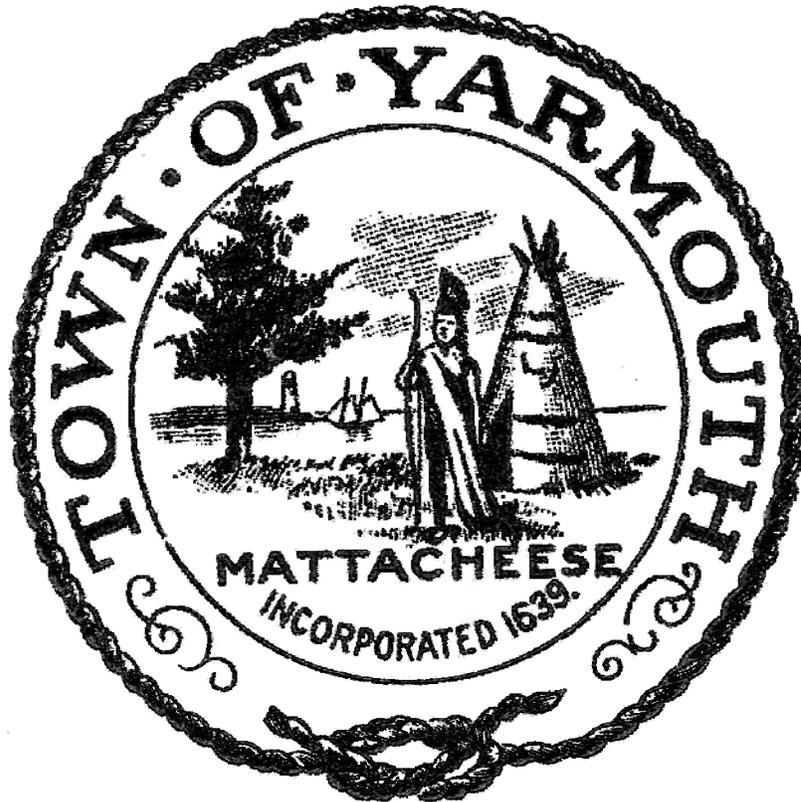


TOWN OF YARMOUTH

COMMONWEALTH OF MASSACHUSETTS



ZONING BYLAW

YARMOUTH PLANNING BOARD

AMENDED THROUGH OCTOBER 29, 2019

ZONING

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LEGISLATIVE HISTORY

This Zoning Bylaw has been revised and reorganized according to the provisions of Chapter 808 of the Acts of 1975, The Zoning Act, under Article 1 of the Special Town Meeting on April 11, 1978.

Revisions:

1. In the Special Town Meeting of December 5, 1978, and continued: under Articles 25, 28, and 36.
2. In the Annual Town Meeting of April 8, 1980, and continued: under Articles 54 and 55.
3. In the Special Town Meeting of January 7, 1981, and continued: under Articles 2 and 3.
4. In the Annual Town Meeting of April 13, 1982, and continued: under Articles 45, 46, 47, 48, 49, 50, 51, and 52.
5. In the Annual Town Meeting of April 12, 1983, and continued: under Articles 19, 20, 28, and 53.
6. In the Special Town Meeting of September 28, 1983, and continued: under Articles 14, 16, and 18.
7. In the Annual Town Meeting of April 10, 1984, and continued: under Articles 25, 26, 43, 44, and 46.
8. In the Special Town Meeting of August 29, 1984, and continued: under Articles 9 and 10.
9. In the Annual Town Meeting of April 9, 1985, and continued: under Articles 25, 26, 41, and 42.
10. In the Special Town Meeting within the Annual Town Meeting, April 10, 1985, and continued: under Article 3.
11. In the Annual Town Meeting of April 8, 1986, and continued: under Articles 19, 20, 26, and 38.
12. In the Special Town Meeting of January 7, 1987, and continued: under Article 20.
13. In the Annual Town Meeting of April 14, 1987, and continued: under Articles 20, 22, 23, 40, 41, and 42.
14. In the Special Town Meeting of September 14, 1987, and continued: under Articles 13, 14 15, 22, and 26.
15. In the Special Town Meeting of November 18, 1987, and continued: under Article 6.

16. In the Annual Town Meeting of April 12, 1988, and continued: under Articles 25, 40, 41, and 42.
17. In the Annual Town Meeting of April 11, 1989, and continued: under Articles 19, 35, 37, 38, 39, 40, 41, 42, 51, and 52.
18. In the Annual Town Meeting of April 10, 1990, and continued: under Articles 21, 22, 23, and 35.
19. In the Special Town Meeting of October 24, 1990, and continued: under Articles 8 and 16.
20. In the Annual Town Meeting of April 9, 1991, and continued: under Articles 16 and 25.
21. In the Annual Town Meeting of April 14, 1992, and continued: under Articles 17, 25, and 26.
22. In the Special Town Meeting of September 9, 1992: under Article 9.
23. In the Annual Town Meeting of April 13, 1993, and continued: under Articles 31, 32, and 34.
24. In the Special Town Meeting of February 16, 1994: under Article 1.
25. In the Annual Town Meeting of April 12, 1994, and continued: under Articles 16, 17, 18, 19, and 20.
26. In the Special Town Meeting of August 30, 1994: under Article 8.
27. In the Annual Town Meeting of April 11, 1995, and continued: under Articles 17, 18, 19, 20, and 25.
28. In the Special Town Meeting of August 29, 1995: under Articles 19, 20, and 21.
29. In the Annual Town Meeting of April 9, 1996, and continued: under articles 23, 24, and 26.
30. In the Special Town Meeting of April 10, 1996: under Article 5.
31. In the Special Town Meeting of July 15, 1996: under Article 2.
32. In the Annual Town Meeting of April 8, 1997, and continued: under Articles 20, 21, 22, 28, and 32.
33. In the Special Town Meeting of February 10, 1998: under Article 4.

34. In the Annual Town Meeting of April 14, 1998, and continued: under Articles 15, 16, 20, 21, 25, 27, 30, and 31.
35. In the Special Town Meeting of December 1, 1998: under Articles 6, 7, 8, 9, 10, and 11.
36. In the Annual Town Meeting of April 13, 1999, and continued: under Articles 18, 20, 21, 22, 26, 28, and 32.
37. In the Special Town Meeting of January 11, 2000: under Articles 13 and 15.
38. In the Annual Town Meeting of April 11, 2000, and continued: under Articles 17, 18, 23, and 24.
39. In the Special Town Meeting of February 6, 2001: under Articles 14, 15, and 16.
40. In the Annual Town Meeting of April 9, 2002, and continued: under Article 26.
41. In the Annual Town Meeting of April 9, 2003, and continued: under Articles 19, 20, 21, 22, 35, 37, and 39.
42. In the Annual Town Meeting of April 13, 2004, and continued: under Articles 13, 14, 15, 26, 33, and 37.
43. In the Special Town Meeting of January 11, 2005: under Articles 2, 3, 4, 5, and 7.
44. In the Annual Town Meeting of April 12, 2005, and continued: under Articles 20, 21, and 22.
45. In the Special Town Meeting of October 5, 2005: under Article 15.
46. In the Annual Town Meeting of April 11, 2006, and continued: under Articles 29, 30, 31, 32, 35, and 36.
47. In the Special Town Meeting of September 13, 2006: under Articles 11 and 13.
48. In the Annual Town Meeting of April 10, 2007, and continued: under Articles 37, 38, 40, 41, 42, 43, 44, 45, 46, and 49.
49. In the Special Town Meeting of December 11, 2007: under Articles 5, 6, 7, 8, 10 and 11.
50. In the Annual Town Meeting of April 8, 2008: under Articles 27, 28 and 29.
51. In the Annual Town Meeting of May 04, 2009: under Articles 15, 16, 17, 18, 35, 36, 38, 39, 40, 41 and 42.
52. In the Annual Town Meeting of May 03, 2010: under Articles 15, 16, 17 and 19.
53. In the Annual Town Meeting of April 04, 2011: under Articles 32, 33 and 34.

54. In the Annual Town Meeting of April 02, 2012: Under Article 25.
55. In the Special Town Meeting of October 22, 2012: Under Articles 7, 8 and 9.
56. In the Annual Town Meeting of April 01, 2013: Under Articles 29, 30, 31, 32, 33 and 34.
57. In Annual Town Meeting of April 8, 2014: Under Articles 30, 32, 33, 34 & 35.
58. In Annual Town Meeting of May 2, 2015: Under Articles 26, 27, 28, 29 & 30.
59. In Annual Town Meeting of May 7, 2016: Under Articles 28, 29, 30 & 31.
60. In Annual Town Meeting of May 6, 2017: Under Articles 25, 26, 27, 28 & 29.
61. In Annual Town Meeting of May 5, 2018: Under Articles 28, 30 & 31.
62. In Annual Town Meeting of May 4, 2019: Under Articles 40, 41 & 43.
63. In Special Town Meeting of October 29, 2019: Under Articles 4 & 5.

I. ADMINISTRATION AND PROCEDURE

100. PURPOSE

The purpose of this bylaw is to promote the health, safety, convenience and welfare of the inhabitants by dividing the town into districts and regulating the use and construction of buildings and premises therein.

101. ADMINISTRATION

101.1 Enforcement. This bylaw shall be enforced by the Building Commissioner or his/her duly authorized and qualified designee.

101.2 Professional Inspection. Construction on projects under a single building permit involving either one (1) or more structures (other than one or two-family dwellings), each containing thirty-five thousand (35,000) cubic feet of volume or more, or involving fifty (50) or more dwelling units, irrespective of type, shall be done with the inspection of a registered professional engineer or architect, retained by the developer. Such engineer or architect shall periodically, as requested by the Building Commissioner, attest that all work being done under his supervision is being done in accordance with the plans as certified under subsection 103.1.

101.3 Penalties. Any person violating any of the provisions of this bylaw shall be fined not more than three hundred dollars (\$300.00) for each offense. Each day that such violation continues shall constitute a separate offense.

101.4 Nondiscrimination. The administration and enforcement of this bylaw shall be done without regard to race, color, sex, age, physical handicap, religion or national origin.

102. BOARD OF APPEALS

102.1 Establishment. The Board of Appeals shall consist of five (5) members and such number of associate members as the Selectmen shall determine, who shall be appointed by the Selectmen and shall act in all matters under this bylaw in the manner prescribed by G.L. ch. 40A, 40B and 41, as amended.

102.2 Powers. The Board of Appeals shall have and exercise all the powers granted to it by G.L. ch. 40A, 40B and 41, as amended, and by this bylaw. The Board's powers are as follows:

102.2.1 To hear and decide applications for special permits upon which the Board is empowered to act under this bylaw, in accordance with subsection 103.2.

102.2.2 To hear and decide appeals or petitions for variances from the terms of this bylaw, including variances for use, with respect to particular land or structures. Such variance shall be granted only in cases where the Board of Appeals finds all of the following:

1. literal enforcement of the provisions of this bylaw would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.

2. The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures, but not affecting generally the zoning district in which it is located.
3. Desirable relief may be granted without either: substantial detriment to the public good; or nullifying or substantially derogating from the intent or purpose of this bylaw.

102.2.3 To hear and decide other appeals. Other appeals will also be heard and decided by the Board of Appeals when taken by:

1. Any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L., ch. 40A, as amended, or;
2. The Cape Cod Commission, or;
3. Any person, including any office or board of the Town of Yarmouth or of any abutting town, if aggrieved by any order or decision of the Building Commissioner or other administrative official, in violation of an provision of G.L. ch. 40A, as amended, or this bylaw.

102.2.4 To issue comprehensive permits. Comprehensive permits for construction may be issued by the Board of Appeals for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, upon the Board's determination that such construction would be consistent with local needs, whether or not consistent with local zoning, building, health or subdivision requirements, as authorized by G.L., ch. 40B, sec. 20 through 23, as amended.

102.2.5 To issue withheld building permits. Building permits withheld by the Building Commissioner acting under G.L. ch. 41, sec. 81Y, as amended, as a means of enforcing the Subdivision Control Law, may be issued by the Board of Appeals where the Board finds practical difficulty or unnecessary hardship and if the circumstances of the case do not require that the building be related to a way shown on the subdivision plan in question.

102.3 Public Hearings. The Board of Appeals shall hold public hearings in accordance with the provisions of G.L. ch. 40A, 40B and 41, as amended, on all appeals and petitions brought before it. Submission shall be in conformity with Sections 8 and 14 of Chapter 40A, which shall include payment of a filing fee to be set after a public hearing in accordance with Chapter 96-1 of the Yarmouth Bylaws.

102.4 Repetitive Petitions. Repetitive petitions for special permits, appeals and petitions for variances and applications to the Board of Appeals shall be limited as provided in G.L. ch. 40A, sec. 16, as amended.

102.5 Zoning Administrator. The Board of Appeals may appoint a Zoning Administrator in the manner and under the provisions of ch. 40A, sec. 13. The Zoning Administrator shall have those powers specifically delegated by vote of the Board of Appeals. Such powers may be modified, amended or restricted from time to time by vote of the Board.

103. PERMITS REVIEWS

103.1 Required Permits.

103.1.1 Compliance certification. Buildings, structures or land may not be erected, substantially altered or changed in use without certification by the Building Commissioner that such action is in compliance with then applicable zoning, or without review by him regarding whether all necessary permits have been received from those governmental agencies from which approval is required by federal, state or local law. Issuance of a building permit or certificate of use and occupancy, where required under the Commonwealth of Massachusetts State Building Code, may serve as such certification.

103.2 Special Permits.

103.2.1 Special Permit granting authority. Unless specifically designated otherwise, the Board of Appeals shall act as the special permit granting authority. Applications to the Board of Appeals for a special permit shall be filed with the Town Clerk. Applications to other special permit granting authorities shall be made directly to those authorities.

103.2.2 Criteria. Special permits shall not be granted unless the applicant demonstrates that no undue nuisance, hazard or congestion will be created and that there will be no substantial harm to the established or future character of the neighborhood or town. In addition, individual sections of the Zoning Bylaw contain supplemental special permit criteria for specific uses and types of development.

103.2.3 Public hearing. Special permits shall only be issued following public hearings held within sixty-five (65) days after filing with the special permit granting authority an application, a copy of which shall forthwith be given to the Town Clerk by the applicant.

103.2.4 Conditions. Special permits may be granted with such reasonable conditions, regulations or limitations as the special permit granting authority may deem necessary to serve the purposes of this bylaw.

103.2.5 Expiration. Special permits shall lapse if a substantial use thereof or construction has not begun, except for good cause, within twenty-four (24) months of special permit approval (exclusive of time required to pursue or await the determination of an appeal referred to in G.L. ch. 40A, sec. 17, as amended, from the grant thereof).

103.3 Site Plan Review. Projects developing or redeveloping under Section 414, VCOD, are not subject to this Section 103.3 and shall be regulated by Section 414.3.2 (VCOD Site Plan Review) and shall follow the procedures and requirements as set forth therein.

103.3.1 Objectives. The design of projects requiring submission of a site plan, pursuant to this section, shall comply with the following:

1. Internal circulation and egress from the site are such that traffic safety is protected and access via minor streets servicing single-family homes is minimized.

2. Reasonable use is made of building location, grading and vegetation to reduce visibility of parking areas from public ways.
3. Adequate access to each structure for fire and service equipment is provided. Installation of Yarmouth Fire Department (YFD) Lockbox(es) shall be required to ensure building and site access.
4. Utilities and drainage serving the site provide functional service to each structure and paved area in the same manner as required for lots within a subdivision, and fire protection provisions meeting Fire Department regulations are provided.
5. Drainage serving the site must comply with Section 304 – Stormwater Management.
6. The proposed development will: a) minimize adverse environmental impacts on such features as wetlands, flood plains, and aquifer recharge areas; b) minimize obstruction of scenic views from publicly accessible locations; c) preserve unique natural or historical features to be preserved on the site or within the Town of Yarmouth; d) maximize open space retention; e) avoid major topographic changes; and f) minimize removal of existing trees within the required buffer zones.
7. In or abutting residential districts, effective use is made of topography, landscaping and building placement to maintain, to the degree reasonable, the character of the neighborhood.

103.3.2 Applicability. Applications for building permits for new construction or additions for the following activities, if involving one thousand (1,000) square feet or more of new ground coverage by structures or paving, shall be subject to site plan review:

1. Cluster and planned residential development
2. Mobile home parks
3. Motels and guest houses
4. All other nonresidential uses requiring five (5) or more parking spaces.

