GM Gateway Medical District, a licensed marijuana cultivator, research facility or independent testing laboratory may be permitted as a conditional use, provided a special permit is first obtained from the Planning Board. All special permits granted under this article shall be subject to the provisions of § 240-125C and § 240-24.1.2E herein and subject to all additional standards and conditions of this article.
- (4) Prohibition of all other non-medical marijuana establishments. Except for licensed marijuana cultivators, research facilities and independent testing laboratories permitted as a conditional use in the MS Medical Services District and GM Gateway Medical District, subject to all the requirements of this article, all other types of non-medical "marijuana establishments" as defined in M.G.L. c.94G § 1, including marijuana product manufacturers, marijuana retailers or any other types of licensed related businesses are prohibited.

- B. Definitions. Any term not specifically defined herein shall have the meaning as defined in Massachusetts General Laws Chapter 94G, § 1, and the Cannabis Control Commission Regulations 935 CMR 500.00 governing Adult Use of marijuana.

### **CANNABIS or MARIJUANA or MARIHUANA**

All parts of any plant of the genus Cannabis, not excepted in 935 CMR 500.002: Cannabis or marijuana or Marihuana (a) through (c) and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; clones of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in M.G.L. c.94G, § 1; provided that cannabis shall not include:

- (1) The mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination;
- (2) Hemp; or
- (3) The weight of any other ingredient combined with cannabis or marijuana to prepare topical or oral administrations, food, drink or other products.

**CRAFT MARIJUANA COOPERATIVE**

A marijuana cultivator comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, manufacture, process, package and brand cannabis or marijuana products to transport marijuana to marijuana establishments, but not to consumers.

**RECREATIONAL MARIJUANA ESTABLISHMENT, INDEPENDENT TESTING LABORATORY**

A laboratory that is licensed by the Cannabis Control Commission and is:

- (1) Accredited to the International Organization for Standardization 17025 (ISO/IEC 17025:2017) by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the Cannabis Control Commission;
- (2) Independent financially from any medical marijuana treatment center, marijuana establishment or licensee for which it conducts a test; and
- (3) Qualified to test cannabis or marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34.

**RECREATIONAL MARIJUANA ESTABLISHMENT, MARIJUANA CULTIVATOR**

An entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other marijuana establishments, but not to consumers. A craft marijuana cooperative is a type of marijuana cultivator.

**RECREATIONAL MARIJUANA ESTABLISHMENT, MARIJUANA RESEARCH FACILITY**

An entity licensed to engage in research projects by the Cannabis Control Commission.

- C. Requirements for allowed marijuana cultivators, research facilities and independent testing laboratories. Marijuana cultivators, research facilities and independent testing laboratories shall comply with the following requirements:

## (1) General.

- (a) Marijuana cultivators, research facilities and independent testing laboratories shall comply with applicable state and local laws, regulations, ordinances, codes, conditions and agreements with the Town, including, but not limited to, Chapter 55 of the Acts of 2017 and M.G.L. c.94G, the Humanitarian Medical Use of marijuana Act, M.G.L. c.94C, App. § 1-1, et seq., as amended by Chapter 55 of the Acts of 2017 and M.G.L. c.94I, to be enacted pursuant to Chapter 55 of the Acts of 2017, Cannabis Control Commission Regulations 935 CMR 500.00 governing Adult Use of marijuana, the Town of Barnstable's General Ordinances, the Town of Barnstable's Zoning Ordinances, all applicable Town building, fire prevention, police, and health codes, regulations and standards, any conditions imposed on licenses and permits held by the marijuana cultivators, research facilities and independent testing laboratories (including, but not limited to, the Town's Planning Board special permit), and agreements between the marijuana cultivator, research facility or independent testing laboratory and the Town, including host community agreements.
- (b) Marijuana cultivators, research facilities and independent testing laboratories shall maintain all permits and licenses required by state and local laws. Any voiding of the Cannabis Control Commission's license by operation of law (including due to cessation of operations, failure to become operational within the permitted time, or relocation without Cannabis Control Commission approval), and any revocation or suspension of the marijuana cultivators,' research facilities' and independent testing laboratories' Cannabis Control Commission license shall result in an automatic suspension of the special permit pending hearing or the opportunity therefore afforded to the marijuana cultivator,

research facility or independent testing laboratory and pending further determination by the Planning Board.

- (c) All taxes and charges owed to the Town must be paid on a current basis. Failure to pay all taxes and charges shall be subject to the provisions of Chapter **121** of the Barnstable Code and all other available legal remedies.
  - (d) An approved host community agreement shall be required prior to granting a special permit for a marijuana cultivator, research facility or independent testing laboratory.
  - (e) Dimensional requirements. Except where it is explicitly stated otherwise in this article, marijuana cultivator, research facilities and independent testing laboratories shall conform to the dimensional requirements applicable within the underlying and other overlaying zoning districts.
  - (f) Parking. The required number of parking spaces for marijuana cultivators, research facilities and independent testing laboratories shall be one space for every 700 square feet of gross floor area. The Planning Board shall also rely on the recommendation of site plan review.
  - (g) Loading. The Planning Board may require loading bays based on the recommendation of site plan review and/or based on the needs of the proposed use.
  - (h) Landscaping. Landscape requirements in the underlying zoning district shall apply.
  - (i) Landscape buffers. The landscape setback from any residential property line shall be 20 feet. Landscape buffers shall be densely landscaped with a combination grasses, trees, and shrubs providing year-round screening.
  - (j) Signage. The signage requirements of the underlying zoning district pursuant to Article **VII** of this chapter shall apply. The Planning Board may impose additional restrictions on signage, as appropriate, to mitigate any aesthetic impacts.
  - (k) Groundwater protection. Marijuana cultivators, research facilities and independent testing laboratories shall be subject to the requirements of § **240-35**, Groundwater Protection Overlay Districts, as applicable.
- (2) Operational requirements.
- (a) All marijuana cultivators', research facilities' and independent testing laboratories' licensed operations shall be conducted within a building at a fixed location.
  - (b) No marijuana cultivators, research facilities or independent testing laboratories shall allow research, testing, cultivation, processing, packaging, manufacturing, or display of marijuana or marijuana products to be visible to the public without the use of binoculars, aircraft, or other optical aids.
  - (c) Marijuana cultivators, research facilities and independent testing laboratories may cultivate, process, package, or conduct research and testing on marijuana or marijuana products as licensed by the Cannabis Control Commission only within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the marijuana cultivator, research facility or independent testing laboratory to access the area.
  - (d) The hours of operation for a marijuana cultivator, research facility or independent testing laboratory shall be those conditioned by the marijuana cultivator's, research facility's or independent testing laboratory's special permit.
  - (e) Marijuana cultivators, research facilities and independent testing laboratories shall ensure that their hours and methods of transportation of product shall not be a detriment to the surrounding area and nearby uses.

- (f) Marijuana cultivators, research facilities and independent testing laboratories shall not permit any disorder, disturbance, or illegality under state or local law of any kind on the premises.
  - (g) Marijuana cultivators', research facilities' and independent testing laboratories' operations shall not result in illegal redistribution under state or local law of marijuana obtained from the marijuana cultivator, research facility or independent testing laboratory, or in use of marijuana in any manner that violates state or local law.
  - (h) Marijuana cultivators, research facilities or independent testing laboratories operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties.
  - (i) Marijuana cultivators, research facilities and independent testing laboratories shall equip the premises and otherwise conduct their operations in such a manner that (a) no pesticides or other chemicals or products are dispersed into the outside atmosphere, or into a wastewater treatment system or in any other manner that may contaminate the groundwater and (b) no odor of marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of any adjoining use or property.
  - (j) Marijuana cultivators, research facilities and independent testing laboratories shall be required to remove all marijuana and marijuana products by the earlier of: prior to surrendering its state-issued license; or within six months of ceasing operations.
  - (k) Marijuana cultivators, research facilities and independent testing laboratories must display a sign legible from the exterior of the building in which the marijuana cultivator, research facility or independent testing laboratory is located either by posting on the building exterior in close proximity to the entrance or by placement in a window in close proximity to the entrance with the text facing and legible from the exterior, which states: "Must be 21 years or older and show identification to enter this establishment."
  - (l) Solid and liquid waste, including waste composed of or containing marijuana, finished marijuana, marijuana-infused product, or byproducts of marijuana processing shall be stored, secured, managed, and disposed of in accordance with state law and all other applicable statutes and ordinances and regulations of the Town.
- (3) Security-specific requirements.
- (a) Marijuana cultivators, research facilities and independent testing laboratories shall submit and receive the approval of the Barnstable Police Department for its required security and emergency procedures, including a disaster plan, which plan shall include measures relating to alarms, fencing, gates, limited access areas, delivery procedures, police details, specification of video and lighting locations, notifications to the Police Department in the event of any known or suspected violation of criminal law that has taken place on or near the location of the establishment.
  - (b) Lighting shall be designed and maintained so as to protect adjacent properties from intrusive lighting; however, in accordance with state law, the exterior perimeter of marijuana cultivators, research facilities and independent testing laboratories shall be sufficiently lit to facilitate surveillance.
  - (c) Marijuana cultivators, research facilities and independent testing laboratories shall secure every entrance so that access to areas containing the storage of marijuana products are restricted to employees and others permitted by the marijuana cultivator, research facility or independent testing laboratory to access the area and to Cannabis Control Commission or state and local law enforcement officers, agents and emergency personnel.

- (d) Marijuana cultivators, research facilities and independent testing laboratories shall secure their inventory and equipment during and after operating hours to deter and prevent theft of marijuana, marijuana products and marijuana accessories.
  - (e) Marijuana cultivators, research facilities and independent testing laboratories shall file an emergency procedures, including a disaster plan, with the Town's Fire, Police and Health Departments and share with these Departments their security plan and procedures and any updates to them in the event they are modified.
  - (f) Landscaping shall be in compliance with the requirements set forth herein, except that in accordance with state law, marijuana cultivators, research facilities and independent testing laboratories shall maintain trees, bushes, and other exterior vegetation so that they do not allow for a person or persons to conceal themselves from sight.
- (4) Access to premises and information/reporting/record-keeping.
- (a) Marijuana cultivators, research facilities and independent testing laboratories shall be subject to unannounced, unscheduled, periodic inspections of its premises by the Building Commissioner or designee, including an agent from the Building, Health, Police and applicable Fire Department on weekdays between 8:00 a.m. to 5:00 p.m. to determine the marijuana cultivator's research facility's; or independent testing laboratory's compliance with the requirements of applicable state and local laws, regulations, codes, license and permit conditions, and this article. In addition, routine inspections may be made on weekdays during regular Town business hours by authorized inspectional departments to determine compliance with applicable state and local laws, regulations, codes and license and permit conditions. Inspections by the authorized inspectional departments may be made at other times to investigate complaints or suspected noncompliance issues. Inspections may include all areas occupied, used or controlled by the marijuana cultivator, research facility or independent testing laboratory. Facilities requiring re-inspection are subject to applicable re-inspection fees. Inspections shall be conducted in conformity with applicable federal, state and local law.
  - (b) Marijuana cultivators, research facilities and independent testing laboratories shall cooperate and comply with requests for information made by the Building Commissioner or designee, including agents from the Planning and Development, Building, Health, Police, Fire and Public Works Departments.
  - (c) Within 24 hours of receipt of notice of it, marijuana cultivators, research facilities and independent testing laboratories shall file with the Town Manager, Director of Public Health and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state or federal agency (including, but not limited to, the Cannabis Control Commission) regarding the marijuana cultivator, research facility or independent testing laboratory, or the Cannabis Control Commission license.
- (5) Additional location requirements for marijuana cultivators, research facilities and independent testing laboratories.
- (a) No marijuana cultivator, research facility and independent testing laboratory shall be located within 500 feet, as measured from each lot line of the subject lot, of the following preexisting uses: K-12 educational use; childcare center; or children's camp.
- D. Site plan review for marijuana cultivators, research facilities and independent testing laboratories. Marijuana cultivators, research facilities and independent testing laboratories shall be subject to Article **IX**, Site Plan Review, § **240-102**.
- E. Special permits. The following apply to special permits to operate a marijuana cultivator, research facility or independent testing laboratory.