Special Permit and/or Variances from Section 104.3.2(4) paragraph 2 shall go through formal Site Plan Review.

Projects developing under Section 415 (Registered Marijuana Dispensaries) are required to go through formal Site Plan Review.

In addition, the Building Commissioner may require a site plan review if he deems it necessary in order to determine zoning compliance.

103.3.3 Procedures. For applicable projects, Design Review per Section 103.4 must precede Site Plan Review. Applicants for building permits subject to site plan review shall submit copies

of a site plan, as outlined below. The Building Commissioner shall forward copies of the plan(s) to the Site Plan Review Team. The Site Plan Review Team shall consist of a representative of the Building Division, the Water Division, the Health Division, and the Fire Department and may, when deemed necessary, include representatives of the Community Development Department, the Conservation Commission, the Planning Division, the Engineering Division, and the Police Department. A Design Review representative shall sit on hearings as specified in Section 103.4.5. No building permit subject to this section shall be issued without review by the Site Plan Review Team unless twenty-five (25) days lapse from the date of submission without review by the Team.

103.3.4 Plans. Plans submitted under this section shall show the location and dimension of the lot, the exact location and size of any existing or proposed building, streets, and ways adjacent to the lot, existing and proposed topography, drives, parking, landscaping, park or recreation areas, the use of structures and land, screening, water, sanitary sewerage systems, storm drainage systems, zone lines, and easements. Such plans are to be prepared, except in the case of one or two-family dwellings, by a registered architect or engineer if such buildings contain thirty-five thousand (35,000) cubic feet or more of space, as defined in 231 CMR 2.02 (c). Projects developing under Section 415 (Registered Marijuana Dispensaries) shall provide supplemental submittal information as required by Section 415.4.

103.3.5 Requirements. The Site Plan Review Team shall review a site plan to determine whether or not the requirements of the Zoning Bylaw are satisfied.

103.3.6 Compliance. In the case of land or buildings subject to this section, no occupancy permit for full or partial occupancy of the site shall be issued until all required site improvements serving the structure to be occupied have been completed, or a bond for their completion has been posted. Where deemed necessary the Building Commissioner may require certification and/or as-built plans from a registered professional engineer, registered land surveyor, or registered architect that the required improvements have been made in accordance with the approved plans.

103.4 Design Review

103.4.1 Purpose. The purpose of this section is to establish an architectural and site design review process for all commercial and mixed-uses within the design review jurisdiction.

103.4.2 Applicability and Jurisdiction. All commercial uses located south of Route 6 and all projects subject to the provisions of Bylaw sections 404, 411, 414 and 415 shall be subject to design review. All projects developing under Section 104.3.2(4) paragraph 2 shall be subject to design review.

103.4.3 Goals and objectives. The goals of the design review process shall be to revitalize all commercial uses south of Route 6 by:

1. Improving the aesthetic quality of buildings and sites therein;
2. Promoting attractive and viable commercial districts, and;

3. Providing a process for review of all changes in land use, the appearances of structures, or the appearances of sites within the districts.

The objectives of the design review process are to:

1. Preserve the natural and cultural patterns of the surrounding landscape whenever possible.
2. Encourage incorporation of public amenities, including, but not limited to, sidewalks, benches, and bike racks within commercial developments. Encourage clustering of buildings in large developments to retain more open space.
3. Building is encouraged to be of a style which complements and promotes traditional Cape Cod architectural styles and character with proper scale, proportion and roof pitch. Traditional building materials (clapboards and cedar shingles) are recommended for usage. Colors of clapboard and trim should be muted colors of traditional usage, not designed to shock or stand out.
4. Identify the internal parking circulation system in a manner which will reduce curb cuts, improve landscaping and traffic flow, allow for proper turning radius and parking space, encourage pedestrian uses and access, screen trash receptacles, and minimize any accessory signage.

103.4.4 Design Review Authority.

1. The Planning Board shall review all projects in the Jurisdiction that are located in the HMOD2 for compliance with the Yarmouth Architectural and Site Design Standards, as adopted and from time-to-time amended by the Planning Board. Such review shall take place at a duly posted and advertised hearing and after notification of those proceedings by mail to all abutters and abutters to abutters within 300 feet of a project locus.
2. The Planning Board shall review all projects within the Jurisdiction that are submitted for approval under Bylaw section 411, the R.O.A.D. Bylaw, for compliance with the Yarmouth Architectural and Site Design Standards, as adopted and from time-to-time amended by the Planning Board.
3. The Design Review Committee shall review all applications within the VCOD pursuant to Section 414.
4. The Design Review Committee shall review all other commercial and mixed-use projects within the Jurisdiction, and all projects submitted under Section 104.3.2(4) paragraph 2, and make recommendations based on the Yarmouth Architectural and Site Design Standards. Recommendations shall concern the conformity of the proposed actions with the goals and objectives outlined in section 103.4.3 and may include such items as building style and features, architectural details, lighting, landscaping, materials encouraged, examples of craftsmanship, height and proportions, roof shape and pitch, directional expression, relationship of building and spaces, and other considerations as deemed appropriate by the Design Review Committee.

5. The Design Review Committee shall be the Design Review Authority to review all projects developing pursuant to Section 415 (Registered Marijuana Dispensaries) for mandatory compliance with the Yarmouth Architectural and Site Design Standards, as adopted and from time-to-time amended by the Planning Board.

103.4.5 Design Review Representative. The design review authority shall designate a representative to participate in Site Plan Review, as outlined in section 103.3.3

1. For design review of all projects in the Jurisdiction submitted in conjunction with Bylaw section 404.2, the Motel Bylaw and in conjunction with Bylaw section 411, the Revitalization Overlay Architectural District (R.O.A.D.) Bylaw, A Planning Board member (or its designee) shall act as the Design Review Representative on the Site Plan Review Team.
2. For design review of all other commercial and mixed-use projects within the jurisdiction, except VCOD, and all projects submitted under Section 104.3.2(4) paragraph 2, a Design Review Committee member shall act as the Design Review Representative on the Site Plan Review Team.

103.4.6 Procedures. Design Review must precede Site Plan Review. Applicants for projects submitted in conjunction with Bylaw sections 404, 411 and Section 104.3.2(4) paragraph 2 must submit 13 copies of the architectural building elevations, certified site plan, lighting plans, landscape plans, and sign plans. Applications for development under Bylaw Section 415 (Registered Marijuana Dispensaries) shall submit 6 copies of the plans outlined above plus supplemental information outlined in Bylaw Section 415. Applicants for development under the VCOD shall provide application materials in accordance with Section 414.3.2. Applicants for all other applicable projects within the Jurisdiction must submit only 6 copies of the site plan and architectural elevations but are encouraged to submit lighting plans, landscape plans and sign plans for review. Application materials must be submitted to the Community Development Department for scheduling with the proper Review Authority.

104. APPLICABILITY

104.1 Other Regulations. This bylaw shall not interfere with, or annul any bylaw, rule, regulation or permit, provided that, unless specifically excepted, where this bylaw is more stringent, it shall control.

104.2 Conformance. Construction or operations under a building or special permit issued before the first publication of notice of the public hearing of such bylaw or amendment, shall conform to any subsequent amendment of this bylaw unless the use or construction is commenced within a period of six (6) months after the issuance of the permit, and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable, all as provided in G.L., ch. 40A, sec. 6, as now or hereafter amended.

104.3 Nonconformancy. The lawful use of any structure or land existing at the time of enactment or subsequent amendment of this bylaw may be continued, although such

structure or use does not conform with provisions of the bylaw, subject to the following conditions and exceptions, except for properties developing or redeveloping under Section 414, VCOD, in which nonconformity is regulated by Section 414.4 and not this Section 104.3:

104.3.1 Abandonment. A nonconforming use which has been abandoned or discontinued for a period of two (2) years or more shall not be reestablished, and any future use shall conform with the bylaw.

104.3.2 Change, Extension or Alteration

1. Lawfully pre-existing non-conforming single- and two-family structures, and their accessory structures, and lawfully pre-existing single-family and two-family structures, and their accessory structures, located on non-conforming lots, may be altered, extended or razed and replaced provided the alteration, extension or raze and replacement:
 - A. itself conforms to the applicable bylaw requirements, and does not involve a change of use, or;
 - B. does not otherwise increase the non-conforming nature of the structure. These determinations shall, in the first instance be made by the Building Commissioner as the Zoning Enforcement Officer. For purposes of this section, any alteration or extension of such a structure which will remain within the pre-existing footprint and height of the structure or raze and replacement which meets the current minimum setback and does not exceed the current maximum building height and current maximum building coverage requirements shall be presumed not to be an increase in the non-conforming nature of the structure.
2. Except as provided in paragraph 1 above, such single-family and two-family structures, and their accessory structures, may be altered, extended or razed and replaced only upon Special Permit from the Board of Appeals, if it is determined that such alteration, extension or raze and replacement will not be substantially more detrimental to the neighborhood than is the existing non-conforming structure.
3. Other lawfully pre-existing, non-conforming structures may be altered, extended, razed and replaced by Special Permit from the Board of Appeals if it is determined that:
 - A. the alteration, extension or raze and replacement either:
 - (1.) conforms to the current dimension requirements of the bylaw or does not increase the existing non-conforming nature of the structure, or;
 - (2.) will not be substantially more detrimental to the neighborhood, zoning district, or Town, and;
 - B. the extension, alteration, or raze and replacement will not cause or contribute to any undue nuisance, hazard or congestion, and;
 - C. strict enforcement of the current bylaws would result in undue hardship to the property or its owner.

4. Except as provided herein, other lawfully pre-existing non-conforming uses may be changed or extended only upon Special Permit from the Board of Appeals, if it is determined that such change or extension will not be substantially more non-conforming and will not be substantially more detrimental to the neighborhood, zoning district or Town than is the existing non-conforming use. Once changed to a conforming use, no structure or land shall be permitted hereunder to revert to a non-conforming use. Any such non-conforming use may be changed to a conforming use if the Building Commissioner determines that such a change will not be substantially more detrimental to the neighborhood than is the existing use.

A Special Permit may be issued for a hotel or motel located in the B2 Business Zone or within that portion of the R25 Residential Zone located south of Route 28 and licensed as such on or before April 11, 2006, and for which a Special Permit authorizing conversion to condominium form of ownership was issued under Bylaw Section 104.4 on or before said date, authorizing a change in use to Use Code A12 multi-family use provided further that such hotel or motel is not located in the HMOD1 or HMOD2 Zoning Districts and further provided that the Board of Appeals finds all of the following:

- A. That each single family residential unit contains not less than 500 square feet of living area, as described in the condominium documents and floor plans;
- B. That the site contains facilities providing at least 1.5 parking spaces per residential unit;
- C. That the number of proposed residential units does not exceed the number of permitted motel units;
- D. That there is no increase in either of the following:
 - (1.) in the gross area of the proposed residential use over that used for the existing motel or hotel units, or
 - (2.) in the site septic flow;
- E. That the Board of Health has determined that the septic system, either existing or as proposed, is in good operating condition and is suitably sized and designed to accommodate the septic flow;
- F. That each of the residential dwelling units has or will be equipped with at least the minimum kitchen facilities as required under State health codes for a dwelling unit, and;
- G. That the buildings containing the residential condominium units contain hardwired heat and/or smoke detector systems connected to a central panel.

The Board of Appeals shall have the right to impose such reasonable conditions on the special permit as it deems appropriate. Projects shall be subject to the

inclusionary zoning provisions of section 412.2. All Special Permit applications and/or Variances for this section of the Bylaw shall include the following:

1. Design Review Comments: Applicants shall go through the Formal Design Review process with the Design Review Committee (DRC) for advisory review and recommendations based on the Yarmouth Architectural and Site Design Standards.
 2. Site Plan Review Comments: Applicants shall go through the Formal Site Plan Review (SPR) process.
 3. Site Plan and Architectural Plans/Elevations showing proposed improvements to meet the goals and objectives of Design Review and Site Plan Review. Architectural Plans shall identify units proposed to meet the inclusionary zoning provisions of section 412.2.
5. Deleted (ATM 4/9/03).
6. For purposes of this section, any expansion or alteration of a structure which will occur within the footprint and height of the existing structure shall be presumed not to increase its non-conforming nature or effect. A structure's "footprint" shall extend to the exterior walls of the foundation or to the exterior walls of the structure, whichever is greater. Any change of use to a use which is presently allowed at the site under the current use regulation schedules shall be presumed not to be substantially more detrimental to the neighborhood, district or town than is the present use.

104.3.3 Restoration. Necessary repairs and rebuilding after damage by fire, storm or similar disaster are hereby permitted, provided that they are accomplished within two (2) years of the event and do not substantially change the character or size of the buildings, nor the use to which they were put prior to such damage. Such buildings reconstructed within a Special Flood Hazard Area identified in Section 403 – Flood Area Provisions, may increase the height of the new structure by-right to accommodate the Base Flood Elevation and to meet minimum Massachusetts Building Code requirements, provided current maximum Building Height requirements are not exceeded. Structures to be constructed after the two (2) year time period shall conform to the current applicable bylaw requirements of Section 104.3.2 (Change, Extension or Alteration).

104.3.4 Nonconforming Lots. Except as provided below, lots which do not conform to the dimensional requirements of this by-law, as amended, shall not be individually built upon unless combined and/or re-subdivided so as to meet the revised dimensional requirements.

1. Single lots. Any increase in area, frontage or other dimensional requirements of this zoning bylaw shall not apply to a lot for single family residential use which, at the time of recording or endorsement, whichever occurs sooner, conformed to then existing requirements, had less than the new requirement but at least five thousand (5,000) square feet of area and fifty (50) feet of frontage and was not held in common ownership with any other contiguous lot at the time of, or since, the effective date of the increased requirements.

2. Two (2) or three (3) adjoining lots. Any increase in area, frontage or other dimensional requirements of this zoning bylaw shall not apply to a lot for single family residential use, provided the plan for such lot was duly recorded or endorsed and such lot was held in common ownership with contiguous lots and had less than the dimensional and density requirements of the newly effective zoning but contained at least seven thousand five hundred (7,500) square feet and seventy-five (75) feet of frontage, or contained fifteen thousand (15,000) square feet and fifty (50) feet of frontage if approved under section 203.2 of this bylaw. This exemption shall not apply to more than three (3) such adjoining lots held in common ownership.
3. Definitive and Approval Not Required Plans. Provided in G.L., ch. 40A, sec. 6, as amended.
4. Business and Industrial Lots. In a B1, B2, or B3 District, or in the VCOD, any increase in area or frontage of this zoning bylaw shall not apply to a lot for business or industrial use which, at the time of recording or endorsement, whichever occurs sooner, conformed to then existing requirements, had less than the new requirement but at least eight thousand five hundred (8,500) square feet of area and fifty (50) feet of frontage and was not held in common ownership with any other contiguous lot at the time of, or since, the effective date of the increased requirements. Contiguous lots in common ownership shall be combined and/or re-subdivided so as to meet the revised dimensional and area requirements with the exception that, except as hereinafter set forth in this paragraph, area and/or lot frontage dimensional requirements of this Zoning Bylaw shall not apply to a lot in a B1, B2, or B3 zoning district, or in the VCOD, for allowed uses within said zoning districts or uses allowed by Special Permit therein, provided a plan for such lot was approved or endorsed by the Planning Board on or before June 3, 1996, duly recorded, filed, or registered and such lot was not held in common ownership with more than one abutting or contiguous lot as of June 3, 1996, and provided said lot contains at least ten thousand (10,000) square feet of non-wetland lot area and seventy-five (75) feet of lot frontage. The minimum required frontage may be reduced to fifty (50) feet if the lot is capable of containing a square each side of which is equal to seventy-five (75) feet. The width of any lot between the street line and the proposed building setback line shall be no less than twenty (20) feet. No point along any side of the above requisite square shall exceed five hundred (500) feet from the street. Measurement of this distance to the street abutting the lot shall be taken within the lines of the lot.
5. Other Nonconforming Residential Lots. Except as set forth in this paragraph, area, lot frontage or other dimensional requirements of this zoning bylaw shall not apply to a lot for single-family residential use, provided a plan for such lot was approved or endorsed by the Planning Board on or before June 3, 1996, duly recorded, filed, or registered and such lot was not held in common ownership with more than two abutting lots as of June 3, 1996; as provided said lot contains at least ten thousand (10,000) square feet of non-wetland lot area and either seventy-five (75) feet of lot frontage or fifty (50) feet of lot frontage if the minimum dimensional requirements of Section 203.2 of this zoning bylaw are met, each side of the square described therein being seventy-five (75) feet. The minimum front yard setback for such a lot shall be pursuant to this bylaw Section 203.5 and footnote 1 thereof. The minimum side yard setbacks for such a lot shall be as set forth in Section 203.5 of this bylaw, but not more than the average of the setbacks of the

residential dwellings on the lots next thereto on either side, but not less than six (6) feet, nor less than twelve (12) feet from any other building. The minimum rear yard setback for such a lot shall be as set forth in Section 203.5 of this bylaw, but not more than the average of the rear yard setbacks of the building(s) on the lot(s) abutting thereto, but not less than twelve (12) feet. The maximum building coverage for such a lot shall be in accordance with Section 203.5 of this bylaw.