- (1) Application requirements: Applicants shall include with their special permit application:
  - (a) Copies of any required licenses and permits relating to the operation of the marijuana cultivator, research facility or independent testing laboratory, or, if an application for a required license or permit is pending, a copy of the application.
  - (b) Evidence of the applicant's right to use the proposed site as a marijuana cultivator, research facility or independent testing laboratory, such as a deed, lease or purchase and sales agreement.
  - (c) A copy of the site plan review approval.
  - (d) A description of the security measures, required by this article, approved by Barnstable Police Department and Cannabis Control Commission for the marijuana cultivator, research facility or independent testing laboratory, as applicable.
  - (e) A copy of emergency procedures, including a disaster plan with procedures to be followed in case of fire or other emergencies, approved by the Cannabis Control Commission for the marijuana cultivator, research facility or independent testing laboratory, as applicable.
  - (f) A copy of the policies and procedures for the transfer or acquisition of marijuana between marijuana cultivators, research facilities and independent testing laboratories and other recreational marijuana establishments, as applicable.
  - (g) A copy of proposed waste disposal procedures.
  - (h) Proof of liability insurance that is in accordance with 105 CMR 725.105(Q) or any applicable regulations promulgated by the Cannabis Control Commission.
  - (i) Any waivers from Cannabis Control Commission regulations issued for the marijuana cultivator, research facility or independent testing laboratory, as applicable.
  - (j) A copy of the community host agreement.
  - (k) Any other materials requested by the special permit application form, as well as any other additional materials the Planning and Development Department determines is necessary for review, such as Department reports or transportation studies or a license application.
- (2) Special permit criteria, The Planning Board, subject to the provisions of § **240-125C** and § **240-24.1.2E**. shall not approve any application for a special permit unless it finds that in its judgment all of the following conditions are met:
  - (a) That the marijuana cultivator, research facility or independent testing laboratory has demonstrated compliance with or the ability to comply where the requirements are prospective with all of the general requirements set forth in this article.
  - (b) That the marijuana cultivator, research facility or independent testing laboratory has an approved host agreement.
  - (c) That the marijuana cultivator, research facility or independent testing laboratory has security and emergency procedures, including a disaster plan, approved by the Barnstable Police Department.
  - (d) The location is compliant with this article in its entirety.
  - (e) The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, cyclists and public transportation users.
  - (f) Traffic generated by client trips, employee trips, and deliveries to and from the marijuana cultivator, research facility or independent testing laboratory shall not create a substantial

adverse impact on nearby residential uses.

- (g) A special permit granted under this article shall have a term limited to the duration of the applicant's ownership or lease of the premises for a marijuana cultivator, research facility or independent testing laboratory, as licensed by the applicable Massachusetts licensing authority. Any new license for an existing marijuana cultivator, research facility or independent testing laboratory location or transfer of an existing license to a new owner shall require a new special permit pursuant to the Barnstable Zoning Ordinance.
- F. Implementation. This article shall not be implemented in a manner that conflicts or interferes with the operation of M.G.L. c. 94G, 94I or the regulations promulgated thereunder, including 935 CMR 500.
- G. Severability. The provisions of Article XII, § 240-122.1, are severable. If any provision shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

## Article XIII. Administration and Enforcement

### § 240-123. Enforcement; violations and penalties.

- A. Enforcement. This chapter shall be enforced by the Building Commissioner of the Town of Barnstable or his designee.
- B. Violations. For any violation of this chapter, the Building Commissioner or his designee may, where the situation requires, cause a criminal complaint to issue from the First District Court of Barnstable or may institute proceedings in Superior Court to enjoin the construction, alteration, enlargement, reconstruction or use of any building or the use of any premises in violation hereof, or further may institute proceedings to enjoin the construction, alteration, enlargement or reconstruction of any building which would result in a use in violation hereof.
- C. Nonconflicting remedies. The use of one of the remedies described in Subsection B above shall not preclude the use of the other remedy for the same violation or a continuing violation.
- D. Verification required. The Building Commissioner or his designee may require any plans, documents or sworn statements to be filed with his office to verify the intended use of a building or premises, or to establish the existence, nature or extent of a nonconformity alleged to exist or any other matter in which evidence is required.
- E. Penalties. Anyone convicted of a violation under this chapter shall be fined not more than \$300 for each offense. Each day that such violation continues shall constitute a separate offense.

### § 240-124. Bonds and permits.

- A. Performance bonds required. A performance bond of not less than \$4 per foot of frontage against possible costs due to erosion or damage within passable street rights-of-way shall be required by the Building Commissioner prior to authorization of any new building, and a bond or cash security may be required by the Building Commissioner for other construction, such bond or cash security to be held by the Town Treasurer until an occupancy permit is granted as provided for in Subsection B herein. Prior to the proceeding with construction above the foundation, a registered land surveyor shall certify that the structure has been located in compliance with all yard requirements.
- B. Occupancy permits. No premises and no building or structure erected, altered or in any way changed as to construction or use, under a permit or otherwise, shall be occupied or used without an occupancy permit signed by the Building Commissioner. Such permit shall not be issued until



the premises, building or structure and its uses and accessory uses comply in all respects with this chapter.

## § 240-125. Zoning Board of Appeals.

- A. Establishment of the Board. The Zoning Board of Appeals established by Chapter 215 of the Acts of 1984, as amended by Chapter 295 of the Acts of 1984 and as may be further amended from time to time, is the Zoning Board of Appeals referred to herein.
- (1) Membership of the Board. The Zoning Board of Appeals shall consist of five members appointed by the Town Council of the Town of Barnstable.
  - (2) Term of office. Members of the Zoning Board of Appeals shall be appointed for three-year terms so arranged that as nearly as possible 1/3 of the terms shall expire each year.
  - (3) Associate Board members. The Town Council may appoint not more than six associate members for similar terms as provided in Subsection **A(2)**.
  - (4) Election of officers. The Zoning Board of Appeals shall elect a Chairman and clerk from its own membership each year.
  - (5) Removal of members. Members may only be removed for cause by the Town Council after a hearing.
  - (6) Vacancies. In case of a vacancy, inability to act, or interest on the part of a member of the Board, the Chairman of the Zoning Board of Appeals may designate a duly appointed associate member to act to fill the vacancy.
- B. General powers.
- (1) The Zoning Board of Appeals shall have the following powers:
    - (a) Appeals from administrative official. To hear and decide an appeal taken by any person aggrieved by reason of their inability to obtain a permit from any administrative official under the provisions of Chapter 40A of the General Laws, or by any officer or board of the Town, or by any person aggrieved by any order or decision of the Building Commissioner, or other administrative official in violation of any provision of Chapter 40A of the General Laws or of this chapter.
    - (b) Special permits. To hear and decide applications for special permits for exceptions as provided for in Chapter 40A of the General Laws and in this chapter.
    - (c) Variances. To authorize upon appeal or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this chapter where, owing to conditions especially affecting such parcel or such building but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter, but not otherwise.
    - (d) Other powers. To act as a Board of Appeals under the provisions of Chapter 41, §§ 81Y, 81Z, 81AA, and 81BB of the General Laws.
    - (e) Use variances. To authorize variances for uses in accordance with the provisions of this chapter; provided, however, that no such variances shall be granted within 300 feet of the major arteries known as Route 28, Route 132, Route 149 and West Main Street and Route 6A, within the Marstons Mills Village District (MMVD) and the West Barnstable

Village Business District (WBVBD) and within 300 feet of the MMVD and WBVBD boundary.

[Amended 6-17-2010 by Order No. 2010-122; 9-8-2011 by Order No. 2011-138; 3-21-2013 by Order No. 2013-060]

- (2) In exercise of the foregoing enumerated powers, the Zoning Board of Appeals shall take into consideration the same types of evidence as referred to in § **240-123D**.  
[Amended 11-2-1995 by Order No. 95-198]
- C. Special permit provisions. The Zoning Board of Appeals may grant special permits only for uses specifically provided for as such in this chapter.
- (1) Public hearing required. The Zoning Board of Appeals shall, within 65 days after the filing of a special permit application with the Town Clerk or the Board, hold a public hearing on said application as per Chapter 808, Acts of 1975, as amended. Special permits shall not be issued until said public hearing is held.
- (2) Standards for granting special permits. A decision of the Zoning Board of Appeals on an application for a special permit shall be based on the following:
- (a) Whether or not the application falls within the category specifically excepted by this chapter.
- (b) An evaluation of all the evidence presented at the public hearing by the petitioner and interested parties as it relates to the fulfillment of the spirit and intent of this chapter without substantial detriment to the public good or the neighborhood affected.
- (c) A site plan has been reviewed and found approvable in accordance with Article **IX** herein subject only to the issuance of a special permit.  
[Added 11-7-1987 by Art. 1]
- (3) Validity.  
[Amended 5-7-2009 by Order No. 2009-077]
- (a) Period of validity: A special permit shall become void within two years from the date of issue unless any construction work contemplated thereby shall have commenced and proceeded in good faith continuously to completion, or, if no construction work is contemplated by the special permit, the premises shall be open for business or in full use under said special permit. The two-year period shall not include time required to pursue or await determination of an appeal referred to in MGL Ch. 40A, §17. However, the special permit granting authority, in its discretion, may extend the time for exercise of such rights for a period not to exceed a total of one year upon a showing of good cause; and provided, further, that the request for such extension is filed with the special permit granting authority prior to the expiration of said two-year period. If the permit granting authority does not grant such extension, upon the expiration of the original two-year period, such special permit shall become void.
- (b) Retroactive applicability: The period of validity for any special permit in effect on the effective date of these provisions shall be two years from the date of issue, unless further extended pursuant to Subsection **C(3)(a)** above. The period of validity for any special permit that would have lapsed before the effective date of these provisions, but for which a request for extension was filed prior to its lapse, shall be two years from the date of issue, unless further extended pursuant to Subsection **C(3)(a)** above.
- (4) Subsequent amendments. Construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance unless the use or construction is commenced within a period of not more than six months after the issuance of said permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

## § 240-126. Variance provisions.

[Amended 10-7-1993 by Order No. 94-014]

The Zoning Board of Appeals may grant variances as provided for within this chapter and in accordance with MGL Ch. 40A, § 10, provided that, when an application for a variance proposes a development or activity which would require site plan review in accordance with § **240-100**, the applicant should submit to the Zoning Board of Appeals a site plan which has been reviewed and found approvable in accordance with Article **IX** herein, subject only to the issuance of a variance.

## Article XIV. Amendment; Definitions; Moratorium

### § 240-127. Zoning amendment procedures

All amendments to the Zoning Ordinance shall be in accordance with Massachusetts General Law, Chapter 40A, § 5.