104.3.5 Other Adjoining Non-conforming Lots

1. Purpose: The purpose of this sub-section is to provide for the orderly, efficient, and appropriate combination and/or re-division of multiple non-conforming lots where there is insufficient land to permit the resulting lot(s) to comply with the current dimensional requirements of the Bylaw. The procedures and relief authorized herein are intended to be considered in conjunction with, and not in place of, any other procedures with which the petitioners must comply, including those of the Subdivision Control Law and the Rules and Regulations of the Planning Board. It is the intention of this sub-section to accomplish maximum feasible compliance with the intent and purpose of the current zoning bylaws where full compliance is not possible but where development of the available land may otherwise be accomplished without substantially derogating from the intent and purposes of the bylaws.
2. When the owner or owners of abutting lots, whether or not any of such lots are currently developed, wish to combine or redivide such lots, but where one or more of the existing lots do not conform to the current dimensional requirements, and where one or more of the resulting lots will not conform to the current dimensional requirements, such combinations or redivisions may be allowed by Special Permit from the Board of Appeals, upon the following conditions (also see Section 104.3.5, paragraph 5 for other applicable provisions):
 - A. the combination or re-division does not increase the number of non-conforming individually buildable lots over the number of such lots as presently exist;
 - B. the combination or re-division shall not increase any pre-existing non-conformity nor create any new non-conformity as to any existing structure or use of the lots involved or affected by the combination or re-division;
 - C. if more than one adjoining vacant, non-conforming lot is created by, or is the result of the combination or redivision, it/they may be approved for construction of a single family residence thereon provided that each lot:
 - (1.) is substantially less non-conforming than the pre-existing lot(s) from which it was created;
 - (2.) has at least 75% of the area and frontage required for new lots in the zoning district;
 - (3.) is consistent with or larger than the other residential lots in the neighborhood, and;

- D. the development and use of all of the resulting and affected lots as proposed would be consistent with the current and future development of the neighborhood and zoning district, would not cause or substantially contribute to any undue nuisance, hazard, or congestion in the neighborhood or zoning district, would substantially promote the intent and purpose of the Bylaws currently in effect, and the entire combination or redivision proposal is consistent with the intent and purpose of this sub-section.
3. Conditions, Restrictions, and Limitations: With respect to each and every lot created or altered by such recombination or redivision, the Board of Appeals, in granting such a Special Permit, may impose reasonable restrictions, conditions, and limitations, and may, consistent with the purposes and objectives of this section, designate certain of the non-conforming lots or parcels as non-buildable lots or parcels which will not thereafter be built upon. Such conditions may include, without limitation, any conditions intended to insure compliance with the foregoing standards or to minimize any adverse effects of the development of the non-conforming lot, or to promote the purpose of the zoning bylaw or of the particular zoning amendment(s) which rendered the lot non-conforming, including:
- A. limitations or restrictions on the maximum allowable size and location of the principal and accessory structures or improvements,
 - B. limitations or restrictions on the alterations of the existing topography and other site conditions or improvements of the lot, including those associated with the installation of a septic system,
 - C. requirements for the preservation of natural buffers or vegetation or for the creation of new buffers or plantings so as to minimize the effect of any side yard or setback non-conformity or encroachment or impact upon abutting lots or upon the neighborhood,
 - D. limitations on the allowable present or future development or use of the site, including, where appropriate, restrictions and/or prohibitions of accessory or other uses, home occupations, and family related apartments.
4. Nothing in this section shall be intended to prevent the addition of land area to an otherwise buildable or developed lot, provided that such addition renders the resulting lot less non-conforming and does not create any additional non-conforming building lots, and does not otherwise make any other lot more non-conforming.
5. Perimeter Plans: When an owner of a developed property wishes to combine the developed lot with one or more abutting non-developed lots, and where the resulting lot will not conform to the current dimensional requirements, but will be less nonconforming than the individual lots, such combination may be done by-right. This Perimeter Plan shall combine existing lots, with no new lines drawn indicating a division of land, and shall be done in accordance with M.G.L. Chapter 41, Section 81X, and recorded at the Barnstable Registry of Deeds.

104.4 Condominium Conversion.

104.4.1 Any legally existing conforming or nonconforming structure or use may be converted to a condominium form of ownership with a Special Permit from the Board of Appeals if the Board of Appeals finds that there is no change of use, that the declaration of condominium document(s) explicitly define the existing use (e.g. seasonal use, time sharing use, number of units, existence or absence of kitchen facilities, etc.) and that the "declaration of condominium document(s)" is written with proper management authority to insure maintenance and repair of public health and safety aspects (e.g. water lines, sewage facilities, etc.) of the property being converted. The Site Plan Review Team may review condominium documents before application to the Board of Appeals, at the discretion of the Building Commissioner.

104.4.2 A special permit may be issued for an entire subdivision based upon a typical condominium unit and lot plot plan, even though said units and lots will vary within said subdivision. Any fees shall be charged upon a single special permit.

104.4.3 Deleted (ATM 04/11/06).

105. VALIDITY. The invalidity of any section or provisions of this bylaw shall not invalidate any other section or provisions thereof.

106. AMENDMENT. This bylaw and its map may be amended in accordance with the procedures described in G.L. ch. 40A, sec. 5, as amended, by the submission to the Board of Selectmen of a proposed amendment by the Board of Selectmen, Board of Appeals, Planning Board, an individual owning land to be affected by said amendment, or by citizens' petition pursuant to G.L. ch. 39, sec. 10, provided that the applicant, if other than a Town board or committee, shall, prior to a public hearing by the Planning Board, pay the cost of notice of hearing, including mailed notices, and reasonable costs of processing the proposed amendment and holding the public hearing.

II. DISTRICT REGULATIONS

200. RESERVED

201. ESTABLISHMENT OF DISTRICTS

201.1 Classes of Districts. The Town of Yarmouth is herewith divided into the following classes of districts:

Residential (Res.): R-87, R-40, R-25, RS-40
Business: B1, B2, B3
Floodplain Zones: VE, AE, AO, X
Municipal Use (MU)
Adult Entertainment District (AED)
Revitalization Overlay District (ROAD)
Medical Services Overlay District (MOD)
Hotel/Motel Overlay District 1 (HMOD1)
Hotel/Motel Overlay District 2 (HMOD2)
Village Centers Overlay District 1 (VC1)
Village Centers Overlay District 2 (VC2)
Village Centers Overlay District 3 (VC3)
Village Centers Overlay District 4 (VC4)
Registered Marijuana Dispensary Overlay District (RMDOD)

201.2 Zoning Map. B1, B2, B3, AED, MU, APD, MOD, HMOD1, HMOD2, ROAD, all districts of the VCOD, RMDOD and all residential districts are defined and bounded as shown on the map entitled "Official Zoning Map of the Town of Yarmouth," dated November 01, 2004, as most recently amended. This map and all explanatory matter thereon is hereby made part of this bylaw.

201.3 (Deleted)

201.4 – Floodplain Zones. The Floodplain Zones include all special flood hazard areas within the Town of Yarmouth designated as Zone AE, AO, and 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 (NFIP). The map panels of the Barnstable County FIRM that are wholly or partially within the Town of Yarmouth are panel numbers 25001C0557J, 25001C0559J, 25001C0567J, 25001C0569J, 25009C0576J, 25009C0577J, 25009C0578J, 25009C0579J, 25009C0583J, 25001C0586J, 25001C0587J, 25001C0588J, 25001C0589J, 25001C0591J, 25001C0782J, and 25001C0801J, dated July 16, 2014. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Building Division, the Engineering Division, the Planning Division, and the Town Clerk.

201.5 B1. In a B1 District the rear boundary line shall be the existing rear boundary lot lines as of March 15, 1946, not to exceed, however one thousand two hundred (1,200) feet in depth.

201.6 B2. In a B2 District the rear boundary line shall be the existing rear boundary lot line as of June 24, 1971 not to exceed, however, one thousand two hundred (1,200) feet in depth.

201.7 Rear Boundary Lot Line. The "rear boundary lot line," for purposes of district definition, is defined as that boundary line of a lot shown on a plan of land or described by deed, recorded with the Barnstable County Registry of Deeds, which is opposite the street line of Route 28.

201.8 Lots in Two Districts. Where a district boundary line divides a lot in existence at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than thirty (30) feet into the more restricted portion, provided that the lot has frontage on a street in the less restricted district.

202 USE REGULATIONS.

202.1 Application. No building or structure shall be erected and no premises shall be used, except as set forth in the Use Regulations Schedule, or in other sections of this bylaw. If a use is not specifically allowed, by right or special permit, it shall be considered to be not allowed unless an appeal is taken under section 102.2.3 and it is shown beyond a reasonable doubt to be of similar nature and at least no more noxious nor detrimental to the welfare of the neighborhood than a specifically allowed use.

Other uses specifically prohibited in the Aquifer Protection Overlay District, are listed in Bylaw section 406.4.1.

The various classes and subclasses of uses listed here come, generally, from the North American Industry Classification System, as amended. While the manual may be used from time to time as a guide for clarification, the final application shall be as the "common man" would interpret these uses in conjunction with the intent below.

202.2 Intent. It is the intent of this section to promote a choice in housing types, including that for transients and broaden the economic base of the town and create employment while at the same time protecting the public health by preserving air, water and groundwater quality and enhancing the public welfare through regulations, or banning land uses which are noisy, dusty, dirty, smelly, dangerous or otherwise a nuisance to the public at large.

Note: These last, – noisy, etc., statements are to be considered away from the place of activity, so that, while a bowling alley may be noisy to a bowler, it will not be so to the public driving past.

202.3 More Than One Use. Where a proposed use might be classified under more than one of the following classes, the more specific classification shall determine permissibility; if equally specific, the more restrictive shall prevail.

202.4 Symbols. The symbols used in the Use Regulation Schedule shall mean the following:

Yes – Permitted

No – Prohibited

BA – Permitted only under a Special Permit issued by the Board of Appeals

PB – Permitted only under a Special Permit issued by the Planning Board

202.5 Use Regulation Table	Res.	RS-40	B1 ²¹	B2 ²¹	B3 ²¹	RMDOD ⁴⁴	MU	APD	AED	MOD	HMOD1	HMOD2	VC1	VC2	VC3	VC4
A. RESIDENTIAL																
A1 Single-family dwelling	yes	yes	yes	yes	no	no	yes	yes	no	yes	yes	yes	no ⁴¹	no ⁴¹	no ⁴¹	no ⁴¹
A2 Two-family dwelling ⁴⁸	yes	no	yes	PB ²⁴	no	no	yes	yes	no	yes	yes	yes	no ⁴¹	no ⁴¹	no	no
A3 Multi-family dwelling (in Cluster/PRD only)	BA ¹⁴	no	BA ¹⁴	BA ¹⁴	no	no	BA ¹⁴	BA ¹⁶	no	BA ¹⁴	no	no	no	no	no	no
A4 Cluster/Planned Residential development	PB	no	PB	PB	no	no	PB	PB	no	PB	no	no	no	no	no	no
A5 Boarding or Lodging house	BA	no	BA	BA	BA	no	BA	BA ¹⁶	BA	BA	PB	PB	no	BA	no	no
A6 Guesthouse, Inn, or Bed & Breakfast Inn	BA	no	BA	BA	BA	no	BA	BA ¹⁶	BA	BA	PB	PB	BA	BA	no	no
A7 Hotel or motel	no	no	no	yes ^{42,43}	no	no	no	PB	no	no	yes ^{42,43}					
A8 Mobile home	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
A9 Mobile home park	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
A10 Accessory apartments	BA	BA	BA	BA	no	no	no	BA	no	BA	no	no	no	no	no	no
A11 Employee Housing at non Motels/Hotels	no	no	no	yes ⁴⁷	no	no	no	no	no	BA	no	no	no	no	no	no
A11A Seasonal Employee Housing at Motels/Hotels	no	no	no	yes ⁴³	no	no	no	no	no	yes ⁴³	yes ⁴³	yes ⁴³	yes ⁴³	yes ⁴³	yes ⁴³	yes ⁴³
A12 Multi-family	no	no	no	no ²⁴	no	no	no	PB ¹⁶	no	BA	no ²⁴	no	yes ²⁸	yes ²⁸	yes ²⁸	yes ²⁸
B. AGRICULTURE																
B1 Agricultural production of Crops	yes ⁷	yes ⁷	yes ⁷	yes ⁷	yes ⁷	no	yes ⁷	yes	yes ⁷	yes ⁷	yes ⁷	yes ⁷	yes ⁷	yes ⁷	yes ⁷	yes ⁷
B2 Agricultural production of livestock (except on feed lots - then no)	yes ⁷	yes ⁷	yes ⁷	yes ⁷	yes ⁷	no	yes ⁷	yes	yes ⁷	yes ⁷	yes ⁷	yes ⁷	yes ⁷	yes ⁷	yes ⁷	yes ⁷
B3 Agricultural service agencies	no	no	yes ⁴	yes ²	BA	no	no	BA ¹⁶	BA	no	yes ²	no	no	no	no	no
B4 Forestry, fishing, hunting	yes	yes ¹⁰	yes	yes	yes	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
C. MINING AND MINERAL EXTRACTION																
C1 Mining & mineral extraction (including sand & gravel pits)	BA	no	no	BA	BA ⁹	no	BA	BA ^{16,17}	BA ⁹	BA	no	no	no	no	no	no
D. CONSTRUCTION																
D1 General building contractor's yard	no	no	no	no	yes ⁹	no	no	BA ¹⁶	yes ⁹	no	no	no	no	no	no	no
D2 Heavy construction contractor's yard	no	no	no	no	BA	no	no	BA ¹⁶	BA	no	no	no	no	no	no	no
D3 Special trade contractor's yard	no	no	no	no	yes ⁹	no	no	BA ¹⁶	yes ⁹	no	no	no	no	no	no	no
E. MANUFACTURING																
E1 Food & kindred products (*except no manufacturing of fats, oils & shortening)	no	no	no ³	no	yes ^{9*}	no	no	BA ¹⁶	yes ^{9*}	no	no	no	no	no	no	no
E2 Tobacco products	no	no	no ³	no	yes ⁹	no	no	BA ¹⁶	yes ⁹	no	no	no	no	no	no	no
E3 Textile mill products (*except no dyeing, finishing of yarn & thread mills or coated fabrics)	no	no	no ³	no	yes ^{9*}	no	no	BA ¹⁶	yes ^{9*}	no	no	no	no	no	no	no
E4 Apparel & other textile products, leather & leather products(*except no for tanning & finishing)	no	no	no ³	no	yes ^{9*}	no	no	BA ¹⁶	yes ^{9*}	no	no	no	no	no	no	no
E5 Lumber & wood products (*except wood preserving BA, plywood & particle board BA)	no	no	no ³	no	yes ^{9*}	no	no	BA ¹⁶	yes ^{9*}	no	no	no	no	no	no	no
E6 Furniture & fixtures	no	no	no ³	no	yes ⁹	no	no	BA ¹⁶	yes ⁹	no	no	no	no	no	no	no
E7 Paper & allied products (*except BA for manufacture of products from purchased paper & allied material)	no	no	no ³	no	no*	no	no	BA ¹⁶	no*	no	no	no	no	no	no	no

202.5 Use Regulation Table	Res.	RS-40	B1 ²¹	B2 ²¹	B3 ²¹	RMDOD ⁴⁴	MU	APD	AED	MOD	HMOD1	HMOD2	VC1	VC2	VC3	VC4
E8 Printing & publishing (*except BA for printing)	no	no	yes ^{9,18}	yes ^{9,18}	yes ^{9*}	no	no	BA ¹⁶	yes ^{9*}	no	no	no	no	no	no	no
E9 Chemicals & allied products	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
E10 Petroleum & coal products	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
E11 (Deleted 12-11-07)						no										
E12 Stone, clay & glass products	no	no	no ³	no	yes ⁹	no	no	BA ¹⁶	yes ⁹	no	no	no	no	no	no	no
E13 Primary metal industries	no	no	no ³	no	no	no	no	no	no	no	no	no	no	no	no	no
E14 Fabricated metal products (*except no for coating, engraving & allied services)	no	no	no ³	no	BA ^{9*}	no	no	BA ¹⁶	BA ^{9*}	no	no	no	no	no	no	no
E15 Machinery, except electrical	no	no	no ³	no	BA ⁹	no	no	no	BA ⁹	no	no	no	no	no	no	no
E16 Electrical & electronic equipment	no	no	no ³	no	BA ⁹	no	no	BA ¹⁶	BA ⁹	no	no	no	no	no	no	no
E17 Transportation equipment	no	no	no ³	no	BA ⁹	no	no	BA ¹⁶	BA ⁹	no	no	no	no	no	no	no
E18 Misc. manufacturing industries	no	no	no ³	no	BA ⁹	no	no	BA ¹⁶	BA ⁹	no	no	no	no	no	no	no
F. TRANSPORTATION AND PUBLIC UTILITIES																
F1 Railroad transportation terminal	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
F2 Local & commuter passenger transportation terminal (incl. bus, cab, rail & other transportation)	no	no	no	BA	no	no	no	no	no	no	no	no	no	no	no	no
F3 Trucking & warehousing	no	no	no	no	yes ^{8,9}	no	no	BA ^{16,22}	yes ^{8,9}	no	no	no	no	no	no	no
F4 Water transportation	no	no	no	BA	yes ^{8,9}	no	no	BA ¹⁶	yes ^{8,9}	no	no	no	yes ²⁹	yes ²⁹	yes ²⁹	no
F5 Aviation field	no	no	no	no	no	no	BA	no	no	BA	no	no	no	no	no	no
F6 Transportation services	no	no	yes ^{2,4,18}	yes ^{2,18}	yes ^{8,9}	no	no	BA ¹⁶	yes ^{8,9}	no	no	no	BA ²	no	BA ²	BA ²
F7 Communications facilities	BA ²⁰	BA ²⁰	BA ²⁰	BA ²⁰	BA ²⁰	no	BA ²⁰	BA ²⁰	BA ²⁰	BA ²⁰	no	no	BA ²⁰	BA ²⁰	BA ²⁰	BA ²⁰
F8 Public utility	no	no	BA ⁴	BA	BA	no	BA	BA ¹⁶	BA	no	no	no	no ³⁰	no ³⁰	no ³⁰	no ³⁰
G. WHOLESALE TRADE																
G1 Wholesale of durable or non-durable goods (*except: no for petroleum products. no for chemical & allied products. no for junk yards)	no	no	no	no	yes ^{9*}	no	no	BA ¹⁶	yes ^{9*}	no	no	no	no	no	no	no
H. RETAIL TRADE																
H1 Building materials & garden supplies	no	no	yes ^{2,4,18}	yes ^{2,18}	no	no	no	BA ¹⁶	no	no	no	no	yes	no	yes	yes
H2 General merchandise stores	no	no	yes ^{2,4,18}	yes ^{2,18}	no	no	no	yes	no	no	yes ^{2,18}	no	yes	yes	yes	yes
H3 Food stores	no	no	yes ^{2,4,18}	yes ^{2,18}	no	no	no	yes	no	no	yes ^{2,18}	no	yes	yes	yes	yes
H3A Farmers' Markets (as outlined by the Selectmen's Farmers' Market Policy)	yes	yes	yes	yes	yes	no	yes	yes	yes	yes	Yes	yes	yes	yes	yes	yes
H4 Sale of autos, boats, motor cycles, mopeds or other motorized recreational vehicles (includes service as accessory to sales)	no	no	BA	BA	no	no	no	no	no	no	no	no	no ³⁶	no ³⁶	no	no
H5 Sale of trucks, mobile homes or other heavy motorized equipment (includes service as accessory to sales)	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
H6 Motor vehicle fuel & service	no	no	BA ²	BA ^{2,18}	no	no	no	no	no	no	no	no	no	no	no	no
H7 (Deleted 12-11-07)						no										
H8 Apparel & accessories	no	no	yes ^{4,18}	yes ^{2,18}	no	no	no	yes	no	no	yes ^{2,18}	no	yes	yes	yes	yes
H9 Furniture & home furnishings	no	no	yes ⁴	yes ²	no	no	no	yes	no	no	yes ²	no	yes	yes	yes	yes

202.5 Use Regulation Table	Res.	RS-40	B1 ²¹	B2 ²¹	B3 ²¹	RMDOD ⁴⁴	MU	APD	AED	MOD	HMOD1	HMOD2	VC1	VC2	VC3	VC4
H10 Eating & drinking establishments	no	no	yes ¹⁸	yes ¹⁸	no	no	no	BA ¹⁶	no	no	yes ¹⁸	no ²⁴	yes	yes	yes	yes
H11 Miscellaneous retail stores (*except BA for fuel oil dealers; no junk yards in any district)	no	no	yes ^{4,18}	yes ^{2,18}	no	no	no	yes ^{8,9}	no	no	yes ^{2,18}	no	yes ³⁷	yes ³⁷	yes ³⁷	yes
I. FINANCE, INSURANCE AND REAL ESTATE																
I1 Banking & credit agency office	no	no	yes ¹⁸	yes ¹⁸	yes	no	no	yes	yes	no	yes ¹⁸	no	yes	yes	yes	yes
I2 Security & commodity brokers & services	no	no	yes ¹⁸	yes ^{2,18}	yes	no	no	yes	yes	no	yes ^{2,18}	no	yes	yes	yes	yes
I3 Insurance carriers, agents & brokers office	no	no	yes ¹⁸	yes ^{2,18}	yes	no	no	yes	yes	no	yes ^{2,18}	no	yes	yes	yes	yes
I4 Real estate managers, agents & service office & land subdivision	no	no	yes ¹⁸	yes ^{2,18}	yes	no	no	yes	yes	no	yes ^{2,18}	no	yes	yes	yes	yes
I5 Holding & other investment office	no	no	yes ¹⁸	yes ^{2,18}	yes	no	no	yes	yes	no	yes ^{2,18}	no	yes	yes	yes	yes
J. PERSONAL SERVICES																
J1 Laundry, dry cleaning & garment services	no	no	yes ^{4,18}	yes ^{2,18}	no	no	no	BA ¹⁶	no	no	yes ^{2,18}	no	yes ³⁸	yes ³⁸	yes ³⁸	yes
J2 Photographic studios	no	no	yes ^{4,9,18}	yes ^{2,9,18}	no	no	no	BA ¹⁶	no	no	yes ^{2,9,18}	no	yes	yes	yes	yes
J3 Beauty & barber shops	no	no	yes ^{4,18}	yes ^{2,18}	no	no	no	BA ¹⁶	no	no	yes ^{2,18}	no	yes	yes	yes	yes
J4 Funeral home	no	no	yes ^{4,18}	yes ^{2,18}	BA ⁹	no	no	BA ¹⁶	BA ⁹	no	yes ^{2,18}	no	no	no	no	BA
J5 (Deleted 12-11-07)						no										
J6 Miscellaneous personal services	no	no	yes ^{4,18,23}	yes ^{2,18,23}	BA ^{9,23}	no	no	BA ¹⁶	BA ⁹	no	yes ^{2,18,23}	no	yes ²³	yes ²³	yes ²³	yes ²³
K. BUSINESS SERVICES																
K1 Advertising agencies	no	no	yes ^{4,18}	yes ^{2,18}	yes ⁸	no	no	yes	yes ⁸	no	yes ^{2,18}	no	no	no	yes	yes
K2 Consumer credit reporting agencies	no	no	yes ^{4,18}	yes ^{2,18}	yes ⁸	no	no	yes	yes ⁸	no	yes ^{2,18}	no	no	no	yes	yes
K3 Mailing, reproduction, commercial art & stenographic services	no	no	yes ^{4,18}	yes ^{2,18}	yes ⁸	no	no	BA ¹⁶	yes ⁸	no	yes ^{2,18}	no	no	no	yes	yes
K4 Building cleaning & maintenance services	no	no	yes ^{4,18}	yes ^{2,18}	yes ^{8,9}	no	no	BA ¹⁶	yes ^{8,9}	no	yes ^{2,18}	no	no	no	yes	yes
K5 Extermination services	no	no	yes ^{4,18}	yes ^{2,18}	yes ^{8,9}	no	no	BA ¹⁶	yes ^{8,9}	no	yes ^{2,18}	no	no	no	no	yes
K6 News syndicates	no	no	yes ^{4,18}	yes ^{2,18}	yes ⁸	no	no	yes	yes ⁸	no	yes ^{2,18}	no	no	no	yes	yes
K7 Personnel supply services	no	no	yes ^{4,18}	yes ^{2,18}	yes ⁸	no	no	yes	yes ⁸	no	yes ^{2,18}	no	no	no	yes	yes
K8 Computer & data processing	no	no	yes ^{4,18}	yes ^{2,18}	yes ^{8,9}	no	no	yes	yes ^{8,9}	no	yes ^{2,18}	no	no	no	yes	yes
K9 Detective agencies & guard services	no	no	yes ^{4,18}	yes ^{2,18}	yes ⁸	no	no	yes	yes ⁸	no	yes ^{2,18}	no	no	no	yes	yes
K10 Motion picture production, distribution & services	no	no	yes ^{4,18}	yes ^{2,18}	yes ^{8,9}	no	no	BA ¹⁶	yes ^{8,9}	no	yes ^{2,18}	no	no	yes	yes	yes
K11 Misc. Businesses	no	no	yes ^{4,9,18}	yes ^{2,9,18}	BA ^{8,9}	no	no	BA ¹⁶	BA ^{8,9}	no	yes ^{2,9,18}	no	no	no	yes ⁹	yes ⁹
L. MOTOR VEHICLE SERVICES																
L1 Auto, bus, truck & trailer rental (no vehicle servicing allowed)	no	no	BA	BA	yes ^{8,9}	no	no	BA ¹⁶	yes ^{8,9}	no	no	no	no	no	no ³⁹	no
L2 Commercial parking lots	no	no	no	BA	yes ⁹	no	no	BA ¹⁶	yes ⁹	no	no	no	yes ³¹	yes ³¹	yes ³¹	yes ³¹
L3 Mechanical repair shop	no	no	BA	BA	no	no	no	no	no	no	no	no	no ⁴⁰	no ⁴⁰	no	yes
L4 Auto body & paint shop	no	no	BA	BA	no	no	no	no	no	no	no	no	no	no	no	no
L5 Other auto services	no	no	BA	BA	no	no	no	no	no	no	no	no	no	no	no	no ³²
L6 Junk yard or similar	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
L7 Medical Services Appurtenant Parking	no	no	no	no	no	no	no	no	no	yes	no	no	no	no	no	no
M. MISCELLANEOUS REPAIR SERVICES																
M1 Electrical repair (including refrigeration & air conditioning)	no	no	yes ^{4,18}	yes ^{2,18}	yes ^{8,9}	no	no	BA ¹⁶	yes ^{8,9}	no	yes ^{2,18}	no	no	no	yes	yes

202.5 Use Regulation Table	Res.	RS-40	B1 ²¹	B2 ²¹	B3 ²¹	RMDOD ⁴⁴	MU	APD	AED	MOD	HMOD1	HMOD2	VC1	VC2	VC3	VC4
M2 (Deleted 12-11-07)						no										
M3 Reupholstery & furniture repair (*except no for paint stripping)	no	no	yes ^{4,18}	yes ^{2,18}	yes ^{8,9 *}	no	no	BA ¹⁶	yes ^{8,9 *}	no	yes ^{2,18}	no	no	no	no	yes
M4 Misc. repair shops & related services	no	no	yes ^{4,18}	yes ^{2,18}	yes ^{8,9}	no	no	BA ¹⁶	yes ^{8,9}	no	yes ^{2,18}	no	BA	no	BA	BA
N. AMUSEMENT & RECREATION SERVICES																
N1 Movie & drive-in theaters	no	no	BA	BA	BA	no	no	BA ¹⁶	BA	no	PB	no	BA ³³	BA ³³	BA ³³	BA ³³
N2 (Deleted 12-11-07)																
N3 Theatrical productions, including bands, orchestras & entertainers	no	no	BA ⁵¹	BA ⁵¹	BA	no	no	BA ¹⁶	BA	no	PB	no	yes	yes	yes	yes
N4 Bowling alleys & billiard establishments	no	no	BA	BA	BA	no	no	BA ¹⁶	BA	no	PB	no	no	no	yes	yes
N5 Professional sports establishments	no	no	BA	BA	BA	no	no	BA ¹⁶	BA	no	PB	no	no	no	yes	yes
N6 Public golf course	BA	no	BA	BA	BA	no	BA	BA ¹⁶	BA	BA	no	no	no	no	no	no
N7 Coin-op amusement arcade	no	no	BA	BA	BA	no	no	BA ¹⁶	BA	no	PB	no	BA	BA	yes	yes
N8 Private sports & recreation club	no ¹	no	BA	BA	BA	no	no ¹	BA ¹⁶	BA	no ¹	PB	no ¹	BA	no	BA	BA
N9 Municipal recreation use	BA	no	BA	BA	BA	no	yes	BA ¹⁶	BA	BA	PB	PB	yes	yes	yes	Yes
N10 Temporary outdoor recreation	no ⁴⁶	no ⁴⁶	no ⁴⁶	no ⁴⁶	BA ⁴⁶	no	no ⁴⁶	BA ⁴⁶	BA	no	no	no	no	no	no	No
N11 Other miscellaneous amusement & recreation services	no	no	BA	BA	BA	no	no	BA ¹⁶	BA	no	no	no	yes	no	yes ³⁴	Yes
N12 Adult Entertainment Enterprises, pursuant to section 410 of this Bylaw	no	no	no	no	no ¹⁹	no	no	BA ¹⁶	BA	no	no	no	no	no	no	No
O. PROFESSIONAL SERVICES																
O1 Doctors & dentists offices	no ¹²	no ¹²	yes	yes ²	yes	no	no ¹²	BA ¹⁶	yes	yes	yes ²	no ¹²	yes	yes	yes	Yes
O2 Legal office	no ¹²	no ¹²	yes	yes ²	yes ⁹	no	no ¹²	yes	yes ⁹	no ¹²	yes ²	no ¹²	yes	yes	yes	Yes
O3 Engineering & architectural office	no ¹²	no ¹²	yes	yes ²	yes ⁹	no	no ¹²	yes	yes ⁹	no ¹²	yes ²	no ¹²	yes	yes	yes	Yes
O4 Accounting, auditing & book keeping office	no ¹²	no ¹²	yes	yes ²	yes ⁹	no	no ¹²	yes	yes ⁹	no ¹²	yes ²	no ¹²	yes	yes	yes	Yes
O5 Management, consulting & public relations office	no ¹²	no ¹²	yes	yes ²	yes ⁹	no	no ¹²	yes	yes ⁹	no ¹²	yes ²	no ¹²	yes	yes	yes	Yes
O6 Research & development office (except yes for medical purposes in the MOD)	no	no	BA	BA ²⁷	yes ⁹	no	no	BA ¹⁶	yes ⁹	yes	PB	no	yes	no	yes	Yes
O7 Veterinary office (including kennel)	no	no	BA	BA	BA	no	no	BA ¹⁶	BA	no	PB	no	no	no	no	no
O8 Other professional office	no ¹²	no ¹²	yes	yes ²	yes ^{8,9}	no	no	BA ¹⁶	yes ^{8,9}	no ¹²	yes ²	no ¹²	BA	BA	BA	BA
P. INSTITUTIONAL SERVICES																
P1 Educational institutions	yes	yes ¹¹	yes	yes	yes	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
P2 Religious institutions	yes	yes	yes	yes	yes	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
P3 Cemetery	BA	no	BA	BA	BA	no	BA	BA ¹⁶	BA	BA	no	no	no	no	no	no
P4 Hospital	BA	no	BA	BA	BA	no	BA	no	BA	yes	no	no	no	no	no	no
P5 Nursing & personal care facility	BA	no	BA	BA	BA	no	BA	BA ¹⁶	BA	BA	no	no	no	no ³⁵	no	no ³⁵
P6 Social service facility	BA	no	no	BA	BA	no	BA	BA ¹⁶	BA	BA	no	no	no	no	no	no
P7 Day Care Center	yes	yes	yes	yes	yes	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
P7A Family Day Care Home	BA	BA	yes	yes	no	no	BA	BA ¹⁶	no	BA	yes	no	no	BA	no	no
P8 Non-profit private club, civic or fraternal organization	BA	no	BA	BA	BA	no	BA	BA ¹⁶	BA	BA	PB	PB	yes	yes	no	no
P9 Museum, art gallery, botanical or zoological garden	BA	no	BA	BA	BA	no	BA	BA ¹⁶	BA	BA	PB	PB	yes	BA	yes	yes