### § 240-128. Definitions.

In the interpretation of this chapter, the following words and terms are to be used and interpreted as defined herein unless the context otherwise requires:

#### **ACCESSORY DWELLING UNIT (ADU)**

An accessory dwelling unit (ADU) is a self-contained dwelling unit, inclusive of sleeping, cooking, and sanitary facilities, incorporated within a lawful principal single-family dwelling or within a detached building accessory to and on the same lot and in the same ownership as a lawful principal single-family dwelling use. The ADU shall maintain a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress. ADUs shall have a maximum habitable floor area that is not larger than 1/2 of the habitable floor area of the principal single-family dwelling unit (exclusive of floor area that converted to the ADU), or 900 square feet, whichever is smaller, unless special permit relief is granted with respect to the requirements of § **240-47.2C(4)** with regard to square footage.

[Added 7-15-2021 by Order No. 2021-174; amended 7-15-2021 by Order No. 2021-175]

#### **ACTIVE ADULT DWELLING**

An attached dwelling unit (apartment) intended and operated for occupancy by persons 55 years of age or older in which at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older in accordance with applicable requirements of federal and Massachusetts law.

[Added 5-19-2016 by Order No. 2016-146]

#### **ACUTELY HAZARDOUS WASTE**

As defined in MGL Ch. 21C.

[Added 8-19-1993 by Order No. 93-105]

#### **ADJOINING**

When used to modify "lot" or "lots," shall mean that the said lots share a common boundary or property line for at least 20 continuous feet.

[Added 11-2-1995 by Order No. 95-198]

#### **ADULT BOOKSTORE**

An establishment having as a substantial or significant portion of its stock-in-trade, books, magazines, and other material, which are distinguished or characterized by their emphasis

depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31. For purposes of this definition, "substantial or significant portion of stock" shall mean greater than 25% of the subject establishment's inventory stock or greater than 25% of subject premises' gross floor area, or 200 square feet, whichever is greater.

[Added 6-4-1998 by Order No. 98-064]

#### **ADULT MOTION-PICTURE THEATRE**

An enclosed building used for presenting material, motion picture films, video cassettes, cable television, slides or any other such visual material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31.

[Added 6-4-1998 by Order No. 98-064]

#### **ADULT PARAPHERNALIA STORE**

An establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31. For purposes of this definition, "substantial or significant portion of stock" shall mean greater than 25% of the subject establishment's inventory stock or greater than 25% of subject premises' gross floor area, or 200 square feet, whichever is greater.

[Added 6-4-1998 by Order No. 98-064]

#### **ADULT VIDEO STORES**

An establishment having a substantial or significant portion of its stock-in-trade for sale or rent, movies, videos, and similar audio/visual media, which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL Ch 272, § 31. For purposes of this definition, "substantial or significant portion of stock" shall mean greater than 25% of the subject establishment's inventory stock or greater than 25% of subject premises' gross floor area, or 200 square feet, whichever is greater.

[Added 6-4-1998 by Order No. 98-064]

#### **ADULT USE**

As defined herein, an adult bookstore, adult paraphernalia store, adult motion-picture theatre establishment, or an establishment which displays live nudity, or any other business or establishment characterized by an emphasis depicting, describing or related to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31. Adult use shall include an establishment with a combination of adult use materials as listed above including books, magazines, devices, objects, tools, or toys, movies, videos, and any similar audio/visual media for sale or rent, which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31, which in combination, is either greater than 25% of the subject establishment's inventory stock or greater than 25% of subject premises' gross floor area, or 200 square feet, whichever is greater.

[Added 6-4-1998 by Order No. 98-064]

#### **AGRICULTURE AND RELATED USES**

The adoption of this definition is explicitly intended to be a clarification of existing ordinances and is not intended to be a new restriction.

[Added 10-7-1999 by Order No. 99-160A]

- A. For the purposes of § 240-8A(3), agriculture, horticulture, floriculture and viticulture on a parcel of land more than five acres subject to statutory exemption pursuant to MGL Ch 40A, § 3, shall be defined to mean what they mean under state statute.
- B. For the purposes of § 240-8DA(4), on a parcel of land five acres or less in size, the terms agriculture, horticulture, viticulture, aquaculture or floriculture shall not include:
  - (1) The sale of products or plants grown elsewhere;
  - (2) The storage of loam, mulch, gravel, and similar materials;

- (3) The storage of plants for installation, use or sale elsewhere;
- (4) The parking, storage or use of heavy equipment; and
- (5) The assembling of crews for the purpose of landscape construction and maintenance at off-site locations.

**APARTMENT UNIT**

That portion of the floor area of a single-family dwelling or a multifamily dwelling designed for occupancy by a single family.

[Amended 3-1-2018 by Order No. 2018-053]

**ASSISTED LIVING DWELLING**

An attached dwelling unit (apartment) in which supportive services are offered for individuals who need assistance in activities of daily living.

[Added 5-19-2016 by Order No. 2016-146]

**BED-AND-BREAKFAST**

Tourist and guest accommodations located within an owner-occupied, single-family residential dwelling unit, let for compensation for brief periods of time, customarily less than two weeks long, without cooking facilities accessible to the guests; the temporary abode of visitors who have a permanent residence elsewhere.

[Added 2-20-1997]

**BOATHOUSE**

A building used solely for the storage of boats and related equipment.

**BUILDING HEIGHT**

The vertical distance from the ground level to the plate.

**DOCK or PIER**

A combination of assembled materials that may be used as access to the water and extending below the reach of mean high water, including but not limited to, the following:

[Amended 2-1-2001]

- A. Elevated open, pile-supported structure including gangways, floats, extensions, including ells and tees, dolphins, outhaul piles, and attendant pilings;
- B. Floating dock or pier; and
- C. Float, dock or pier installed for seasonal use, whether fixed or floating.

**DWELLING, SINGLE-FAMILY**

A detached residential building designed for and occupied by a single family and providing complete independent living facilities for one or more persons.

[Amended 3-1-2018 by Order No. 2018-053; 7-15-2021 by Order No. 2021-174]

**DWELLING, TWO-FAMILY**

A detached residential building designed for and occupied by two families.

**DWELLING UNIT**

Complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

[Added 7-15-2021 by Order No. 2021-174]

**ESTABLISHMENT WHICH DISPLAYS LIVE NUDITY**

An establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in MGL Ch. 272, § 31.

**FAMILY APARTMENT**

An apartment unit within a single-family dwelling intended to be occupied only by family members of the property owner and which provides complete independent living facilities for one or more persons, as outlined herein, including permanent provisions for living, sleeping, eating, cooking and sanitization.

[Amended 3-1-2018 by Order No. 2018-053]

**FAMILY MEMBER**

Any person who is related by blood or marriage.

**FLOOR AREA, GROSS**

The sum of all floor areas within a building or structure, measured from the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features. It shall include all areas capable of being used for human occupancy, including all basement floor area, mezzanine and attic space and enclosed porches.

[Amended 10-7-1993 by Order No. 94-016]

**HALF STORY**

That space above the plate line but below the ridgeline in an area commonly called the "attic space," provided that the gross floor area of the half story shall not exceed 66% of the gross floor area immediately below the half story.

[Added 6-28-2001 by Order No. 2001-036]

**HAZARDOUS MATERIALS**

As defined in Chapter **108**, Hazardous Materials, of the Code of the Town of Barnstable.

[Added 8-19-1993 by Order No. 93-105]

**HAZARDOUS WASTE**

As defined in MGL Ch. 21C.

[Added 8-19-1993 by Order No. 93-105]

**INTENSIFICATION OF USE**

Any new construction, reconstruction, alteration, remodeling, repair, enlargement, change in use, increase in capacity, or addition of service resulting in greater off-street parking demand.

**LOT**

A single area of land in one ownership defined by metes and bounds or boundary lines, no portion of which is bisected by a street.

**LOT COVERAGE**

The term "maximum lot coverage as % of lot area" where used as a column heading in bulk regulations shall mean the maximum lot coverage by structures as a percent of lot area.

[10-4-1990 by Order No. 90-68]

**LOT WIDTH**

The width of any lot shall be measured wholly within the lot at the building setback line along a straight line parallel to a line connecting the intersection of the front boundary with the lot side lines, except that an owner of land may establish his own setback line at a distance greater than that required, and the lot width may be determined at the setback line so established.

**MARIJUANA**

Has the meaning given "marihuana" in Chapter 94C of the General Laws.

[Added 2-6-2014 by Order No. 2014-050]

**MARIJUANA DISPENSARY, REGISTERED**

Also known as "RMD" or "medical marijuana treatment center," shall mean an establishment properly registered with the Massachusetts Department of Public Health under 105 CMR 725.100

that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers.  
[Added 2-6-2014 by Order No. 2014-050]

#### **PERSONAL WIRELESS SERVICE FACILITIES**

Facilities for personal wireless service including commercial mobile radio services, unlicensed wireless services and common carrier wireless exchange access services as defined by the Telecommunications Act of 1996.  
[Added 6-3-1999 by Order No. 99-74A]

#### **RETAIL**

The term "retail" shall not be construed to include "restaurant."

#### **SETBACK**

The distance between a street line and the front building line of a principal building or structure, projected to the side lines of the lot. Where a lot abuts on more than one street, front yard setbacks shall apply from all streets.

#### **SHAPE FACTOR (LOT SHAPE FACTOR)**

The numerical value resulting from:

- A. Division of the square of the perimeter in feet of a lot by the area in square feet thereof; or
- B. Division of the square of the perimeter in feet of that portion of a lot intended as the site for building by the area in square feet thereof.  
[Amended 1-20-2005 by Order No. 2005-038]

#### **SHUTTLE SERVICE**

Use of a multipassenger vehicle to shuttle parking lot patrons between remote parking lots, parking facilities, and transportation terminals.  
[Added 7-21-2016 by Order No. 2016-166]

#### **SIGN**

See Article VII, § 240-59 et seq., herein.

#### **SPECIMEN TREES**

A native, introduced or naturalized tree which is sufficiently well grown to be an important visual element on a site. Any tree with a dbh of six inches or greater is eligible to be considered a specimen tree. Trees that have a small height at maturity, or are slow growing, such as a flowering dogwood or American holly with a dbh of four inches or larger, are eligible to be considered specimen trees.  
[Amended 3-11-1999 by Order No. 99-056]

#### **SPORTS AND RECREATION FACILITY**

A facility that offers indoor and outdoor sporting, recreation, physical fitness and training, and athletic competition venues. Such a facility may include multiple structures including a field house that contains one indoor ice rink, and one or more playing fields, athletic courts, track space, swimming pools, fitness training centers, locker rooms, batting cages, accessory retail and sports related proshops, athletic and fitness training center, including rehabilitation facilities, food concessions and restaurant, child-care areas, sports-related museums and memorabilia, accessory office space and community meeting rooms. Such facilities may also contain outdoor playing fields, tracks and courts, swimming pool, viewing stands, scoreboards, shall not have an outdoor ice rink, outdoor lighting, and detached comfort stations (restrooms/concessions) and other accessory structures.  
[Added 8-17-2017 by Ord. No. 2017-165]

**STORY**

That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above and having at least 1/2 its height above grade.

**STRUCTURE**

Any production or piece of work, artificially built up or composed of parts and joined together in some definite manner, not including poles, fences and such minor incidental improvements.

**TENT**

A temporary shelter with a frame supporting a cloth or similar flexible covering, without a fixed location, foundation or permanent anchors.

[Added 2-22-1996 by Order No. 95-194]

**UPLAND**

All lands not defined herein as wetlands.

**VERY SMALL QUANTITY GENERATORS**

Those operations that generate less than 26 gallons or 220 pounds of dry weight of hazardous waste per month and no acutely hazardous waste as defined in 310 CMR 30.00.

**WETLANDS**

The land under the ocean or under any bay, lake, pond, river, stream, creek or estuary; any wet meadows, marshes, swamps, bogs, areas where high groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrata for a plant community for at least five months of the year, lowland subject to any tidal action or annual storm flooding or flowage, or any flat, beach, dune or other shifting sand formation.<sup>[1]</sup>

[1] *Editor's Note: Former § 240-129, Hyannis Downtown 500 Block Moratorium Zone, added 4-10-2003 by Town Council agenda item 2003-045, which immediately followed this section, was removed from the Code because it ceased to be effective on 5-10-2005.*

## § 240-129. Temporary moratorium on medical marijuana treatment centers and associated activities relating to Ballot Question 3.

[Added 3-7-2013 by Order No. 2013-065]

- A. There shall be a temporary moratorium on the use of land or structures in the Town for the siting of one or more medical marijuana treatment centers and associated activities relating to Ballot Question 3.
- B. No building permit, special permit, variance, site plan approval decision or other permit may be issued under this Zoning Ordinance for the purpose of establishing a medical marijuana treatment center or associated activities.
- C. The moratorium shall be in effect through and including January 1, 2014, or until 180 days after the effective date of the final regulations promulgated by the State Department of Public Health relating to Ballot Question 3, whichever occurs first.
- D. During the moratorium period, the Town shall undertake a planning process to address the potential direct and secondary impacts of siting one or more medical marijuana treatment centers in the Town and shall review and consider the Department of Public Health regulations regarding the siting of such centers and related uses, and shall consider proposing the adoption of zoning amendments to address the potential direct and secondary impacts of siting one or more medical marijuana treatment centers and related uses in the Town.



- E. Zoning amendments resulting from the aforementioned study process shall be deemed to be continuations of this moratorium and not new zoning amendments. Applications for permits submitted after the first publication of the notice of the public hearing which results in the adoption of this moratorium but before the moratorium's effective date, shall be administered according to established procedures until the effective date of this moratorium, and if a permit or other relief is granted prior to such effective date, it shall be subject to the effectiveness of this moratorium and shall be issued at the peril of the permit applicant and/or recipient. During the moratorium, any application shall be denied on the basis of this moratorium. In no event shall any permit or other relief sought after the first publication of the notice of the public hearing create or result in any protections with respect to the land, its uses or structures upon it.
- F. Unless extended, continued or modified by a subsequent action of Town Council, this section shall cease to be effective January 2, 2014, or 180 days after the effective date of the final regulations promulgated by the Department of Public Health relating to Ballot Question 3, whichever occurs first.

## § 240-129.1. Temporary moratorium on recreational marijuana establishments and marijuana retailers and associated activities.

[Added 4-27-2017 by Order No. 2017-108]

- A. Definitions. As used in this § **240-129.1**, the following terms shall have the meanings indicated:

### **MARIJUANA ACCESSORIES**

Equipment, products, devices or materials of any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body.

### **MARIJUANA CULTIVATOR**

An entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.

### **MARIJUANA ESTABLISHMENT**

A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

### **MARIJUANA MANUFACTURING**

To compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

### **MARIJUANA PRODUCTS**

Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

### **MARIJUANA PRODUCT MANUFACTURER**

An entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

### **MARIJUANA TESTING FACILITY**

An entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

#### **RECREATIONAL MARIJUANA RETAILER**

An entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

- B. No building permit, special permit, variance, site plan approval decision or other permit may be issued under this chapter for recreational marijuana establishments and marijuana retailers or associated activities, as those terms are defined herein.
- C. The moratorium shall be in effect through and including December 31, 2018.
- D. During the moratorium period, the Town shall undertake a planning process to address the complex and novel planning, legal and public safety issues related to recreational marijuana establishments and marijuana retailers, to consider the Cannabis Control Commission regulations regarding recreational marijuana establishments and marijuana retailers and related uses, to determine whether the Town shall restrict any, or all, licenses for recreational marijuana establishments and marijuana retailers and to determine whether the Town will prohibit on-site consumption at recreational marijuana establishments and marijuana retailers and shall consider adopting new provisions of this chapter to address the direct and secondary impacts and operation of recreational marijuana establishments and marijuana retailers and related uses.
- E. Applications for permits submitted after the first publication of the notice of the public hearing which results in the adoption of this moratorium but before its effective date shall be dealt with in due course until the effective date of this moratorium; and if a permit or other relief is granted prior to such effective date, it shall be subject to the effectiveness of this moratorium and shall be issued subject to any reliance thereon being at the peril of the recipient. During the effective period of this moratorium, any application shall be denied on the basis of this moratorium. In no event shall any permit or other relief applied for after the first publication of the notice of the public hearing create or result in any protections with respect to the land, its uses or structures upon it.
- F. Unless extended, continued or modified by a subsequent action of Town Council, this section shall cease to be effective on January 1, 2019.
- G. Severability. The provisions of this section are severable. If any provision, paragraph, sentence, or clause of this section or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this section.

## **Article XV. District of Critical Planning Concern Regulations**

[Added 7-16-2009 by Order No. 2009-137]

### **§ 240-130. Centerville Village District.**

Authority. This article is adopted under the authority of the Home Rule Amendment, Article 89 of the Constitution of the Commonwealth, and the Cape Cod Commission Act, Chapter 716 of the Acts of 1989.

#### **§ 240-130.1. Purposes and intent.**

- A. The purposes and intent of this section is to guide development and redevelopment in Centerville Village that:

- (1) Promotes a location-appropriate scale and traditional mix of business, institutional and residential land uses that contribute to and respect the historic character and historic neighborhood development patterns;
  - (2) Acknowledges the historic context of the village, including the National Register District which encompasses properties in the northern portion of the district;
  - (3) Protects and preserves the historic and scenic streetscape and minimizes traffic congestion;
  - (4) Provides a variety of functions that support residents' day-to-day use of the district;
  - (5) Supports and enhances the diverse local economy and retains established village goods and service offerings;
  - (6) Preserves and protects the traditional New England village character of Centerville through architectural design that replicates in scale and character the best examples of traditional neighborhood design from the historic towns and villages of Cape Cod and New England to enhance the aesthetic quality of Barnstable as a whole.
- B. The further purpose and intent of this section is to enable the Town of Barnstable to enter into development agreements (hereinafter "regulatory agreements") under Chapter 168 of the Code of the Town of Barnstable (Barnstable Code) within the Centerville Village District (CVD).

## § 240-130.2. Definitions.

As used in the CVD, the following terms shall have the meanings indicated:

### APARTMENT

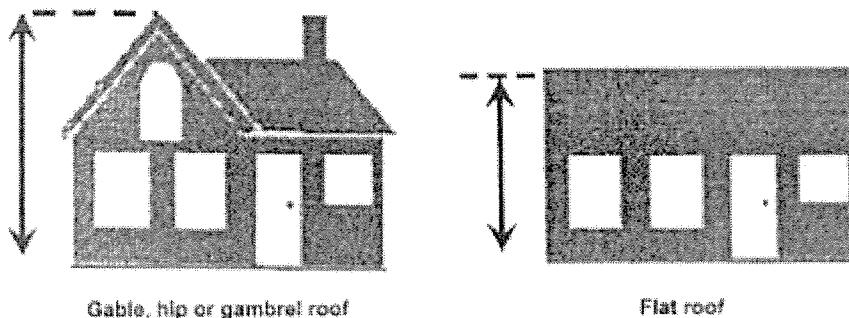
One or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit located in a building containing two or more such rooms or suites or located in a building devoted primarily to nonresidential use or in a mixed-use building.

### BED-AND-BREAKFAST

Tourist and guest accommodations located within an owner-occupied, single-family residential dwelling unit, let for compensation for brief periods of time, customarily less than two weeks long, without cooking facilities accessible to the guests; or the temporary abode of visitors who have a permanent residence elsewhere.

### BUILDING HEIGHT

The vertical distance between the grade and the highest point of a gable, hip or gambrel roof; the highest point of the coping of a flat roof.



### GRADE

The referenced plane of the average of all finished ground level adjoining the building or structure for a distance of six feet from all exterior walls.

**HALF STORY**

That space above the plate line but below the ridgeline in an area commonly called the "attic space," provided that the gross floor area of the half story shall not exceed 66% of the gross floor area immediately below the half story.

**ICE CREAM SPECIALTY RETAIL USE**

An establishment specializing in the retail sale of ice cream for consumption on or off site or carry-out consumption that may include a seating area for food service use as an accessory use to the ice cream specialty retail or an ice cream retail use in existence at the time of the adoption of this section. Accessory food service use may sell and serve by wait staff a variety of foods that may be prepared on site. Ice cream specialty retail and any accessory food service use is subject to formula business limitations as described herein. Ice cream specialty retail may include on-site ice cream product preparation for wholesale sales; provided, however, in no case shall wholesale sales of ice cream product for use off-site become the principal use; truck distribution and delivery activity necessary to the wholesale sale of ice cream product for off-site use shall not create additional congestion; and the use shall not generate noise that violates Town ordinances, or detract from the established character within the CVD.

**IMPERVIOUS SURFACE**

A surface which prevents the penetration of precipitation or other liquids into the ground, including roofs, concrete, asphalt, natural stone, sidewalks, etc. Any area designed for vehicle use or vehicle parking covered with porous pavers may become impervious over time and may, at the discretion of the Building Commissioner, be considered impervious surface.

**INN**

A commercial structure used for overnight lodging accessed through interior hallways which may include the provision of meals and incidental related services to lodgers or a motel or motor inn use in existence at the time of the adoption of this section.

**LIBRARY**

A building or room that houses a collection of books, records, literary documents or other reference materials for borrowing, reading, study, education or reference and which is owned or operated by a nonprofit educational corporation.

**LOT AREA**

The upland area of the lot.

**MIXED-USE DEVELOPMENT**

Development including at least one residential unit and at least one nonresidential use on a single lot or several nonresidential uses on a single lot.

**NONPROFIT EDUCATIONAL USE**

An educational use conducted by a not-for-profit corporation whose articles of incorporation permit it to engage in educational activities and "educational purposes" as its principal permitted use within the meaning of MGL c. 40A, § 3, including but not limited to libraries and museums.

**PROFESSIONAL OR BUSINESS OFFICE**

Office, but not including medical or dental offices.

**RELIGIOUS INSTITUTION**

An institution engaged in "religious purposes" within the meaning of MGL c. 40A, § 3.

**SETBACK**

The required distance between every structure and lot line of the lot on which it is located.

**SINGLE-FAMILY RESIDENCE**

A detached residential building designed for and occupied by a single family.

**SMALL-SCALE FOOD SERVICE**

An establishment where food is served to customers by wait staff. Small-scale food service does not include restaurants designed to serve a large volume of customers. Small-scale food service is subject to formula business limitations as described herein. These uses are intended to increase pedestrian traffic.

**SMALL-SCALE RETAIL**

Small stores and businesses, including, but not limited to, corner groceries, artist space, bookstore, galleries and other small retail uses typically found in small New England towns. Small-scale retail does not include retail or commercial buildings or storage designed to serve a large volume of customers, e.g. gasoline and oil filling stations, garages for automotive or machine repair. Small-scale retail is subject to formula business limitations as described herein. These uses are intended to increase pedestrian activity.

**STORY**

That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above and having at least 1/2 its height above grade.

**STRUCTURE**

Anything constructed or erected on the ground or which is attached to something located on the ground. Structures include buildings, sheds, swimming pools and towers, but shall exclude fences of six feet or less in height, flagpoles and retaining walls.

**UPLAND**

All lands not defined herein as wetlands.

**WETLANDS**

The land under the ocean or under any bay, lake, pond, river, stream, creek or estuary; any wet meadows, marshes, swamps, bogs, areas where high groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrata for a plant community for at least five months of the year, lowland subject to any tidal action or annual storm flooding or flowage, or any flat, beach, dune or other shifting sand formation.