202.5 Use Regulation Table	Res.	RS-40	B1 ²¹	B2 ²¹	B3 ²¹	RMDOD ⁴⁴	MU	APD	AED	MOD	HMOD1	HMOD2	VC1	VC2	VC3	VC4
P10 Municipal use (Municipal Use may include installation and operation of Municipal Wind Energy Facilities)	BA	BA	yes	yes	yes ^{8,9,26}	no	yes	BA ¹⁶	yes ^{8,9}	BA	yes	PB	yes	yes	yes	yes
Q. ACCESSORY USE																
Q1 Temporary construction trailer	yes	yes	yes	yes	yes	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Q2 Parking for more than 2 cars	BA	BA	yes	yes	yes	no	BA	yes	yes	BA	yes	no ²⁴	yes	yes	yes	yes
Q3 Other accessory uses if customarily incidental to any of the above permitted uses and not detrimental to the neighborhood	yes ⁵	yes ⁵	yes	yes	yes ^{8,9}	no	yes	yes	yes ^{8,9}	yes ⁵	yes	yes ⁵	yes	BA	yes	yes
Q4 Parking or storing of vehicles or trucks with 12 wheels or more or vehicles capable of hauling a unit of 12 wheels or over except for the purpose of constructing a home or structure or making a delivery or pickup	no	no	yes	yes	yes ⁹	no	no	BA ¹⁶	yes ⁹	no	yes	no	no	no	no	no
Q5 Neighborhood convenience store in PRD	BA	no	BA	BA	no	no	BA	BA ¹⁶	no	BA	no	no	no	no	no	no
Q6 Home Offices ⁴⁹	yes	yes	yes	yes	yes	no	no	yes	no	yes	yes	yes	yes	yes	yes	yes
Q7 Home Occupations ⁵⁰	yes	yes	yes	yes	yes	no	no	yes	no	yes	yes	yes	yes	yes	yes	yes
R. MISCELLANEOUS																
R1 Registered Marijuana Dispensary	no	no	no	no	no	BA ⁴⁴	no	no ⁴⁵	no	no	no	no	no	no	no	no
R2 Marijuana Establishments	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no

FOOTNOTES:

1. Except "yes" if not for profit and in existence in the town prior to January 1, 1964.
2. Only when the bulk of display and sales are conducted within a building.
3. Except "yes" if the major portion of the products are to be sold at retail by the manufacturer and if there are not more than four (4) employees directly involved in the manufacture.
4. Not involving manufacture on the premises except of products, the major portion of which are to be sold at retail by the manufacturer to the consumer, and provided further that not more than four (4) employees are directly involved in manufacture.
5. Except BA for garage space for or storage of more than three (3) vehicles.
6. Except "yes" for uses exempt from prohibition by G.L. Ch. 40, sec. 3, as amended.
7. Except that retailing shall require a Special Permit.
8. Provided that all but minor work and storage shall be conducted within a building sufficiently sound-insulated to confine disturbing noise to the premises.
9. Provided that such use is not hazardous by reason of potential fire, explosion or radiation nor injurious or detrimental to the neighborhood by reason of dust, odor, fumes, wastes, noise, vibration, or other noxious or objectionable features, nor harmful to surface or ground water quality.
10. Except "no" for trapping and hunting.
11. For nonprofit use only, including Free Public Library.
12. Allowed BA as an accessory use in a dwelling provided that it is the principal residence of the person utilizing the office space.
13. Deleted (ATM 4/13/93).
14. Except that multi-family dwellings are not allowed north of Route 6 (Mid-Cape Highway).
15. Deleted (ATM 4/11/06).
16. Subject to the provisions of Section 406, Aquifer Protection Overlay District.
17. Except "yes" for Department of Public Works uses.
18. Except BA for any new building, or new complex of buildings, with a first floor surface area of more than 10,000 square feet, and PB for these types of projects developing under Section 404.

19. Except BA if within the Adult Entertainment District (AED).
20. Communications Facilities are allowable, by Special Permit, pursuant to section 408 of this Bylaw.
21. Uses permitted (yes), prohibited (no) or permitted only under Special Permit from the Board of Appeals (BA) or Planning Board (PB) shall be as stated hereunder based upon the property's location within the B1, B2 or B3 Zoning District, but may be modified by Special Permit subject to and with the benefit of section 411.
22. Except no for self storage facilities.
23. Except no for Body Art Establishments, as defined in 105 CMR 124.000.
24. Except "yes" in accordance with the provisions of Section 404, or "BA" in accordance with the provisions of section 104.3.2, paragraph 4.
25. Deleted (ATM 04/02/12).
26. Municipal Wind Energy Facilities are allowable by Special Permit, pursuant to Section 413 of this bylaw.
27. Except yes for research & development facilities for renewable and alternative energy, as defined in section 500, in the B2 Zoning District.
28. Only allowed pursuant to the Housing Provisions in the VCOD as listed in Section 414.
29. Water Transportation is limited to establishments primarily engaged in providing water transportation of passengers such as water taxis.
30. Except "yes" for public wastewater treatment plant.
31. Includes "yes" for parking garage pursuant to the regulations set forth in Section 414, but "no" for surface parking lots.
32. Except "BA" for car wash facility. Said car wash facility shall meet the requirements of a drive-through as provided for in Section 414.
33. Except "no" for drive-in theaters.
34. Includes a water park allowed pursuant to regulations set forth in Section 414.
35. Except "PB" for Assisted Living Retirement Communities.
36. Except "BA" for boat sales and service.
37. Except "No" for fuel oil dealers.
38. Except "No" for dry cleaning establishments that perform cleaning on-site.

39. Except “BA” for car rental as an accessory use.
40. Except “BA” for boat repair services.
41. Except “Yes” for residences above commercial (top of shop).
42. Including Extended Stay Hotels.
43. On-Site Property Managers at Motels/Hotels may be approved in accordance with the provisions of Section 404.4. Seasonal Employee Housing at Motels/Hotels may be approved in accordance with the provisions of Section 404.5.
44. Subject to the requirements of Section 415 – Registered Marijuana Dispensaries. The RMD Overlay District (RMDOD) applies solely for use code R1 – Registered Marijuana Dispensary. All other uses shall be subject to the underlying zoning.
45. Except BA in the RMDOD.
46. Except “Yes” for events meeting the definition of Temporary Outdoor Recreation, that are to be located on Town owned Land and for which all other applicable Town permits, approvals and licenses have been obtained, and for which approval has been obtain through application to the Town Administrator’s office for Use of Town-Owned Property.
47. Density of Employee Housing at non Motels/Hotels shall be one dwelling unit per minimum lot size, or per legally pre-existing non-conforming lot, with a maximum of 4 employee housing dwelling units per parcel. Housing must meet the definition of Employee Housing at non Motels/Hotels. All projects that create Employee Housing at non Motels/Hotels shall go through Site Plan Review.
48. Refer to Section 203.5 – Table of Dimensional Requirements for minimum lot size for two-family dwellings.
49. Home Offices are allowed by-right if they meet the definition of Home Offices.
50. Home Occupations may be allowed by-right if they meet the criteria outlined in Section 416.
51. Except “Yes” for Use N3 – Theatrical productions, including bands, orchestras & entertainers, if accessory to an allowed or otherwise permitted use, and an Entertainment License per MGL Chapter 140, Section 183A has been issued by the Board of Selectmen through application to the Town Administrator’s office. This exception excludes any form of Adult Entertainment.

203. INTENSITY OF USE REGULATIONS.

203.1 Buildings and Structures. All buildings and structures in any district shall meet the minimum requirements set forth in the following Table of Dimensional Requirements unless otherwise expressly provided by this law or by G. L. ch. 40A, sec. 6, as amended.

203.2 Minimum Frontage Reduction.

203.2.1 Residential Districts. The minimum required frontage may be reduced to fifty (50) feet in a residential district if the lot is capable of containing a square each side of which is equal to the minimum frontage normally required in that district. The width of any lot, between the street line and the proposed building setback line, shall be no less than twenty (20) feet.

No point along any side of the above requisite square shall exceed a distance from the street greater than the following:

District	Maximum Distance From Street
R-87	750 Feet
R-40	500 Feet
R-25	400 Feet
RS-40	500 Feet

Measurement of this distance to the street abutting the lot shall be taken within the lines of the lot.

203.3 Front Yard. Except for properties developing or redeveloping pursuant to Section 414, VCOD, no building need be set back more than thirty percent (30%) of the depth of the lot nor more than the average of the setbacks of the buildings on the lots next thereto on either side. A vacant lot or a lot occupied by a building set back more than the required front yard setback is counted as though occupied by a building at the setback line. This section does not apply to VCOD development.

203.4 Building Height.

203.4.1 Unless otherwise indicated in this Bylaw, in all zoning districts, building height shall not exceed that which is outlined in Section 203.4.2 Table of Maximum Building Height. No building, except as outlined in Section 404 or in Section 414, shall contain more than three stories, except that the building height for motels that are not subject to the provisions of Section 404 or in Section 414, shall not exceed thirty (30) feet or contain more than two stories. In buildings intended solely for single-family residential use, a third story above grade may occur in a habitable attic. In no other buildings will a third story be allowed to be habitable, except in buildings to which Section 404 or Section 414 applies. Platforms, lofts and other structures constructed to provide a surface higher than the floor of the second story in any except single-family residential buildings and buildings to which section 404 or Section 414 applies, shall not be habitable.

Building height shall be measured from the street side of a structure. When a structure faces on more than one street the height shall be measured from the average of the grade of each street front. Where the grade at other faces of the building is lower than that of the street side,

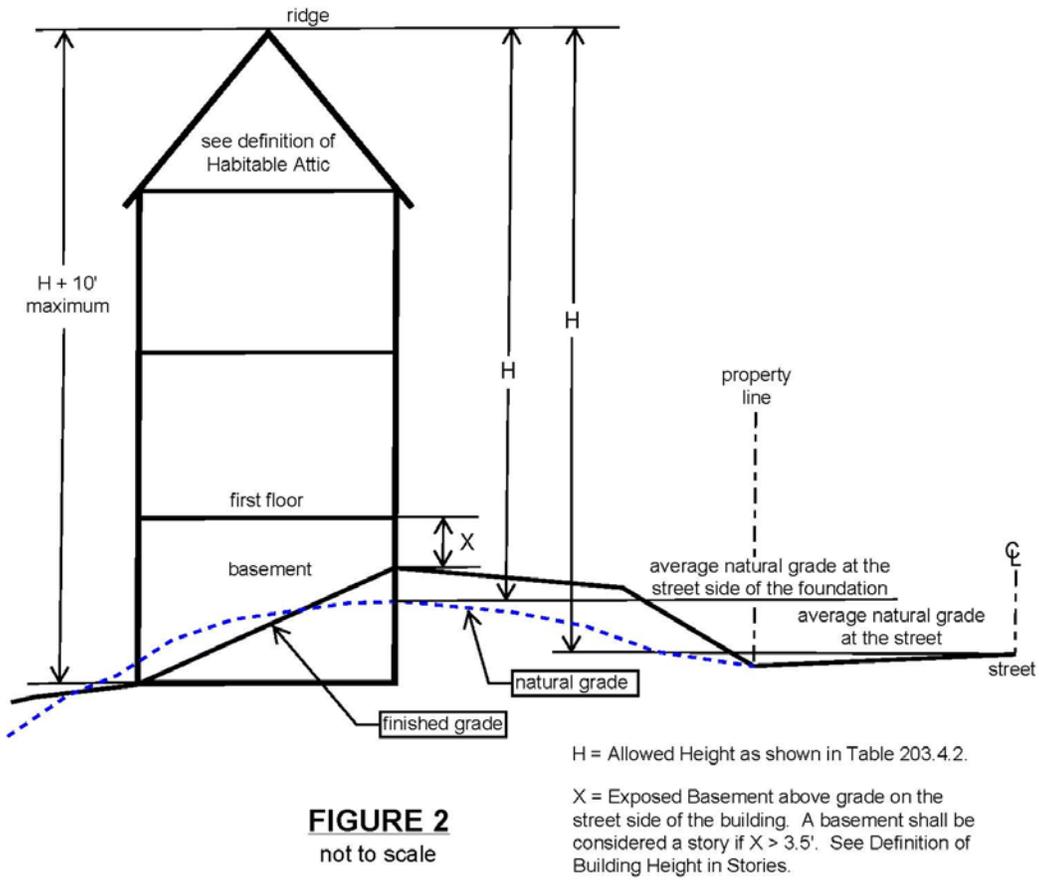
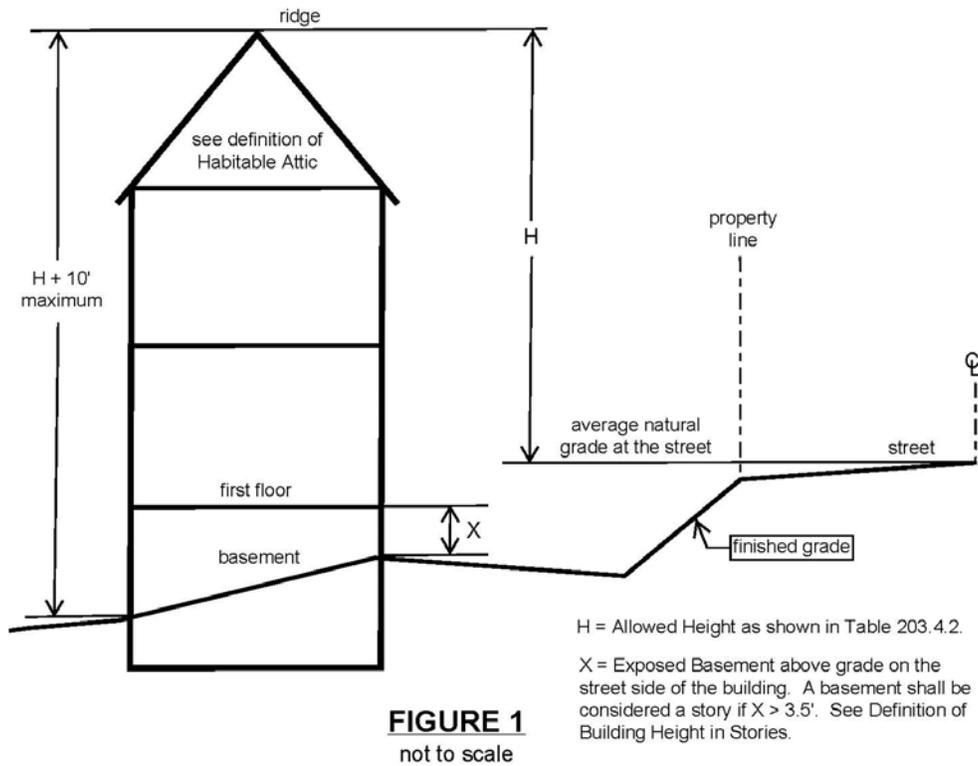
the height of the building above the lowest grade shall not exceed the allowable height by more than ten (10) feet. This will not affect the restrictions described above for building height as measured from the front of the building along average grade. Height limitations shall not apply to chimneys, spires, cupolas, antennas, or other similar structures not intended for human occupancy.

203.4.2 Table of Maximum Building Height

Structure	In FEMA Flood Zones A or V	Height (H) On Upland with a Negative Slope (C) See Figure 1	Height (H) On Upland with a Positive or Neutral slope (C) See Figure 2
HMOD1 Motels	Per 404.1.10		
HMOD2 Motels	Per 404.2.9		
Other motels (not in HMOD1 or HMOD2)	30' (A, D, E)	30' (A)	30' (A)
All residential structures	35' (A, D, E)	35' (A)	35' (B)
All other structures	35' (A, D, E)	35' (A)	35' (B)
VCOD (all districts)	Per Section 414		

Notes:

- A. As measured from average natural grade at the street.
- B. As measured from average natural grade at the street side of the foundation.
- C. Lot slope is to be as determined from the street on which lot frontage is measured.
- D. No lot may be filled to a height greater than 4 feet, as measured from natural grade at the street. Elevated lots must be graded back to natural grade at the street at a slope ratio of no less 3:1 (horizontal:vertical) and may not utilize a retaining wall greater than 2 feet in height. These limitations are waived only to accommodate a raised septic system, if such a system is required by the Board of Health.
- E. If the building is located in a FEMA Flood Zone AO, height shall be measured from 1 foot above the Depth of Water shown on the Flood Insurance Rate Maps, measured from the average natural grade at the front face of the building foundation.