**§ 240-130.3. Permitted uses.**

The following principal and accessory uses are permitted in the Centerville Village District subject to the use limitations outlined below. Other uses of an appropriate scale and function may also be considered subject to a regulatory agreement and are subject to the use limitations outlined below. Municipal uses are exempt from these regulations.

- A. Use limitations. Permitted retail establishment, lodging establishment, restaurant, or take-out food franchise shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized ("formula") array of services and/or merchandise, trademark, logo, service mark, symbol, decor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than 14 other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.
- B. Principal uses.
- \*Ice cream specialty retail
  - \*Mixed-use development
  - \*Professional or business office
  - Single-family residence
  - \*Small-scale food service

- \*Small-scale retail
- \*Bed-and-breakfast
- \*Inn

\*Subject to use limitations as described in § 240-130.3A.

C. Accessory uses.

- (1) Automated banking facilities (ATM) within a principal building or a walk-up facility located in a rear or side yard that also meets landscaping and lighting guidelines of this section.
- (2) Garages accessory to a single-family residence. Such structures shall be located in the rear or side yard. The footprint of the garage shall not exceed 40% of the footprint of the single-family residence and may consist of 1 1/2 stories with a pitched roof unless otherwise permitted for residential use.
- (3) Apartment.

D. Exempt uses.

- (1) Religious institutions, accessory day-care centers, and nonprofit educational uses are permitted as exempt uses within the CVD. These uses shall, however, be subject to and in conformance with the reasonable bulk, density, design and development regulations of the CVD as set forth in § 240-130.1A, Purposes and intent, § 240-130.6, Dimensional, bulk and other requirements, § 240-130.7, Design guidelines, and § 240-130.8, Site development standards.
- (2) Where the exempt use does not comply with said regulations, the Zoning Board of Appeals shall, by modification permit, modify said regulations if compliance with the regulation substantially diminishes or detracts from the usefulness of a proposed development or impairs the character of the development so as to affect its intended use; provided, however, that the relief granted will not create a public safety hazard along adjacent roadways and will not create a nuisance to other surrounding properties.
- (3) A modification permit shall be subject to the same procedural requirements as a special permit except that approval of a modification permit shall require a simple majority of the members of the Board.

## § 240-130.4. Continuation; changes to use; damaged structures.

A. Continuation. Legally established structures, uses and site improvements in existence at the time of the adoption of this section shall be allowed to continue.

B. Change, expansion or alteration of uses and structures.

- (1) As of right.
  - (a) The normal and customary repair and maintenance of a building or structure is permitted as of right.
  - (b) The alteration and expansion of a building or structure is permitted as of right, provided that the alteration or expansion conforms in all other respects with all applicable requirements of this chapter.
- (2) By special permit. Alterations or expansions of a building or structure that do not qualify under as-of-right provisions shall be permitted only by a special permit from the Zoning Board of Appeals, the special permit granting authority (SPGA) for the CVD. In granting such special permit, the Board must find that the proposed alterations and/or expansion are not substantially more detrimental, by standards set out herein, to the surrounding neighborhood

under this chapter, § **240-130.1A**, Purposes and intent, § **240-130.3A**, Use limitations, and, where applicable, § **240-130.2**, Definitions.

- C. Special permit for dimensional relief. The SPGA may provide relief from minimum lot area, minimum lot frontage, maximum building setback, minimum yard setbacks, facade length requirements, and ground floor window requirements when such relief ensures that the proposed development is consistent with the § **240-130.1A**, Purposes and intent, and the applicant demonstrates undue hardship without desired relief.
- D. Re-establishment of damaged or destroyed building or structure.
- (1) The re-establishment of a previously legally established use and/or building or structure which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted as of right, provided that the Building Commissioner has determined that all the following conditions are met:
    - (a) The reconstruction or repair will not, as determined by the Building Commissioner, materially increase the gross floor area or height of the building or structure beyond that which previously existed, nor materially increase the footprint of the structure, or materially change the grade.
    - (b) If the building's location on the lot is to be changed, it will change in a manner that will be closer to complying with the dimensional and bulk regulations.
    - (c) The reconstruction or repair will not constitute an expansion or intensification of any use.
    - (d) In the case of any use in which it would otherwise be required, the site plan review process has been followed.
    - (e) Design and architecture of damaged or destroyed buildings and structures in existence at the time of the adoption of this regulation may be replicated. If the Building Commissioner finds that the structure is to be rebuilt to replicate what existed before the damage or destruction, the CVD design guidelines do not apply.
    - (f) A building permit has been applied for within two years from the date of damage or destruction.
  - (2) Discontinuance: Any legally established structure which no longer complies with the provisions of the CVD that has been damaged or destroyed shall be discontinued unless a building permit has been applied for within two years from the date of damage or destruction, and construction is continuously pursued to completion.

## § 240-130.5. Additional provisions.

- A. Other regulations. The following provisions of the Barnstable Code are hereby incorporated into this regulation: § **240-7**, Application of district regulations; § **240-9C** and **D**; § **240-10**, Prohibited uses; § **240-34**, Floodplain District; § **240-43**, regarding accessory uses; § **240-46A** and **B**, home occupations; Article **VI**, Off Street Parking Regulations; Sections **240-52**, 240-53.B through .E ; and Sign Regulations § **240-59** through 62, and Section **240-67**; Article **XI**, Growth Management, §§ **240-110** through **240-122**; Article **IX**, Site Plan Review; Article **XIII**, Administration and Enforcement, §§ **240-123** and **240-124**; § **240-125C** special permit provisions, as these provisions of the Barnstable Code cited in this section may be amended from time to time.  
[Amended 5-22-2014 by Order No. 2014-126]
- B. Conflicts. Unless otherwise stated, the requirements of the Centerville Village District shall apply to uses and structures within the Centerville Village District. In the event of a conflict, these regulations shall apply.

- C. Severability. The provisions of this chapter are severable. If any court of competent jurisdiction shall invalidate any provision herein, such invalidation shall not affect any other provisions of this chapter. If any court of competent jurisdiction shall invalidate the application of any provision of this chapter to a particular case, such invalidation shall not affect the application of said provision to any other case within the Town.

## § 240-130.6. Dimensional, bulk and other requirements.

Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height		Maximum Lot Coverage By Structures	Total Impervious Surface
		Front <sup>2</sup> (feet)	Rear (feet)	Side (feet)	Feet	Stories		
20,000 or lot area of legally established lot as of 06/18/2009	20	20 or set-back of existing legally established structure from front lot line as of 06/18/2009, whichever is less	0	0	36 <sup>1</sup>	2 1/2	35%	80%

**NOTES:**

- (1) Height - maximum building height. The maximum height of buildings or structures is 36 feet or 2 1/2 stories, whichever is less, at the highest point of the roof for roofs with a pitch of at least six inches in each foot and at the highest point of a gambrel roof. The maximum height for flat-roofed structures is limited to two stories at a maximum of 24 feet.
- (2) Setbacks:
  - (a) The building setback may be modified through a special permit from the Zoning Board of Appeals upon demonstration to the satisfaction of that Board that redevelopment cannot meet the minimum setback without undue hardship or due to topography, lot shape or constraints of existing structures.
  - (b) Wherever possible parking shall be located within side or rear yard setbacks.

## § 240-130.7. Design guidelines.

- A. Purpose: The purpose of these design guidelines is to enhance the traditional small-scale village character currently found in the CVD through the use of compatible building materials, appropriate scale and architectural details currently found within the district or immediate surrounding area. New structures are encouraged to complement, but not necessarily duplicate, surrounding structures.
- B. Objectives:
  - (1) To encourage site planning and architectural design that will enhance the existing historic character of the CVD.
  - (2) Ensure that redevelopment and new development is compatible with the existing character of the CVD while encouraging variety through flexibility in the application of these design standards.



- C. Application: The design guidelines set forth herein do not apply to legally established structures in existence as of the effective date of the CVD but shall apply to all new development, to any additions to existing structures and to all reconstruction projects except as provided for in § **240-130.4D(1)(e)**. These design guidelines shall not apply to walk-in coolers, freezers or their accessories for an ice cream specialty retail use. Any such coolers, freezers and accessories shall be attached to the side or rear of the principal structure and shall be appropriately screened from street view.
- (1) Massing: Buildings or portions of buildings with a mass, including rooflines, over 32 feet in length must divide their elevations into smaller parts through a variety of architectural elements, including but not limited to dormers or additive massing as well as pronounced changes in wall planes. Flat and shed roof architectural elements are limited to a length of 20 linear feet and only in combination with other gable or hip roof elements; except that ground floor open porches may have a longer expanse of shed roof on a structure that otherwise meets these massing provisions.
  - (2) Roof pitch: Except as permitted under massing herein, roof pitch and pattern for new structures and additions to existing structures shall complement the roof pitches found on the main rooflines of existing structures within the CVD and the immediate surrounding area or at least 4 in 12 where the roofs of surrounding structures are flat or only slightly pitched.
  - (3) Ground floor windows for nonresidential development:
    - (a) All new nonresidential development, including nonresidential portions of mixed-use developments, shall provide ground floor windows along street facades, including windows that allow view into working areas or lobbies, pedestrian entrances, or display windows. The glazing pattern shall be aligned in a regular and traditional pattern as found within the CVD and the immediate surrounding area.
    - (b) Window glazing or films that inhibit two-way visibility, such as darkly tinted and mirrored windows, are prohibited as ground floor windows. Mirrored windows are prohibited throughout the CVD.
    - (c) Street facade blank walls greater than four feet in length that do not include display areas, functional landscape structures such as a trellis, windows, architectural features, and/or doorways are prohibited.
  - (4) Architectural details and materials:
    - (a) Architectural character of buildings must complement the historic character of buildings found within the CVD and the immediate surrounding area.
    - (b) Facade materials shall be high-quality, authentic materials such as wood, stone or brick. Manufactured materials intended to duplicate the look of natural materials may be allowed.
    - (c) External side elements, including but not limited to screening devices, site walls, enclosed service, loading and refuse areas and mechanical equipment, shall be designed as an integral part of the building's architectural character.
    - (d) Primary entrance to buildings, other than single-family homes, shall be distinguished with facade variations, porticos, roof variations, recesses or other integral architecturally appropriate building elements.
    - (e) Extended bands of corporate or franchise colors are prohibited in the CVD.
    - (f) Metal-sided buildings are prohibited in the CVD.
    - (g) The following design features shall be incorporated into structures within the CVD where architecturally appropriate. Structures shall include at least one of the following elements:

[1] Gable.

- [2] Offsets on the building face or roof of at least two inches.
- [3] Gable dormers.
- [4] Cupolas or other appropriate roof elements.
- [5] Covered porches.

## § 240-130.8. Site development standards.

All new development and redevelopment and change of use except as set forth in § **240-130** within the CVD with the exception of single-family residences shall be subject to the provisions of Article **IX**, Site Plan Review, §§ **240-98** through **240-105**.

A. Access management. To ensure traffic safety, pedestrian safety and maintain traffic flow, the following standards for new access shall apply in the CVD:

(1) New access on South Main Street and Main Street:

- (a) Shall only be allowed where the Building Commissioner determines that the access will improve internal circulation or address safety at existing access.
- (b) Interconnections between lots and uses are encouraged to prevent unsafe turning conflicts and increase pedestrian safety.
- (c) New driveways on South Main Street and Main Street within 200 feet of any intersection shall not be permitted unless the Town Engineer determines that the proposed driveway location will not create new traffic safety hazards or increase traffic congestion.

(2) New access shall not be more than 24 feet in width unless the Building Commissioner or site plan review determines that a wider width is necessary for safety purposes.