203.5 Table of Dimensional Requirements (A)

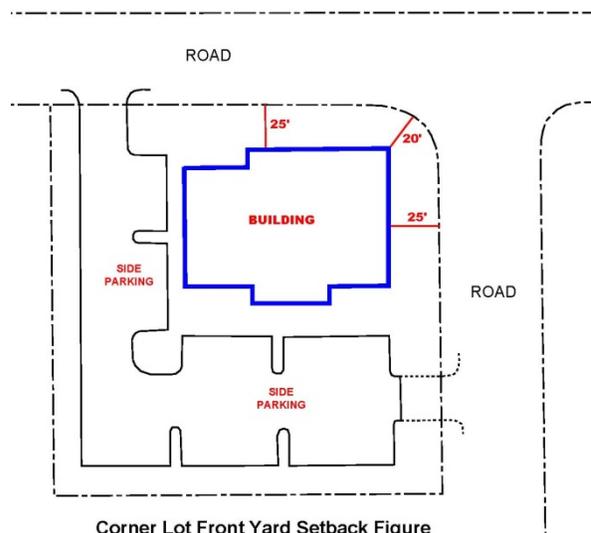
Zoning or Overlay District	Minimum Lot Size in Sq. Ft. (B,C,N,R,S)	Minimum Frontage in feet (F,G,R)	Minimum Yard in feet (D,E,R,U)			Maximum Building Coverage (%) (R)	Maximum Shape Factor (V)
			Front (I)	Side	Rear		
R-87	87210	200	30	50	75	25	22
R-40	40000	150	30	20	20	25	22
R-25	25000	150	30	15	20	25	22
RS-40	40000	150	30	20	20	25	22
B1	25000	150	30 (J, X, Y)	25	20	25 (L)	22
B2	20000	125 (H)	30 (X, Y)	25	20	25 (L)	22
B3	40000	100	30 (K, X, Y)	10 (K)	30	(P)	22
RMDOD	40000	100	30 (W)	10 (W)	30(W)	(P)	22
MU	217800 (5 acres)	200	30	25	20	25	22
AED	40000	100	30	10	30	(P)	22
HMOD1	20000	125 (H)	30 (X, Y)	25	20	25 (L)	22
HMOD2	20000	125(H)	30 (X, Y)	25	20	25 (L)	22
MOD	20000	75	20	15	15	35	22
APD	The Aquifer Protection Overlay District (APD) overlays the town's zoning districts; see the information above for dimensional requirements					(P)	
ROAD	The Revitalization Overlay Architectural District (ROAD) overlays other commercial zoning districts, as described in section 411.3						
VCOD (all districts)	The Village Centers Overlay District (VCOD) overlays other districts and the dimensional requirements of Section 414 shall govern.						

Notes:

- A. See section 402 for dimensional requirements in a cluster or multi-family development.
- B. Motels/hotels, where allowed, shall have a minimum lot area of 25,000 square feet and shall be constructed at a density of not more than one (1) unit per one thousand (1,000) square feet of lot area and shall conform to the minimum lot size in the table above.
- C. Except for properties to which Section 404 applies, two-family dwellings, where allowed, require twice (2 times) the normal minimum lot size of the district.
- D. The following are specifically excluded from these regulations:
 - 1. Fences, walls, poles, posts, paving and other customary yard accessories, ornaments and furniture, ramps, landings and similar structures needed for handicapped access.
 - 2. Cornices, window sills, belt courses and other ornamental features may project not more than eighteen (18) inches; bay/bow windows, greenhouse windows and eaves may project not more than twenty-four (24) inches, and chimneys may project not more than thirty-two (32) inches into any required yard.

3. Any stairway and associated landing may project into a required front yard if it is less than thirty (30) inches in height.
- E. Side and rear yard setbacks for accessory buildings containing one hundred fifty (150) square feet or less and single story, shall be six (6) feet in all districts, but in no case shall said accessory buildings be built closer than twelve (12) feet to any other building on an adjacent parcel.
- F. Corner lots shall have frontage on one street of at least the minimum required in the Table of Dimensional Requirements (203.5) and frontage of at least one hundred (100) feet on any other abutting street.
- G. See section 203.2 for reductions to minimum frontage.
- H. Lot width shall at least meet the minimum frontage for a depth of one hundred (100) feet.
- I. No building need be set back more than thirty percent (30%) of the depth of the lot nor more than the average of the setbacks of the buildings on the lots next thereto on either side, but no closer than 20' in the B1, B2, B3, HMOD1 and HMOD2 zoning districts to provide for vegetated buffers. A vacant lot or a lot occupied by a building set back more than the required front yard setback being counted as though occupied by a building at the setback line.
- J. Except for lots adjoining and southerly of Route 6 along Station Avenue, seventy-five (75) feet.
- K. Except where the district abuts Old Town House Road, seventy (70) feet; or except where an B3 District adjoins a Residential District, no business or building shall be within fifty (50) feet of the district boundary.
- L. The developed footprint of impervious surfaces (structures, pavement, etc.) including any unpaved parking areas, shall not exceed 70% of the total square footage of any lot. Pervious paving shall be counted as impervious in lot impervious coverage calculations.
- M. (Deleted).
- N. One hundred percent (100%) of the minimum lot size required must be upland (i.e., not a bank, beach, bog, dune, marsh, swamp or wet meadow under M.G.L. ch. 131, sec. 40).
- O. (Not used).
- P. 15% Maximum impervious lot surface coverage, or 2500 square feet of any lot, whichever is greater, unless artificial recharge for excess runoff is provided, as noted in 310 CMR 22.21 (2)(b)8. In no case will the maximum building coverage exceed 35% of the total lot area nor total impervious lot coverage exceed 70% of the total lot area when an approved artificial recharge system for stormwater runoff has been provided. Pervious paving shall be counted as impervious in lot impervious coverage calculations.

- Q. The height provisions of 203.4 may be extended to no more than 85 feet, or a maximum of 6 stories, for approved medical and medical related uses in the MOD only on the following lots: Assessor's Map 36, Lot 1 and Assessor's Map 28, Lots 51, 52, 53, 54, and 55.
- R. The dimensional requirements set forth in section 203.5 for the MOD may be altered by special permit from the Board of Appeals in accordance with section 103.2 on only the following lots: Assessor's map 36, Lot 1 and Assessor's Map 28, Lots 51, 52, 53, 54, and 55.
- S. The minimum lot size in the MOD may be decreased for Medical Services Appurtenant Parking (L7) in the MOD by special permit from the Board of Appeals in accordance with section 103.2.
- T. (Not Used)
- U. Dwellings are also subject to the required 100 foot setback from a cranberry bog outlined in Bylaw section 405.2.
- V. The lot shape factor shall be obtained by dividing the square of the lot perimeter (P), measured in feet, by the area of the lot (A), measured in square feet (i.e.: $P^2 \div A$). Lots in existence before October 05, 2005 that are not in compliance with this provision shall not be deemed nonconforming, by virtue of shape. Lots may have a shape factor larger than 22, provided that the portion of the lot intended for building meets the minimum lot area and upland requirements for the zone in which it is located and that such building area has a shape factor not exceeding 22.
- W. Refer to Bylaw Sections 415.5.14 and 415.5.15 for additional setback requirements to residential zoning districts and certain types of structures or uses.
- X. Corner lots are considered to have two front yard setbacks and two side yard setbacks. The front yard setback for corner lots may be reduced to 25' to accommodate parking in the rear or side of the building. If the corner lot has a curved radius along the frontage on a public way, the front yard setback may be reduced to 20' at the corner only. Refer to illustrative Figure below.



Y. Bus Shelters of 120 square feet (sf) and less may be located within the front yard setback if approved by the Site Plan Review Team and located so as not to impede sight lines and traffic visibility, and must be entirely located on the subject property.

III. GENERAL REGULATIONS

300. RESERVED

301. PARKING AND LOADING REQUIREMENTS.

301.1 Objectives. It is the intent of this section that adequate off-street parking must be provided within a reasonable distance to service all parking demand created by new construction, whether through new structures or through additions to existing ones or through change of use creating higher parking demand.

301.2 Applicability. Except for projects developing or redeveloping under Section 414, VCOD, buildings, structures, and land uses lawfully in existence on the effective date of these provisions are not subject to these off-street parking requirements and may be continued, but not enlarged, altered, or changed in use, so as to increase parking demand, nor may one or more drive-in/drive-through windows be added, without either complying with these requirements or securing from the Board of Appeals a Special Permit for such expansion, alteration, or change in use, pursuant to the applicable provisions of section 104.3.2. In considering and granting such permits, it is the intention of this section that the Special Permit shall be conditional upon requiring maximum feasible compliance with the current requirements of this section.

Projects developing or redeveloping under Section 414, VCOD, are not subject to this Section 301. (Parking and Loading Requirements) and shall be regulated by Section 414.7. (Parking Requirements) for the VCOD and shall follow the procedures and requirements as set forth therein.

301.3 Procedures. In applying for building or occupancy permits, the applicant must demonstrate that the minimum parking requirements set forth below will be met for the total new and existing demand.

301.3.1 The minimums of section 301.5 may be reduced by the Building Commissioner upon unanimous recommendation in writing by the Site Plan Review Team, or by Special Permit from the Board of Appeals, if it is determined that special circumstances render a lesser minimum provision adequate for all parking needs. In making such determination, the Building Commissioner/Board of Appeals shall consider present, as well as proposed and potential future parking needs, and such determination and/or special permit may contain any restrictions, limitations or conditions reasonably necessary to carry out the intention and purpose of this bylaw. Such restrictions, limitations, and conditions may include, among other things:

1. Provisions for establishing maximum allowable occupancy.
2. Provisions for expiration or forfeiture of the determination/permit upon stated conditions or upon substantial change of the "special circumstances" upon which the

determination/permit was granted.

3. Provisions limiting the duration.
4. Such other provisions as are reasonably related to pursuing and carrying out the intent and purposes of this bylaw.

301.4 Design Criteria.

301.4.1 All required parking areas except those serving one and two family residences shall be paved with bituminous concrete or other suitable, hardened stable and durable material, unless exempted by the Site Plan Review Team for cases such as seasonal or periodic use where a proposed alternative surface will prevent dust, erosion or unsightly conditions. Drainage facilities for each parking area shall be designed and constructed to contain stormwater runoff on the premises and comply with Section 304 – Stormwater Management. No parking lot shall be illuminated in such a way that it causes glare for motorists, pedestrians or neighboring premises.

Parking areas shall be located at the side and/or rear of a principal structure(s), unless the Site Plan Review Team determines that the already developed site work makes such placement impossible. Parking on the side of structures shall be located behind the minimum front yard setback shown in Section 203.5 – Table of Dimensional Requirements. Applicable Properties in the HMOD2, as defined in section 404.2.2, having property lines abutting Nantucket Sound may locate parking areas to the front of the structure(s). If necessary, handicapped parking may be located to the front of a building in order to comply with 521 CMR, the rules and regulations of the Architectural Access Board.

301.4.2 Off-street parking spaces, each not less than ten by twenty (10 x 20) feet per vehicle for a perpendicular space, nor less than ten by twenty three (10 x 23) feet for a parallel space, excluding the portion of the driveway to each such space, shall be provided on the same lot. Ten by eighteen (10 x 18) foot perpendicular parking spaces may be substituted in cases where at least two and one half (2.5) feet of overhang space and wheel bumper stops or adequate curbs are provided. Overhang space shall not be counted in any required setback or parking areas. However, driveway area outside of a street right-of-way may be counted for off-street parking when serving a single-family dwelling.

In B2, B3 and HMOD2 districts, up to thirty percent (30%) of the required parking spaces may be located on a contiguous lot not separated by a way from the lot containing the permitted use, if all said parking spaces are within a radius of two hundred (200) feet from the lot containing the permitted use. Such contiguous lots in the HMOD2 may be separated by a way upon granting of a Special Permit from the Planning Board.

301.4.3 Parking areas for five (5) or more cars shall be designed with enough maneuvering space so that vehicles need not back onto a public way, the required screens, buffers, tree plots or other parking spaces. Driveways subject to this section shall have two hundred fifty (250) feet visibility in each travel direction and shall be comprised of two (2) travel lanes each not more than twelve (12) feet nor less than ten (10) feet in width; a minimum curb radius of 25 feet shall be provided. Travel ways within parking lots must be no less than ten (10) feet wide for each direction of travel, on new site development plans.

301.4.4 Parking areas for five (5) or more cars shall be separated from any street line, or any residentially zoned property line, by no less than a twenty (20) foot wide buffer and from any other property line by a ten (10) foot wide buffer. These buffers shall not contain any paving except for entrance and exit driveways and shall be planted with vegetation or maintained with other landscaping material, as approved by the Site Plan Review Team. Existing trees of at least 4" caliper within these prescribed buffers shall be retained (judicious pruning would be allowed), unless removal is approved by the Site Plan Review Team due to the condition of the tree or for sound landscape design reasons. If such trees do not exist, 3" (three inch) caliper trees (with expected mature height of at least 20') shall be planted at intervals of at most 20' in all buffers. Planted trees which die shall be replaced.

301.4.5 Parking lots for five (5) or more cars shall be screened from any abutting residential use or district which is abutted or separated from it by only a street. Screening shall be by a minimum four (4) foot wide planting strip maintained with densely planted shrubs not less than five (5) feet in height. Shrubs shall be at least seventy-five percent (75%) evergreens. Fences or walls may be a part of such screening where deemed necessary, as approved by the Site Plan Review Team.

301.4.6 Parking lots for twenty (20) or more cars shall contain at least one (1) tree of 3" (three inch) caliper or larger per eight (8) cars, to be located within the parking area in soil plots not less than 5' wide and allowing not less than forty (40) square feet of unpaved soil area per tree in addition to the above requirements. Trees along the outside perimeter of the parking area shall not be considered in-lot trees. In-lot trees shall be dispersed throughout the parking area.

301.4.7 Center lines of driveways serving twenty (20) or more parking spaces, if egressing onto a state-numbered or state maintained highway or onto a street improved under the Chapter 90 Program, shall observe minimum separations as follows, unless precluded by lot configuration in existence on the date of adoption of this bylaw:

1. From other such driveways:
same side of road:
two hundred and fifty (250) feet.
opposite side of road:
zero (0) or two hundred and fifty (250) feet.
2. From intersecting street side line:
two hundred and fifty (250) feet.

No existing parcel shall be subdivided into lots with frontage which would preclude meeting these requirements unless access rights-of-way are provided across adjoining lots.

301.4.8 Parking for fifteen (15) or more cars is subject to the Rules and Regulations of the Architectural Access Board.

301.4.9 All lots in B1, B2 or B3 Districts and all lots which contain a business or industrial use, shall include a twenty (20) foot wide buffer along those boundaries of the lot which are adjacent to a way, and ten (10) foot wide buffers along all other boundaries of the lot. Existing trees of at least 4" caliper within these prescribed buffers shall be retained (judicious pruning

would be allowed), unless removal is approved by the Site Plan Review Team due to the condition of the tree or for sound landscape design reasons. These buffers shall contain no paving except for entrance and exit driveways, common driveways or access rights of way, and shall be planted with vegetation or maintained with other landscaping material, as defined in Section 301 and as approved by the Site Plan Review Team. Common driveways shall have a minimum ten (10) foot wide vegetated buffer on each side of the common driveway, planted with 3" caliper trees every 20'.

Plantings in buffer areas in front of buildings along a way shall include, but not be limited to, 2.5" caliper trees approximately every 35' and shall also include a mixture of shrubs and flowering plants to create a comprehensive landscape plan, as approved by the Site Plan Review Team. The use of fencing or low walls may also be incorporated into these buffer areas.

Existing buffer trees in front of existing buildings may not be removed without approval of the Site Plan Review Team and development of a comprehensive landscape plan.

Plantings in buffer areas in front of parking shall meet the requirements outlined in Section 301.4.