B. Parking spaces, computation.

(1) The parking standards contained within the Schedule of Off-Street Parking Requirements, § **240-56** of the Barnstable Zoning Ordinance, shall establish the minimum parking requirements, with the following exceptions:

- (a) The use of shared parking for different uses having different peak hours of demand will be considered in evaluating compliance with § **240-56**. A signed lease agreement or recorded easement between relevant parties sharing parking must be provided as part of the site plan approval.
- (b) A permitted use can be changed to another permitted use, and any permitted or accessory use can be intensified, without increasing the required off-street parking requirements of § **240-56**, Schedule of Off-Street Parking Requirements, provided that:
  - [1] There is no increase in gross square footage of the building; and
  - [2] There is no reduction in existing parking spaces required pursuant to § **240-56**; and
  - [3] A minimum of two on-site parking spaces per dwelling unit shall be provided. A one-car garage shall count as one parking space. A two-car garage shall count as two parking spaces.

(2) Parking spaces shall be provided for new and/or expanded building area, and for new and/or expanded outdoor uses, as follows:

- (a) Parking space requirements for residential mixed use shall be subject to § **240-130.8B(1)** above; and for the residential units parking, the parking requirement shall be one parking

space per bedroom for one- and two-bedroom units or a total of two parking spaces for units with two or more bedrooms.

- (b) Parking space requirements for nonresidential uses shall be subject to § **240-130.8B(1)** above.
  - (3) Reduction of required parking spaces may be allowed, provided the Building Commissioner, who may waive up to two spaces, or if parking is proposed to be reduced by more than two (2) spaces the Zoning Board of Appeals must find that:
    - (a) Adequate shared parking is available consistent with Subsection **A(1)** above; or
    - (b) There are other factors that support the reduction.
- C. Landscaping. All applications for new nonresidential development and redevelopment shall be accompanied by a landscape plan that shows the location within the development of each species of trees, shrubs and/or other plantings, their suitability for the conditions at the proposed location and their size at maturity.
- (1) Those portions of the front yard not occupied by pedestrian amenities and public spaces shall be landscaped.
  - (2) Existing trees and other features of the land shall be protected in the development or redevelopment of the site.
  - (3) Landscape materials shall be used that, at full growth, will not overwhelm the site location or interfere with views or pedestrian activity over time.
  - (4) Landscaping plan will adequately provide street trees and will buffer parking areas from sidewalks and streets.
- D. Lighting.
- (1) All exterior lighting shall use full cutoff light fixtures in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted.
  - (2) Flood, area and up lighting shall not cast glare onto neighboring properties or oncoming traffic.

## § 240-131. Craigville Beach District; statutory authority.

[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

Sections **240-131** through **240-131.8** are adopted under the local authority of the Town of Barnstable and the Cape Cod Commission Act, Chapter 716 of the Acts of 1989.

### § 240-131.1. Purposes and intent.

[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

- A. The purpose and intent of §§ **240-131** through **240-131.8** are to guide development in the Craigville Beach District pursuant to the Guidelines of Barnstable County Ordinance 09-10 to ensure that development and redevelopment:
  - (1) Contributes to and respects the character and historic development patterns of the area and minimizes inconsistent development and redevelopment impacts to the historic and community character resources in this area;

- (2) Protects and preserves scenic views and vistas and ways to the water;
- (3) Protects and improves natural resources, including but not limited to the barrier beach and groundwater and coastal water quality and minimizes development and redevelopment impacts to the natural resources and ecosystems in this district;
- (4) Protects human life and property from the hazards of periodic flooding;
- (5) Preserves the natural flood control characteristics and the flood control function of the floodplain;
- (6) Preserves and maintains the groundwater table and water recharge areas within the floodplain. As the entire complex of coastal wetland resources moves landward due to relative sea level rise, the Craigville Beach area's coastal floodplains immediately landward of salt marshes, coastal beaches, barrier beaches, coastal dunes, and coastal banks require special protection.

## § 240-131.2. District boundaries.

[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

- A. The provisions of §§ **240-131** through **240-131.8** shall apply within the Craigville Beach District (CBD), as shown on the Zoning Map of the Town of Barnstable, as amended in Section 1 above.<sup>[1]</sup>

[1] *Editor's Note: Section 1 of Ord. No. 11-01 of the Barnstable County Assembly of Delegates amended the Zoning Map of the Town of Barnstable. A description of said amendment is included in the Table of Zoning Map Revisions at the end of this chapter.*

- B. Neighborhood Overlays. For the purpose of §§ **240-131** through **240-131.8**, the Craigville Beach District is divided into the following Neighborhood Overlay areas, as shown on the Zoning Map and identified as:

LBSB	Long Beach/Short Beach
CB	Craigville Beach
CRNB	Centerville River North Bank
CV	Craigville Village

## § 240-131.3. Definitions.

[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

### **ACCESSORY USE OR BUILDING**

A use or structure which is customarily incidental to and subordinate in area, extent, and purpose to that of the principal use or structure.

### **BASE FLOOD ELEVATION (BFE)**

The elevation shown on the Flood Insurance Rate Map (FIRM) that indicates the water surface elevation resulting from a flood that has a one-percent chance of equaling or exceeding that level in any given year.

### **BEACH CLUB**

A membership establishment legally in existence at the time of the adoption of §§ **240-131** through **240-131.8**, not open to the general public, located in close proximity to a beach and providing recreational and social activities, including food service, to members.

**BUILDING COVERAGE**

The percentage of a lot covered by principal and accessory buildings or structures. For the purposes of §§ **240-131** through **240-131.8**, this definition does not include uncovered swimming pools and tennis courts, and decks not exceeding 100 square feet or 10 feet in length.

**BUILDING HEIGHT**

The vertical distance from the grade plane to the highest point of a gable, hip or gambrel roof and the highest point of the coping of a flat roof. These height limitations shall not apply to chimneys, cupolas, flagpoles or other similar appurtenances as approved by the Building Commissioner.

**COASTAL BANK**

The first significant break in slope beyond the one-hundred-year storm elevation on a seaward face or elevated landform, other than a coastal dune, which lies at the landward edge of a coastal beach, land subject to tidal action, or other coastal wetland. The slope of the bank must be greater than 18% and serve to contain storm flowage, rather than being inundated by it, or function as a sediment source. (See Barnstable Code, Wetlands Protection, § **237-5**.)

**COMMON DRIVEWAY**

A form of access which is not a street but extends from a street and provides common vehicular access to more than one lot. For the purposes of calculating lot coverage, the common driveway's impervious surfaces shall be equally allocated among the lots served and/or benefited by the common driveway in proportion to the sizes of the lots.

**CONFERENCE CENTER**

A nonprofit religious and educational use legally in existence at the time of the adoption of §§ **240-131** through **240-131.8**, comprised of guest houses and cottages, single-family residences, recreational areas, lodging for guests, meeting spaces, and summer recreational opportunities.

**COTTAGE COLONY**

A group of three or more detached dwellings, under one ownership, legally in existence at the time of the adoption of §§ **240-131** through **240-131.8**, located on a single lot, which are customarily rented out to the transient public by day, week, month, or season and occupied on a seasonal basis only. Cottage colonies shall not be used year round. Cottage colony structures shall not exceed 1 1/2 stories and 800 square feet of gross floor area.

**DEMOLITION, VOLUNTARY**

Destruction of 20% or more of the exterior walls of a building or the destruction of more than 50% of the roof structure of a building, not including like-for-like replacement of the roof structure.

**ELEVATED STRUCTURE**

A structure elevated for the purpose of Barnstable Code, § **240-34**, Floodplain District, whose lowest structural member is one foot above BFE in A Zones and two feet above BFE in V Zones. [Amended 5-22-2014 by Order No. 2014-126]

**FEMA**

Federal Emergency Management Agency.

**FEMA FLOOD ZONES**

Geographic areas susceptible to inundation by water that FEMA has mapped according to varying levels of flood risk, as defined and delineated on a community's Flood Insurance Rate Map, as may be amended from time to time.

**FIRM**

Flood Insurance Rate Map.

**GRADE**

The referenced plane as of November 6, 2009, representing the ground elevation adjoining the proposed building at all exterior walls. Where the ground level slopes away from the exterior walls,

the reference plane shall be established by the lowest points within the area between the building and a point six feet from the building, or between the building and the lot line, whichever point is closer. Retaining walls for mounded septic systems mandated by the Board of Health are not included in the calculation of grade.

### **GROSS FLOOR AREA**

The sum of all floor areas within a building or structure, measured from the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features. It shall include all areas capable of being used for human occupancy, including all basement floor areas, mezzanine and attic space and enclosed porches.

### **HALF STORY**

That space above the plate line but below the ridgeline in an area commonly called the "attic space," provided that the gross floor area of the half story shall not exceed 66% of the gross floor area immediately below the half story.

### **IMPERVIOUS SURFACE**

A surface which prevents the penetration of precipitation or other liquids into the ground, including roofs, concrete, asphalt, sidewalks, etc. Any area designed for vehicle use or vehicle parking covered with porous pavers, which may become impervious over time may, at the discretion of the Building Commissioner, be considered impervious surface.

### **LOT AREA**

For the purpose of determining maximum building coverage and maximum lot coverage allowances, the lot area for legally created lots that are vacant or developed and/or improved as of November 6, 2009, shall be the horizontal area of the lot defined by metes and bounds. All of the lot area used for zoning compliance shall be land other than that under water nine months or more in a normal year.

### **LOT COVERAGE**

The percentage of a lot covered by impervious surfaces. For the purposes of §§ **240-131** through **240-131.8**, paved driveways and parking areas, principal and accessory structures, and other on-site amenities that render any portion of a lot impervious shall be included in the calculation of lot coverage.

### **NONPROFIT EDUCATIONAL USE**

An educational use conducted by a not-for-profit corporation whose articles of incorporation permit it to engage in educational activities and educational purposes as its principal permitted use within the meaning of MGL c. 40A, § 3, including but not limited to libraries and museums.

### **OPEN FOUNDATION**

A pile or column foundation designed for structures in flood zones that minimizes the foundation area subject to lateral flood loads. Open foundations are intended to prevent flotation, collapse, and lateral movement of a building during a flood event.

### **RELIGIOUS INSTITUTION**

An institution engaged in religious purposes within the meaning of MGL c. 40A, § 3.

### **SEASONAL USE**

A use carried on for only a part of the year. Typical seasonal uses are outdoor recreational activities such as swimming and boating, both motorized and nonmotorized; impermanent use of cottages, motels, hotels, letting of rooms in a residential structure and letting an entire residential structure.

### **SEASONAL USE STRUCTURE**

Any structure designed or used as temporary seasonal living quarters that is not used as a primary, permanent residence. Seasonal use structures may have heat and other amenities but do

not deposit wastewater into wastewater treatment systems on a regular year-round basis and do not withdraw water for consumption or other activities on a regular year-round basis.

### **SINGLE-FAMILY RESIDENCE**

A detached residential building designed for and occupied by a single family.

### **SMALL-SCALE FOOD SERVICE**

An establishment legally in existence at the time of the adoption of §§ **240-131** through **240-131.8**, where food is served to customers by wait staff. Small-scale food service does not include restaurants designed to serve a large volume of customers. Small-scale food service is subject to formula business limitations as described herein. These uses are intended to increase pedestrian activity.

### **SPECIAL PERMIT GRANTING AUTHORITY (SPGA)**

The Zoning Board of Appeals shall be the special permit granting authority within the Craigville Beach District.