301.4.10 Exterior lighting for parking lots which is attached to posts or poles shall not exceed 20 feet in height, measured from the highest point of the light structure. Electric service for said posts or poles shall be placed underground and any outdoor lighting shall be directed on-site only, with no undue glare affecting adjoining properties. For commercial or mixed use developments, trespass of light at the property boundary shall not exceed 0.1 foot candles. Where commercial or mixed use developments abut a residential district, trespass of light at that boundary shall not exceed 0.05 foot candles. For developments that are exclusively residential, trespass of light at property boundaries shall not exceed 0.05 foot candles. Utility services for new commercial structures will be located underground. At driveways, lighting may be up to 0.5 foot candles at the property line adjacent to a roadway.

301.5 Table of Parking Demand.

Use (1)	Parking Spaces Required (2)
Assembly (incl. uses H10, N1-5, 7,8,10 & P1, 2, 8)	1 space/3 occupants (3)
Business (incl. uses I, J, K, L, M & O)	1 space/2 occupants (3)
Industrial (incl. uses C, D, E, F & G)	1 space/2 occupants (3)
Institutional (incl. uses P4 & 5)	1 space/3 beds
Mercantile (incl. uses H1-9 and H11)	1 space/7 occupants (3)
Residential, motels/hotels	1.1 spaces/unit
Residential, multi-family	1.5 spaces/unit
Residential, 1 & 2 family	2 spaces/unit
Other (incl. uses N6, 9, 11 & uses not elsewhere classified)	As determined to be adequate by the Building Commissioner on advice by the Site Plan Review Team.

Notes:

1. As defined in section 202.5 Use Regulation Schedule.
2. Where parking spaces are based on occupancy, occupancy loads shall be tabulated in accordance with Massachusetts Building Code.
3. In cases where planned occupancy is to be below allowable occupancy, parking spaces may be constructed at a reduced number provided that the lot shall be capable of expansion to the spaces required in the table above. When the occupancy load of a building increases, the additional required spaces shall be constructed.
4. Retail storage shall be based on 20% of gross floor area unless otherwise presented on building plans.
5. Parking requirements for outside restaurant seating shall be calculated in the same manner as those for inside restaurant seating.
6. Parking for Day Care Centers: one parking space for every 8 children allowed at the facility, based on the maximum permitted occupancy, is required, plus 1 space for every 3 full-time employees.

301.6 Loading Requirements. Loading zone criteria. Adequate off-street loading facilities and space must be provided to service all regular needs created by new construction, whether through new structures or additions to old ones, and by change of use of existing structures. Facilities shall be so sized and arranged that no vehicles need regularly back onto a public way or be parked on a public way while loading, unloading or waiting to do so.

301.7 Application Requirements. Prior to issuance of a permit for construction of a new structure, addition to or alteration of an existing structure, or change of use, the Building Commissioner may require that the applicant submit information concerning the adequacy of existing or proposed loading facilities on the parcel. Such information may include a plan of the loading area showing its size and its relationship to buildings, parking areas and public being loaded and unloaded from vehicles, the expected types of vehicles to be serviced at the loading area, and the expected normal hours of operation. The Building Commissioner shall use information to determine whether or not the criteria of subsection 301.6 above are met. In making such determination, the Building Commissioner shall seek the advice of the Planning Board and the Town Engineering Department.

301.8 Drive-through Facilities. Businesses utilizing drive-through facilities must provide stacking lanes based on the following minimum ratios:

1. Drive-through bank or Automated Teller Machine (ATM): 8 stacking spaces; 4 stacking spaces per service window if more than one service window is provided;
2. Drug store/pharmacy drive-through Prescription service window; dry cleaners/laundry drive-through service window: 4 stacking spaces per service window;
3. All other drive-through service windows shall have 10 stacking spaces.

Stacking spaces must be located completely within the site, not in the road or road layout. Stacking lanes must be designed so as to prevent circulation congestion, both on site and on adjacent public streets. Stacking lanes must not impede or impair access into or out of parking spaces, nor impede or impair vehicle or pedestrian traffic movement, nor interfere with loading and trash storage areas (nor will such loading and trash storage areas interfere with a stacking lane). Any outdoor service facility (including menu boards, speakers, etc.) shall be a minimum of 100 feet from any residential use or zone.

301.9 Landscaping: All landscaping shall consist of plant species native to the south coast of Massachusetts, Cape Cod and the Islands. Planted trees which die shall be replaced.

301.10 Snow Storage: Site layout shall provide for reasonable accommodations for snow storage.

302. FILLING AND CLEARING PERMITS.

302.1 No person shall fill any area in the Town of Yarmouth with any material to a depth in excess of five (5) feet without a permit from the Building Commissioner. Said Commissioner may require an applicant for such a permit to furnish such plans or specifications as he may deem necessary and any permit issued hereunder may contain such provisions, conditions or limitations as he may deem necessary to prevent dust, erosion, silting or other instability, and storm water diversion onto adjoining properties.

302.2 In order to prevent dust, erosion, silting or other instability, and storm water diversion onto adjoining properties, no lot or portion of a lot containing a commercial or industrial use or located in the B2, B1 or B3 zones, or in the VCOD, may be cleared of vegetation without issuance of a clearing permit by the Building Commissioner. Such permit will not be issued until the owner or applicant has obtained either a formal review of the Site Plan Review Team or a Building Permit, unless a Special Permit is obtained under Section 103.2. The Building Commissioner shall require an applicant for a clearing permit to furnish plans or specifications as he may deem necessary to obtain a clearing permit before clearing land. Clearing shall be defined as removal of more than twenty five percent (25%) of trees of at least two (2) inch caliper. Where there are fewer than ten such trees on a lot, this bylaw will not apply. Any permit issued hereunder may contain such provisions, conditions, or limitations as the Building Commissioner may deem necessary. No permit fee will be required. Failure of the Building Commissioner to act upon an application for a clearing permit within 30 days of the date of filing a completed application shall be deemed to be a grant of such permit.

303. SIGNS.

303.1 Goals and purposes – To regulate signage through a mechanism which protects and serves the individual and economic interests of residents and businesses while at the same time respecting community character, architectural design, and public safety. No sign shall be erected nor maintained except as specifically allowed in this section.

See Section 414.8.11 (Signage) for supplemental regulations specific to development under Section 414, VCOD.

Refer to Section 415.5.10 (Signs) for supplemental sign regulations specific to development under Section 415, Registered Marijuana Dispensaries.

303.2 Definitions.

Abandoned Sign – A sign which identifies or advertises a business, service, product, or activity which no longer exists and/or for which no legal owner can be found.

Accessory Sign – A sign which does not identify a business or product, i.e. “open, “closed”, “VISA”, etc.

Advertising Device – A piece of equipment, an object or a mechanism designed to attract the attention of the public for a commercial purpose.

A-Frame Sign – A sandwich sign which is connected at the top or bottom.

Animated Sign – Any sign which uses actual movement or the illusion of movement.

Attached Sign – A sign attached to and parallel to the wall of a building.

Awning – A roof-like cover, often of fabric, plastic, or glass, designed and intended for protection from the weather or as a decorative embellishment, and which projects from a wall or roof of a structure.

Awning Sign – A sign attached to or printed upon the awning material supported by framing and which is attached to a building.

Banner – A piece of cloth, plastic or similar material attached, at two (2) or more points, to a pole, staff or other support, intended for use as a temporary sign.

Building Front – The portion of a building facing the road or any portion of a building which has separate businesses and separate egress and ingress for the public facing a parking lot or another public way.

Business Center – A group of businesses sharing a common plaza, parking area, building, or located within a shopping plaza.

Calculation of Sign Area – a. The area of a sign shall include all lettering, designs, or symbols, together with the background, whether open or enclosed, upon which they are displayed. Not

included in this definition is any supporting framework or molding incidental to the display itself. b. Where a sign consists of individual letters or symbols attached, painted or applied to a building, wall or window, the area shall be considered to be the smallest rectangle encompassing all the letters and symbols. c. In computing the area of a double-faced sign, only one side shall be considered if both faces are identical. Notwithstanding the above, if the interior angle formed by the two (2) faces of the double-faced sign is greater than forty-five (45) degrees, then both sides of such sign shall be considered in calculating the sign area. d. The maximum allowable area of a sign shall include all permanent signs attached, painted, or applied to a building facade.

Canopy – A roof-like cover, often of fabric, plastic, metal, or glass on a support, which provides shelter over a doorway.

Canopy or Arcade Sign – A wall mounted or electronic 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 on which the characters, letters or illustrations can be changed or rearranged manually without altering the face or the surface of the sign. Changeable-copy signs shall exclude time and temperature signs.

Co-branded business location – Any two retail businesses that share a common central entrance and aisle where there are no interior walls separating the two businesses.

Community Information Board – A free standing sign erected on municipally owned property, the purpose of which is to educate the public on community, town, and other civic activities. The sign, by design, will have changeable content maintained by an organization approved by the Board of Selectmen. The approved organization will establish written criteria as to who is entitled to submit information on up-coming activities of a general interest to the community, as well as a selection method for inclusion of events to be included on the Community Information Board.

Construction Sign – A sign identifying an architect, builder, contractor, subcontractor, material supplier, financing entity or others participating in construction, design or alteration on the property which the sign is located. Said signs may also include a picture of the building under construction.

Direct External Lighting – Illuminated by means of a light source that is external to the sign being lit.

Directional or Traffic Safety Sign – A sign identifying entrances, exits, parking areas or other operational features of premises and/or providing directions for the safe and/or efficient flow of vehicular or pedestrian traffic (Directional or Traffic Safety Signs within public roadway layouts are governed by the Massachusetts Department of Transportation and Highways Manual on Uniform Traffic Control Devices).

Double-faced Sign – A sign with two faces or panels, both of which is not visible at the same time and which, unlike a v-shaped sign, are directly back to back.

Drive-through Menu Sign – A sign associated with drive-through windows or kiosks and directed to drive-through traffic.

Electronic Message Center (EMC) - A portion of a sign that uses changeable lights to display words, symbols, figures or images that can be altered or rearranged by remote or automatic means.

Exposed Neon Sign – An illuminated sign containing a glass tube filled with neon, phosphors or other gaseous substance which is bent to form letters, symbols or other shapes. Exposed neon signs shall include tubes which are visible either through exposed lighting on the sign face or through transparent or translucent material from a light source within the sign. This includes said signs whether or not they are enclosed in a box or other framing material.

Facade – The area of the entire building front wall, including the parapet but not the roof.

Flashing Sign – A sign which contains an intermittent or sequential flashing light source, but excluding changeable-copy signs and electronic message centers, including animated signs or signs which, through reflection or other means, create an illusion of flashing or intermittent light.

Freestanding Sign – A sign not attached to a building which is supported from the ground by a post or other means.

Gateway Sign – A free standing sign owned by a government entity to indicate the entrance to a destination or geographic area.

Government Sign – Any sign erected and maintained by a government agency.

Halo Lighting – Light showing from the back of or from within a letter or graphic shape out towards the surface that the letter or graphic is mounted on without having any light visible through the face of the letter or graphic.

Height of a Sign Structure – The vertical distance including landscape features and mounding measured from the highest point of a sign including all moldings, trim, roofs, to the average natural grade at the street.

Historic or Commemorative Marker – Any sign or plaque indicating the name of a building, the date of erection and/or incidental information about its construction, also known as memorial signs or markers.

Illegal Sign – A sign which does not meet the requirements of this code and which has not received legal nonconforming status.

Illuminated Sign – A sign lighted or exposed to artificial light either by lights on or in the sign or directed towards the sign including Halo Lighting, Direct/External Lighting, Indirect Lighting, Internal Illumination, Flashing or Intermittent Lighting.

Indirect Lighting – Illumination by means of a concealed light source, whereby all devices are shielded from view by opaque or translucent materials and including reflected lighting.

Internal Illumination – Illumination by means of a light source completely enclosed by the sign panel(s).

Ladder Sign – A freestanding ground sign with two (2) vertical supports and one (1) or more crosspieces serving as individual signs.

LED (Light-Emitting-Diode): An electronic device that emits light when an electrical current is passed through it.

Logo – A distinctive emblem or insignia identifying a particular product, service, business, activity or entity.

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 Sign – A sign illustrating the menu or specials for an establishment.

Multiple-faced Signs – Signs containing more than two faces or panels.

National/Regional Advertising Emblem – A sign which refers to a product or organization which is nationally or regionally marketed or has national or regional membership. Examples include Master Card, HBO, AAA, MLS (Multiple Listing Service).

On-Premise Sign – A sign which pertains to the use of the premises on which it is located and maintained.

Off-Premise Sign – A sign which refers to products, services or activities occurring on a parcel of land other than that on which the sign itself is located.

Off Premises Business Public Information Ladder Sign – A sign erected by the Town of Yarmouth, showing only the name service or activity and the direction to where it is located.

Permanent Sign – All signs other than temporary signs.

Political Sign – A temporary sign used in connection with a local, state, or national election or referendum.

Public Information Sign – A sign erected by the Town of Yarmouth, showing only the name of a business, service or activity and the direction to where it is located.

Public Way – For the purposes of this section only a public way shall indicate: Any way, public or privately owned, over which the public has a right to pass.

Quills/Feathers - A type of vertical banner made of flexible materials, the longer dimension of which is typically attached to a pole or rod that is driven into the ground or supported by an individual stand.

Residential Decorative Sign – A sign indicating a name for a residence at the premises and not advertising any products or services.

Residential Identification Sign – A sign identifying a subdivision, condominium, apartment complex or other residential development.

Real Estate Sign – A temporary sign which advertises property as being for sale, rent or lease.

Regulatory or Safety Sign – An on-premises sign which provides directions or regulations for the safe and legal conduct of activities on the premises.

Roadway Banners – Temporary pole mounted vertical banners which are owned by the Town of Yarmouth and located in a public road right-of-way in accordance with policies and procedures adopted by the Board of Selectmen.

Seasonal Sign – A temporary sign used for a portion of the year not to exceed 180 day seasonal basis.

Sign – Any physical symbol which is intended or designed to identify, advertise, or promote a product, service, business, or the name, ownership identity or control of a premises. This shall include all physical symbols which in any way relate to the business or activity conducted or sought on the premises, and which are visible to or are intended or likely to attract the attention of persons who are not on the premises where the business or activity is conducted or sought.

Sign Permit – A permit issued by the Building Department for the erection, construction, enlargement, alteration, repair, or improvement of any sign.

Special Event Sign – A temporary sign advertising or pertaining to a civic, patriotic, non-profit, educational or other event taking place within the town.

Subdivision Lot Plan Sign – A sign depicting the lot plan of a subdivision.

Subdivision Sign – An attached or freestanding sign identifying a residential, commercial or industrial subdivision.

Time and Temperature Sign – A sign or portion thereof which is designed to illustrate the current time and temperature.

Temporary Sign – A sign that by design, usage or material is not intended for long-term use.

Under-canopy Sign – A directional sign suspended beneath a canopy, ceiling, roof or marquee.

Vending Machine Sign – A sign identifying the contents of an exterior vending machine which dispenses beverages, food, candy, etc., or identifies a service provided by the machine. For the purposes of this bylaw section, telephone booths and newspaper boxes are excluded.

Wall Sign – A sign attached parallel to or painted on the wall of a building.

Window – An opening in a wall or door of a building which allows the admission of light and/or air which is enclosed by a frame which may separate it from other windows.

Window Sign – Any sign which is displayed on or outside of or inside of the glass of a window with the primary purpose being that the sign's message will be seen from the exterior of the building. The word glass when used in this section shall mean glass or any other transparent medium.

Yard, Barn, Garage Sale Sign – A sign advertising a yard, barn or garage sale.

Zoning Districts – Districts described in the Town of Yarmouth Zoning Bylaw, as amended.

303.3 General Regulations

303.3.1 Prohibited Signs. Pennants, balloons, aerially supported devices, electronic message centers (unless specifically stated otherwise), quills/feathers, or any other sign not specifically allowed, are prohibited in all districts.

303.3.2 Electronic message centers: Signs allowed to display electronic messages are limited to the following uses and sizes only. All electronic messages must be contained within the allowed sign area.

1. To denote the time, date or temperature, maximum character height of 12 inches and area of twelve (12) square feet. The electronic message shall be static except messages can change as needed to denote accurate time, date or temperature. The electronic message may also toggle between time, date and temperature at reasonable intervals that do not cause a flashing effect or result in traffic safety hazards.
2. Community Information Boards (CIBs) may include electronic messages. The maximum area of the electronic message is twenty-eight (28) square feet. The electronic message can change as needed to provide updated community information, and may include screen changes and scrolling.
3. Gas Station Pricing:
 - a. Free-standing signs for gas stations may include electronic messages for up to two gas prices with a maximum character height of twelve (12) inches and a maximum combined area of ten (10) square feet.
 - b. Gas pumps may have electronic messages on top of the pumps to denote gas prices only for up to four different gas types in a single row with a maximum character height of 8”.
 - c. The electronic messages shall be static except messages can change as needed to provide updated gas prices.