### **STORY**

The vertical distance from top to top of two successive tiers of beams or finished floor surfaces; and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

### **STRUCTURE**

Anything constructed or erected on the ground or which is attached to something located on the ground. Structures include buildings, sheds, swimming pools and towers, but shall exclude fences of six feet or less in height and flagpoles.

### **UPLAND**

All lands not defined herein as wetlands.

### **V (VELOCITY) ZONE**

The area extending from mean low water to the inland limit one-hundred-year floodplain supporting waves greater than three feet in height. V-zones are mapped on the FEMA FIRM.

### **WETLAND**

The land under the ocean or under any bay, lake, pond, river, stream, creek or estuary; any wet meadows, marshes, swamps, bogs, areas where high groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrata for a plant community for at least five months of the year, lowland subject to any tidal action or annual storm flooding or flowage, or any flat, beach, dune, or other shifting sand formation.

## **§ 240-131.4. Craigville Beach District use regulations.**

[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

Municipal uses are exempt from these regulations. For principal permitted uses, see § **240-131.7** (Neighborhood Overlay regulations) herein.

#### **A. Use limitations.**

- (1) Any use not expressly allowed herein is prohibited.
- (2) The conversion of any building or structure from seasonal use to year-round use is prohibited, except that single-family residences are not subject to this use limitation. The conversion of a building, or buildings, constituting a cottage colony, hotel, inn or rooming house, or of a facility required to be licensed as a recreational camp, overnight camp or cabin, or motel under MGL

c. 140, §§ 32A to 32I, to condominium-type ownership, shall be deemed to be a change in use from seasonal to year-round use and is prohibited.

- (3) Permitted business and retail uses shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized (formula) array of services and/or merchandise, trademark, logo, service mark, symbol, decor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than 14 other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.

B. Exempt uses.

- (1) Religious institutions, accessory day-care centers, and nonprofit educational uses are permitted as exempt uses within the Craigville Beach District. These uses shall, however, be subject to and in conformance with the reasonable bulk, density, design and development regulations of the Craigville Beach District as set forth in § **240-131.1**, Purposes and intent, § **240-131.5**, Dimensional, bulk and other regulations, § **240-131.7**, Neighborhood Overlay regulations, including general performance standards and applicable neighborhood performance standards.
- (2) Where the exempt use does not comply with said regulations, the Zoning Board of Appeals shall, by modification permit, modify said regulations if compliance with the regulation substantially diminishes or detracts from the usefulness of a proposed development or impairs the character of the development so as to affect its intended use; provided, however, that the relief granted will not create a public safety hazard along adjacent roadways and will not adversely impact natural resources or create a nuisance or adverse impacts to other surrounding properties. A modification permit shall be subject to the same procedural requirements as a special permit, except that approval of a modification permit shall require a simple majority of the members of the Board.

C. Continuation. Any lawfully established lot, structure or use existing at the time of the adoption of §§ **240-131** through **240-131.8** that does not conform to the provisions of the CBD shall be allowed to continue.

D. Change, expansion or alteration of uses and structures. Changes, expansions, or alterations of existing conforming or nonconforming uses and structures lawfully existing are permitted subject to the following:

(1) As of right.

- (a) The normal and customary repair and maintenance of a building or structure and the conversion of existing floor area to habitable space consistent with Board of Health and other regulations is permitted as of right.
- (b) The alteration and expansion of a building or structure is permitted as of right, provided that the alteration or expansion shall conform to following criteria:
- [1] Conforms to applicable height and setback requirements of § **240-131.5B**, § **240-131.5A** notwithstanding.
- [2] Does not exceed the coverage limitations set forth in § **240-131.6**.
- [3] Complies with applicable general and neighborhood performance standards.

(2) By special permit.

- (a) The alteration or expansion of an existing conforming or nonconforming lawfully established building or structure in lawful existence at the time of adoption of §§ **240-131** through **240-131.8** that does not qualify under the as-of-right provisions above shall be permitted only by a special permit from the SPGA. In granting such special permit, the SPGA shall find that the proposed alterations and/or expansions:



- [1] Are not substantially more detrimental to the environment, community and/or historic character of the neighborhood than the existing building or structure.
  - [2] Comply with § **240-131.1**, Purposes and intent, and with the performance standards and design guidelines for the neighborhood overlay area in which the development is located, in accordance with § **240-131.7**, Neighborhood District Overlay regulations, with the exception of the dimensional requirements of § **240-131.7D(1)**.
  - [3] Do not entail an increase in gross floor area or footprint for voluntary demolition of a single-family residence.
  - [4] Do not exceed 25% of the gross floor area of structures in existence as of July 1, 1989, or do not exceed 10% of the gross floor area of structures in existence as of November 6, 2009.
  - [5] Do not increase lot coverage over what is allowed under § **240-131.6**, Coverage limitations, or by more than 10% over what was existing on November 6, 2009, whichever is greater.
  - [6] Do not increase flood hazards in the neighborhood.
  - [7] Maintain or enhance views to Nantucket Sound and/or the Centerville River where applicable in accordance with § **240-131.5**, Note 4.
  - [8] In V Zones, do not increase south-facing building surfaces so as to limit the adverse effect of increasing elevation or velocity of floodwaters due to a change in flowage characteristics on the subject site, adjacent properties, or any public or private way.
- E. Special permit for dimensional relief. The SPGA may provide relief from minimum yard setbacks when such relief ensures that the proposed development:
- (1) Is consistent with § **240-131.1**, Purposes and intent;
  - (2) Is consistent with the performance standards for the neighborhood district where the development is located in accordance with § **240-131.7**, Neighborhood Overlay regulations; and
  - (3) The applicant demonstrates undue hardship without desired relief.
- F. Reestablishment of damaged or destroyed use, building or structure.
- (1) The reestablishment of a lawfully established conforming or nonconforming use and/or building or structure which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted as of right, provided that the Building Commissioner has determined that all the following conditions are met:
    - (a) The reconstruction or repair will not materially increase the gross floor area or height of the building or structure beyond that which previously existed, nor materially increase the footprint of the structure; or materially change the grade other than grades required for installation or upgrade of on-site septic systems; except that buildings in the floodplain that existed prior to November 6, 2009, may be elevated two feet above BFE or as required by the applicable law regardless of the resulting building height, provided that the building complied with building height regulations at the time of its construction.
    - (b) If the building's location on the lot is to be changed, it will change in a manner that will be closer to complying with the dimensional and bulk regulations and with performance standards regarding building orientation.
    - (c) The reconstruction or repair will not constitute an expansion or intensification of any use.
    - (d) In the case of any use in which it would otherwise be required, the site plan review process has been followed.

- (e) Design and architecture of damaged or destroyed buildings and structures in existence at the time of the adoption of this regulation may be replicated. If the Building Commissioner finds that the structure is to be rebuilt to replicate what existed before the damage or destruction, the design guidelines in this chapter do not apply. If the structure is in the floodplain, any design or architectural changes associated solely with floodproofing the reconstructed structure shall not require compliance with the design guidelines.
- (2) Any previously established use or structure which no longer complies with the provisions of the CBD shall be discontinued unless a building permit has been applied for within two years from the date of damage or destruction, and construction is continuously pursued to completion.
- G. Voluntary demolition and reconstruction of single-family residences. Lawfully established single-family residences may be demolished and reconstructed in accordance with § 240-131.4F.

## § 240-131.5. Dimensional, bulk, and other requirements.

[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

The following requirements apply to all development and redevelopment in the Craigville Beach Zoning District:

- A. For all legally created vacant lots, the frontage and area in existence as of November 6, 2009, and/or legally developed lots that were in existence as of November 6, 2009, and conformed to the existing zoning when legally created, the existing lot area, lot frontage, front, side and rear setbacks and building height dimensions may be used in lieu of the following dimensional requirements in § 240-131.5B, except where stated otherwise.
- B. Requirements table.

Requirements	Neighborhood Overlays			
	Village Craigville	Craigville Beach	Long Beach/Short Beach	Centerville River North Bank
Minimum lot area (square feet)	87,120	87,120	87,120	87,120
Minimum lot frontage (feet)	75	100	125	125
Minimum Front yard setback (feet)	15	20	20	20
Minimum Side yard setback (feet)	10	15	15 <sup>4</sup>	15
Minimum Rear yard setback (feet)	10	15	15	15
Maximum building height <sup>1,2,3</sup>	30	26	30	30
Maximum number of stories <sup>3</sup>	2	2	2	2
Maximum building coverage	See § 240-131.6.			
Maximum lot coverage	See § 240-131.6.			

### Dimensional Table Notes:

<sup>1</sup> Maximum building height allowances vary depending upon the roof pitch of the structure, with gable roofs having a slope of 7/12 or greater allowed the maximum building height; hip and other sloped roofs with a slope of 4/12 or greater are allowed five feet less than the maximum building height; and flat roofs prohibited except on one-story additions totaling less than 300 square feet

per parcel. For the purposes of determining building height, no more than 50% of the roof slope used in the calculation may be altered by dormers and other roof changes.

<sup>2</sup> Buildings in the floodplain that existed prior to November 6, 2009, may be elevated two feet above BFE or as required by the applicable law, provided that the building complied with building height regulations at the time of its construction.

<sup>3</sup> The second story must be set back at least two feet from the facade line of the floor below on two of the building's facades, and the second story floor area shall not exceed 80% area of the floor area immediately below it.

<sup>4</sup> In the Long Beach/Short Beach Neighborhood, to preserve and enhance views of Craigville Beach and the Centerville River, a view corridor shall be preserved using 20 feet of either side setback or, where side yard setbacks are less than 20 feet, the greater of either side yard setback existing on November 6, 2009. The view corridor shall remain free of view-obstructing buildings, structures, site improvements or landscaping other than low-growing plant material or existing natural vegetation for the entire depth of the property from the street to the river or beach.

### § 240-131.6. Coverage limitations.

[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

The following limitations apply to all development and redevelopment in the Craigville Beach Zoning District.

<b>Lot Size (square feet)</b>	<b>Maximum Building Coverage (Footprint) Allowance (square feet)</b>	<b>Maximum Lot Coverage Allowance</b>
1,300 to 4,999	1,100, plus 10.8% of lot area over 1,300	50%
5,000 to 7,499	1,500, plus 6% of lot area over 5,000	50%, but no more than 3,200 square feet
7,500 to 9,999	1,650, plus 6% of lot area over 7,500	3,200 square feet
10,000 to 14,999	1,800, plus 4% of lot area over 10,000	3,300 square feet
15,000 to 19,999	2,000, plus 6% of lot area over 15,000	3,400 square feet
20,000 to 34,999	2,300, plus 4% of lot area over 20,000	3,600 square feet
35,000 to 44,999	2,900, plus 4% of lot area over 35,000	3,600 square feet or 10%, whichever is greater
45,000 and above	3,300, plus 3% of lot area over 45,000	10%

### § 240-131.7. Neighborhood Overlay regulations.

[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

- A. Purpose. The Neighborhood Overlay regulations establish uses, dimensional requirements and design guidelines to preserve the distinctive character; allow continued use and enjoyment of properties and structures; make provisions for changes and expansions; protect and preserve scenic views and vistas; protect and improve natural resources; and limit damage from periodic flood events for each neighborhood within the Craigville Beach District.
- B. Historic and community character. These regulations will ensure that development and redevelopment in the CBD contribute to and do not detract from the historic character of the Craigville Beach area; that any proposed additions to historic structures shall be consistent with

the historic structure and shall be consistent with the character of the surrounding neighborhood, including elements such as building height, mass and orientation; and preserve views and ways to the water from public spaces, streets and ways.

- C. Applicability. Development and redevelopment shall be subject to the following additional requirements and regulations based upon the applicable Neighborhood Overlay.
- D. General performance standards.
- (1) The development complies with the setbacks and lot coverage requirements set forth herein, and is in character with surrounding structures, particularly structures that predate it unless relief has been granted by the SPGA in accordance with § **240-131.4D** and **E**.
  - (2) The development complies with the height limitations set forth herein.
  - (3) Exposed foundation walls for raised septic systems and/or elevated structures are prohibited; foundation walls shall be screened through the use of foundation plantings and/or the use of other natural materials.
  - (4) Stormwater management and erosion control for nonresidential uses comply with best management practices through low-impact development or other adaptive management practice.
  - (5) Up to 50 square feet of roof deck may be allowed atop the first or second floor of a structure if the railing and support structure for the roof deck are constructed fully below the tallest part of the roofline they are contained within.
  - (6) All new non-water-dependent development shall be set back at least 50 feet from the top of the coastal bank resource area. Change, alteration, or expansion of existing structures shall not be sited closer to the top of the coastal bank resource area than the existing development to the maximum extent feasible.
  - (7) Existing natural vegetation within the fifty-foot buffer area to salt marsh and undisturbed buffer areas 50 feet landward of the mean high-water mark of coastal water bodies shall be preserved to the maximum extent feasible.
  - (8) No direct untreated stormwater discharges shall be permitted into any coastal waters or wetlands, including discharges above or below the mean high water level. Stormwater discharge shall be located and treated the farthest practicable distance from wetlands and water bodies and shall be located a minimum of 50 feet from wetlands or water bodies.
- E. Long Beach/Short Beach Neighborhood.
- (1) Permitted principal uses: The following principal uses are permitted in the Long Beach/Short Beach Neighborhood Overlay area subject to the performance standards listed below.
    - (a) Single-family residence.
  - (2) Permitted accessory uses: Customary and incidental uses and structures are permitted in the Long Beach/Short Beach Neighborhood Overlay area subject to the use limitations and performance standards listed in § **240-131.7D**.
  - (3) Neighborhood performance standards. All development and redevelopment shall meet the following standards:
    - (a) No development or redevelopment shall be permitted within V Zones, except that existing structures may be changed or altered, provided that there is no increase in gross floor area, footprint, or intensity of use (including but not limited to increases in wastewater flow and impervious area) within the V Zone. This provision shall not be construed to include duly permitted docks and piers.

- (b) New septic systems shall be prohibited in V Zones except to upgrade existing failed systems where such systems pose a demonstrated threat to public health, water quality, or natural resources.
- (c) Any activity or development in a V Zone that creates an adverse effect by increasing elevation or velocity of floodwaters due to a change in drainage or flowage characteristics on the subject site, adjacent properties or any public or private way is prohibited. Any proposed activity shall not result in flood damage due to filling which causes lateral displacement of floodwaters that, in the judgment of the SPGA, would otherwise be confined to said area. The burden of proof for this standard rests with the applicant and shall require certification by a professional engineer.
- (d) Open foundations shall be designed to accommodate only the height required to elevate the lowest structural member two feet above the BFE in V Zones and one foot above BFE in A Zones. For all new construction and substantial improvements within the V Zones, the space below the lowest floor must either be free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

F. Craigville Beach Neighborhood.

- (1) Permitted principal uses. The following principal uses are permitted in the Craigville Beach Neighborhood Overlay area subject to the performance standards listed below.
  - (a) Single-family residence.
  - (b) Small-scale food service.
  - (c) Beach club.
  - (d) Cottage colony.
  - (e) Hotel or motel in existence as of July 16, 2008, that is lawfully established.
- (2) Permitted accessory uses. Customary and incidental uses and structures are permitted in the Craigville Beach Neighborhood Overlay area subject to the use limitations and performance standards listed in § **240-131.7D**.
- (3) Neighborhood performance standards. All development and redevelopment shall meet the following standards:
  - (a) No development or redevelopment shall be permitted within V Zones, except that existing structures may be changed or altered, provided there is no increase in gross floor area, footprint, or intensity of use (including but not limited to increases in wastewater flow and impervious area) within the V Zone.
  - (b) New septic systems shall be prohibited in V Zones except to upgrade existing failed systems where such systems pose a demonstrated threat to public health, water quality, or natural resources.
  - (c) Any activity or development in a V Zone that creates an adverse effect by increasing elevation or velocity of floodwaters due to a change in drainage or flowage characteristics on the subject site, adjacent properties or any public or private way is prohibited. A proposed activity shall not result in flood damage due to filling which causes lateral displacement of floodwaters that, in the judgment of the SPGA, would otherwise be confined to said area. The burden of proof for this standard rests with the applicant and shall require certification by a professional engineer.
  - (d) Open foundations shall be designed to accommodate only the height required to elevate the lowest structural member two feet above the BFE in V Zones and one foot above

BFE in A Zones. For all new construction and substantial improvements within the V Zones, the space below the lowest floor must either be free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

(4) Beach club design guidelines.

- (a) Purpose: to maintain public views to the water and to maintain the neighborhood's existing character with small-scale building masses and natural or traditional building materials.
- (b) Building height and massing. New construction on beach club properties shall have modest massings to relate to the small scale of most structures in the beachfront neighborhood. Any structure with a footprint of 3,000 square feet or more shall incorporate significant changes in massing to break up the facade and should integrate one-story massings into the design to relate the building to the surrounding smaller structures.
- (c) Building orientation. Buildings shall be oriented with the narrow end facing the street and the water to maximize public views of the water across the site. New buildings or complexes should not extend over more than 150 feet of the lot frontage, and efforts should be made to limit the expansion of existing buildings.
- (d) Maintaining views to water. Multiple buildings on one lot should be clustered close together to limit obstructed views of the water, or shall be separated from each other by 100 feet or more of road frontage to allow broad unobstructed views across the lot to the water.
- (e) Fences. Fences shall be of open construction and low profile (such as split rail and low picket fencing) to maintain public views to the water. Fences over three feet in height should be limited to screening loading and delivery areas adjacent to buildings, or modest trash collection areas. Screening fences should not extend farther than necessary beyond the building footprint to maintain public views.
- (f) Building materials. Exterior building materials shall be those traditionally used in the region or other naturally weathering materials, such as wood shingle, wood clapboard, or board and batten siding.

G. Centerville River North Bank Neighborhood.

- (1) Permitted principal uses. The following principal uses are permitted in the Centerville River North Bank Neighborhood Overlay area subject to the performance standards listed below:
  - (a) Single-family residence.
- (2) Permitted accessory uses. Customary and incidental uses and structures are permitted in the Centerville River North Neighborhood Overlay area subject to the use limitations and performance standards listed in § 240-131.7D.
- (3) Neighborhood performance standards. All development and redevelopment shall meet the following standards:
  - (a) Tree removal or vista pruning shall not interrupt the treeline as viewed from the south looking northward to the treeline.
  - (b) No development or redevelopment shall be permitted within V Zones, except that existing structures may be changed or altered, provided that there is no increase in gross floor area, footprint, or intensity of use (including but not limited to increases in wastewater flow and impervious area) within the V Zone.

- (c) Any activity or development in a V Zone that creates an adverse effect by increasing elevation or velocity of floodwaters due to a change in drainage or flowage characteristics on the subject site, adjacent properties or any public or private way is prohibited. A proposed activity shall not result in flood damage due to filling which causes lateral displacement of floodwaters that, in the judgment of the SPGA, would otherwise be confined to said area. The burden of proof for this standard rests with the applicant and shall require certification by a professional engineer.
- (d) Open foundations shall be designed to accommodate only the height required to elevate the lowest structural member two feet above the BFE in V Zones and one foot above BFE in A Zones. For all new construction and substantial improvements within the V Zones, the space below the lowest floor must either be free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

#### H. Craigville Village Neighborhood.

- (1) Permitted principal uses. The following principal uses are permitted in the Craigville Village Neighborhood Overlay area subject to the performance standards listed below.
  - (a) Single-family residence.
  - (b) Conference center.
- (2) Permitted accessory uses. Customary and incidental uses and structures are permitted in the Craigville Village Neighborhood Overlay area subject to the use limitations and performance standards listed in § **240-131.7D**.
- (3) Neighborhood performance standards. All development and redevelopment shall meet the following design guidelines:
  - (a) Purpose. Most buildings in the Craigville Village Neighborhood date from the late 1800s and early 1900s when the neighborhood developed as a Christian Camp Meeting Association. The neighborhood is still defined by its historic structures and their configuration around a central green, small street grid, and communal paths.
  - (b) Objectives.
    - [1] To preserve the character-defining features of the original camp meeting neighborhood, including its small lots, modest-scale structures, and orientation of buildings to public areas.
    - [2] To ensure that additions and alterations to structures are compatible with the existing scale and character of the building and preserve the original massing and unique architectural features of its historic buildings.
  - (c) Application. The design guidelines set forth herein do not apply to structures in existence as of the date of the adoption of §§ **240-131** through **240-131.8**, but shall apply to all new development, to any additions to existing structures, and to all reconstruction projects except as provided for in § **240-131.4F(1)(e)**.
  - (d) Building design. The guidelines shall apply to construction of new structures and expansions and alterations of existing structures.
    - [1] Preserve the original massing of historic structures (pre-1945).
    - [2] Additions should be attached to secondary or less prominent facades of the building (the side or rear facades), and should be stepped back from the front and rear corners of the building so as to preserve the original massing of the structure, including its roof form.

- [3] Work with modest massings. Additions should be scaled to be consistent with or smaller than the size of the original historic structure, following the neighborhood tradition of expanding small cottages incrementally with modest additions. Additions should generally have a lower roofline than the original structure to maintain the prominence of the original building, though some additions may be slightly taller than the original structure if attached to the original structure with a smaller connecting mass.
- [4] Roof forms. The roof pitch on new construction and additions should complement the roof pitch of the original historic structure and should maintain a pitch of at least six over 12.
- [5] Retain original architectural details and unique forms. Additions should be placed so as to limit the removal of distinctive architectural trim and features that are unique to the building. Additions and alterations should not interfere with character-defining features, such as open porches, steeply pitched roof forms, unique windows, and carpenter gothic trim along eaves and entries. Siding materials used on the original structure should be retained, though other regional siding materials may be appropriate on additions.

## § 240-131.8. Additional provisions.

[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

- A. Other regulations. The following provisions of the Barnstable Code are hereby incorporated into this regulation: § **240-7**, Application of district regulations; § **240-9C** and **D**; § **240-10**, Prohibited uses; § **240-34**, Floodplain District; § **240-43**, Accessory uses; § **240-46A** and **B**, Home occupations; Article **VI**, Off-Street Parking, §§ **240-52**, **240-53B** through **F**, as delimited only in the Craigville Beach neighborhood; and sign regulations, §§ **240-59** through **240-63**; Article **XI**, Growth Management, §§ **240-110** through **240-122**; Article **IX**, Site Plan Review; Article **XIII**, Administration and Enforcement §§ **240-123** and **240-124**; and § **240-125C**, Special permit provisions, as these provisions of the Barnstable Code cited in this section may be amended from time to time.  
[Amended 5-22-2014 by Order No. 2014-126]
- B. Conflicts. Unless otherwise stated, the requirements of the Craigville Beach District shall apply to uses and structures within the Craigville Beach District. In the event of a conflict, these regulations shall apply.
- C. Severability. The provisions of §§ **240-131** through **240-131.8** are severable. If any court of competent jurisdiction shall invalidate any provision herein, such invalidation shall not affect any other provisions of this chapter. If any court of competent jurisdiction shall invalidate the application of any provision of this chapter to a particular case, such invalidation shall not affect the application of said provision to any other case within the Town.