303.3.3 Flags. Up to three (3) governmental flags per premises will be allowed. One additional flag indicating ‘open’, seasons, or community theme is allowed.

303.3.4 Movement or Moving Parts. No sign shall move, contain any moving parts, or give the appearance of motion due to flashing or intermittent light, except portions of a sign which include electronic message centers per Section 303.3.2 and as limited thereby.

303.3.5 Colors. No sign shall contain colors which are fluorescent, luminescent, or "day-glo" paints.

303.3.6 Off-Premises Signs. Except as indicated in Sections 303.4.1 and 303.4.2 below, no off-premises signs will be allowed.

303.3.7 Traffic Safety. No sign shall be erected in such a way as to create a traffic hazard as determined by the Building Commissioner.

303.3.8 Support by Utility Poles or Vegetation. No sign will be allowed to be attached to a utility pole, light pole, tree, vegetation, or other similar vertical surface, excepting that Roadway Banners may be attached to utility poles or light poles in accordance with policies and procedures adopted by the Board of Selectmen.

303.3.9 Vehicles. No truck or other vehicle shall be used exclusively or primarily as a sign. All other vehicles bearing signs must be registered, insured, and inspected.

303.3.10 Illumination. Signs illuminated with exposed neon or gas filled tubes will not be allowed, except as provided in section 303.5.3. No illumination will be allowed that conflicts with the ability to readily see traffic lights or causes any hazardous traffic safety conditions. No sign illumination will be allowed that casts direct light or glare on abutting or other neighboring premises.

303.3.10.1 Strings of Lights. Decorative strings of lights or other seasonal style lights associated with the winter holiday season will be allowed only between the tenth (10th) of November and the twenty-eighth (28th) of February. Except for these seasonal lights, no blinking lights will be allowed.

303.4 Signs Allowed In All Zoning Districts

303.4.1 Temporary Signs. Only the following types of temporary signs will be allowed:

303.4.1.1 Religious, Civic and Non-profit Organizations. On premises temporary signs will be allowed to advertise fundraising and special events. Signs must meet the size, duration and other requirements outlined in the Selectmen's Fundraising/Special Event Sign Policy. Off-premises temporary signs to promote special events may be allowed as described in the Selectmen's Fundraising/Special Event Sign Policy. A permit from the Building Commissioner is required, but no fee will be charged.

303.4.1.2 Special Event Signs for Temporary Outdoor Recreation: One on premises Special Event Sign may be allowed for events meeting the definition of Temporary Outdoor Recreation that are to be located on Town owned Land and for which approval has been obtained through application to the Town Administrator's office for Use of Town-Owned Property. Signs must meet the size, duration, and other requirements outlined in the Selectmen's Fundraising/Special Event Sign Policy. Off premises temporary signs to promote special events may be allowed as described in the Selectmen's Fundraising/Special Event Sign Policy. A permit from the Building Commissioner is required, but no fee will be charged.

303.4.1.3 Commercial. A business will be allowed not more than one additional temporary sign annually for the purpose of advertising a grand opening, anniversary sale, or other special commercial event. Signs which exceed eighteen (18) square feet in area will not be allowed. Temporary signs may be displayed for up to fourteen (14) consecutive days and may apply for one renewal. The location of temporary signs must be approved by the Building Commissioner. A permit from the Building Commissioner is required and a fee will be charged.

303.4.1.4 Real Estate Signs. One (1) sign shall be allowed pertaining to the lease, sale or availability for occupancy of the lot or building on which it is located. Real estate signs will not exceed six (6) square feet in area. All real estate signs must be removed within seven (7) days after the conveyance or lease of the property. Real estate signs shall be exempt from the setback requirements of section 303.5.4 of this code, except that they may not be displayed in a manner which interferes with public safety in the opinion of the Building Commissioner. If due to topographic conditions a property abuts a public waterway or public golf course a second sign may be allowed providing the two signs are erected on parallel property boundaries separated by no less than 75 feet. No permit or fee is required.

303.4.1.4.1 Off-Premise Real Estate. Open House signs may be displayed from 10:00 a.m. to 4:00 p.m. on Saturdays, Sundays and holidays. All such signs must be placed on private property with permission of the owner. Only two such signs will be allowed to be displayed for any property for sale or lease. Only one such sign will be allowed to be displayed on any one lot. Such signs will not exceed six (6) square feet in area. No permit or fee is required.

303.4.1.5 Political Signs. Political signs may be placed on private property with permission of the property owner. No permit or fee is required.

303.4.1.6 Residential Construction site sign. One (1) sign for each trade or service (including financing and design) shall be allowed when a contractor is actively working at any site for either new construction, renovations, landscaping, painting or other work requiring permits, people and equipment. Each sign must be removed when the relevant work is completed, or for new construction, 7 days after a certificate of occupancy issued. Each sign shall not exceed six (6) square feet in size and must be located on the property where the work is being performed. These signs will not require permits or fees. No more than five signs are allowed at one time.

303.4.1.7 Commercial construction site sign. One (1) sign detailing all trade or service contractors (including financing and design) working at any commercial site for new construction, renovations, or work requiring permits, people and equipment. The one (1) sign must be removed seven (7) days after the issuance of a certificate of occupancy. The sign shall not exceed thirty two (32) square feet in size and must be located on the property where the work is being performed. No permit or fee is required.

303.4.2 Off-Premise Signs.

303.4.2.1 Slat/Ladder-Type Public Information Signs. Signs on ways erected as a public convenience shall require a permit, to be issued by the Building Commissioner, in accordance with M.G.L. Ch. 85, Sect. 8. Design shall be as outlined in the Selectmen's Slat/Ladder Sign Policy and will include only the identification of the business. Slat/Ladder-type signs shall be placed at locations approved by the Town of Yarmouth Department of Public Works. Annual fees shall be determined by the Selectmen.

303.4.2.2 Service clubs and religious, charitable and civic organizations' signs providing information on the location or time of meetings will be allowed in locations approved by the Building Commissioner. Such signs will not exceed four (4) square feet in area. A permit is required but no fee will be charged.

303.4.2.3 Public Service Signs. Signs erected to acknowledge the providers of a public service, to acknowledge a donation, or to promote a public service activity (e.g., Neighborhood Crime Watch, Conservation Trust, Community Preservation Committee acquisitions) will be limited to a maximum size of three (3) square feet. Benches donated to the Town to serve at bus stops on Town or Regional Transportation Authority bus routes, or for other town uses, may have one acknowledgment to the donor (Donated by ___) or a memoriam (In Memory of ___) on the front of the bench, on one slat. The acknowledgment may not exceed the length of one back slat, nor exceed 1.5 square feet in area. Lettering is not to exceed 2 inches in height. Benches must be approved by the Department of Public Works for use. Only one sign per site, or per bench, will be allowed. A permit is required but no fee will be charged.

303.4.2.4 Community Information Board (CIB) – CIBs shall be allowed on municipally owned property for the purpose of public education of events and activities of a non-commercial nature or for Special Events for Temporary Outdoor Recreation per Section 303.4.1.2. The sign shall not exceed thirty two (32) square feet and may contain a National/Regional Advertising Emblem indicating the donor of the CIB sign. The Emblem is not to exceed 3 square feet, or 20 percent of the gross area of the CIB, whichever is less. A maximum of three (3) CIBs, at any one time, shall be permitted in the Town of Yarmouth. For the purpose of this Bylaw, a CIB shall not be considered as a second freestanding sign.

303.4.2.5 Adopt-a-Landscape Signs. Signs erected to denote the provider of landscaping or streetscape services to a designated Adopt-a-Landscape area. Areas must be designated by the Department of Public Works for inclusion in the program. The provider of service must agree to a maintenance schedule to remain eligible for a sign. Adopted areas up to 200 square feet may have one sign with a maximum size of three (3) square feet, areas between 200 and 500 square feet may have up to two signs with a combined maximum size of six (6) square feet, areas over 500 square feet may have up to two signs with a combined maximum size of eight (8) square feet. No sign may exceed thirty-six (36) inches in height.

If two signs are installed they must be a minimum of ten feet apart facing different directions. Sign design must conform to standards determined by the Department of Public Works.

303.4.2.6 Gateway Sign. Gateway Signs may be erected on property designated by the Board of Selectmen as an official town or destination gateway. Signs may not exceed 24 square feet.

303.5 Signs Allowed Only In B1, B2 And B3 Zones and the VCOD.

See Section 414.8.11 (Signage) for supplemental regulations specific to development under Section 414, VCOD.

303.5.1 Unlettered Sculptures. Unlettered sculptures must be located a minimum of thirty (30) feet back from the front property line. They must not exceed a maximum of twelve (12) feet in height or eight (8) feet in length in any horizontal direction. Sculptures may be illuminated at night with spotlights providing the lighting does not cause a safety hazard or disturbance to abutters.

303.5.2 On-premise Directional Sign. On-premise Directional signs will be allowed only where needed for directing the flow of traffic within the property. These signs must not exceed two (2) square feet in area and may not include any advertising other than a logo incidental to the directions being given. They shall be included on the permit for other signs of a business, or a separate permit shall be required. No fee will be charged.

303.5.3 Window Signs.

1. The word glass when used in this section shall mean glass or any other transparent medium.
2. No window sign shall be displayed in the lower fifty percent (50%) of the glass of a window. The lower fifty percent (50%) of a window is defined as the glass which is below a horizontal line drawn half way between the bottom and top of the glass. This limitation shall apply only to window signs displayed in windows located within the ground floor of a building. This limitation is imposed to enhance public safety.
3. Only one (1) window sign is allowed to be displayed in each window.
4. No window sign will exceed in size twenty five percent (25%) of the total glass square footage of the window in which the sign is displayed.
5. Window signs may be constructed of any material including exposed gas filled tubes subject to the limitations of the following paragraph.
6. Limitations on window signs which are constructed totally or in part with exposed visible gas filled tubes:
 - A. This type of window sign will be allowed only in the B2 district.
 - B. This type of window sign will not be allowed unless all signs advertising the business, which wishes to display this type of window sign, are in compliance with all of the applicable sign regulations contained within section 303 of this zoning bylaw.
 - C. This type of window sign will not exceed nine (9) square feet in size.
 - D. Only two (2) of this type of window sign shall be allowed in the building area occupied by the business wishing to display this type of window sign.

303.5.4 Free Standing Signs.

303.5.4.1 Singly Occupied or Co-branded Business Location. One free standing sign per business property having a maximum face area of twenty four (24) square feet with a maximum face height or width of eight (8) feet will be allowed. In the case of double faced signs only one sign will be counted for measurement. All advertising or lettering shall be contained within the face of the sign. No advertising, lettering, or internal illumination shall be allowed on the posts, pillars, arms, or other supporting structure with the exception of street numbers. No part of the sign shall be more than twelve (12) feet in height above the average

natural grade at the street. All parts of this type of freestanding sign shall have a minimum 6' setback from any property line.

303.5.4.2 **Business Centers.** A business center may have only one (1) free standing sign, not exceeding twenty four (24) square feet in area, with the advertising area divided among the business enterprises or identifying the business center name or both, with a maximum face height or width of eight (8) feet will be allowed. All parts of this type of freestanding sign shall have a minimum 6' setback from any property line. For Business Centers housing three or more tenants and a minimum of 20,000 square feet of retail/office space, the center may have a 48 square foot sign with a minimum setback of 12 feet. If a Business Center eligible for the 48 feet free standing sign has more than 1000 feet of frontage it may choose to divide the sign into two separate 32 square foot signs provided they meet 50 foot sideline setbacks and are separated by a minimum of 300 feet.

303.5.4.3 **Business Centers – Conformity.** In each business center all freestanding signs will conform to each other as far as, material of construction, color, background and general style. All free standing business center signs must have one light, neutral colored background for the entire business center sign. Neutral colors shall be white, off-white, light grey or light tan. Each tenant sign must have the same light, neutral colored background as the business center sign, and may have up to three (3) foreground colors. Black will be considered a color when determining the number of foreground colors allowed. White will be considered a color for background, but not a color for foreground. For example, a single tenant sign with light blue, dark blue, white and black foreground colors will be considered to have three foreground colors for the purpose of meeting the color requirement.

303.5.4.4 **Street Numbers.** All free standing street signs for a property shall include the street number of the property in a contrasting color with a minimum height of 3" and maximum height of 5" in a visible location on the sign. The numbers may be located outside the sign area on supporting framework or molding and will not be included in the calculation of sign area.

303.5.4.5 **Drive-Through Menu Board:** Food service businesses that have a drive-through window, may have one additional single sided freestanding drive-through menu board of a maximum size of sixty-six (66) square feet, a maximum face height or width of ten (10) feet, and no part of the sign more than twelve (12) feet above the average grade at the sign location. All advertising or lettering shall be contained within the face of the sign. This sign shall be directed to drive-through traffic where the order is to be placed and shall be screened from view from the street.

303.5.4.6 **General.** Any property seeking to increase the size of an existing free standing sign must meet all other requirements of section 303, including setback requirements. Increasing the size of an existing sign may not be done through the addition of hanging or attached riders. An existing sign may be expanded if similar materials, style and colors are used on the expansion and the overall resulting sign appears to be a single, cohesive sign.

303.5.4.7 All business information shall be contained within the allowed sign area, including information related to vacancy/no vacancy, open/closed, or visa/mastercard accepted. Hanging or attached riders are not allowed.

303.5.5 Attached Signs

303.5.5.1 Attached Signs. Attached signs will not extend above or beyond the roof ridge line on the building. No portion of the sign may rise above a point higher than 35 feet.

303.5.5.2 Singly Occupied or Co-branded Business Location. Two (2) single face signs per establishment may be attached to opposite or perpendicular walls of a building. The height of attached signs will not exceed two (2) feet. The length will not exceed one-third (1/3) of the length of the wall of the building to which the sign is affixed. In no instance is the square footage to exceed sixty (60) square feet per sign.

303.5.5.3 Business Centers – Attached. All sections of 303.5.5.2 will apply except that only one attached sign per business will be allowed and no sign shall be longer than one third (1/3) of the length of the building occupied by that business. If a business in a business center has a rear or side public entrance, a secondary attached sign, no larger than four (4) square feet shall be allowed at said entrance.

303.5.6 Location for Attached Signs. All parts of attached signs shall have a minimum 6' setback from any property line.

303.5.7 Menu and Directory Signs. One (1) sign which displays a restaurant's menu or which lists the businesses which are located within a building will be allowed in addition to any other signs allowed by this zoning bylaw. This type of sign must be attached to the exterior of the building and be located in close proximity to the main entrance of the restaurant or building. This type of sign will not exceed three (3) square feet in size. This type of sign will not require permits or fees.

303.5.8 Vending Machine Signs. Exterior vending units may have up to 72 square inches of signage. No vending machine may be located further than six (6) feet from the property's principle building. No more than two machines may be visible from the street.

303.5.9 Commercial Real Estate Signs. Commercially zoned properties with pre-existing free standing signs or attached signs, may utilize the full area of one sign for the purpose of marketing the lease, sale, or occupancy of the lot or building on which it is located. No permit or fee is required.

303.6 Reserved

303.7 Residential Zoning Districts.

303.7.1 Allowed Businesses. Businesses allowed in a residential zoning district as a preexisting nonconforming use, or by the Board of Appeals special permit or variance shall conform to sections of this bylaw applicable to commercial signs in B1, B2, and B3 zones.

303.7.2 Subdivisions. Subdivision signs shall not be larger than twelve (12) square feet and shall conform to all the requirements set forth for signs in B1, B2, and B3 zoning districts, except that subdivision signs may, with Yarmouth D.P.W. approval, be located within a road layout.

303.7.3 Signs for Residences. Single family and two family dwellings will be allowed one Residential Decorative Sign per dwelling unit showing the name of the residence. The sign may not exceed 6 square feet

303.8 Permit Process.

303.8.1 No sign, except those indicated in Section 303.8.3, will be erected or altered without a sign permit issued by the Building Commissioner. All permitted signs shall be identified by a code number issued by the Building Commissioner. A fee will be charged on application for a permit for installation of new signs as per Section 303.8.5 below. A permit shall be granted if a sign is in compliance with these regulations. Permits will be required for temporary as well as permanent signs.

303.8.2 Any person aggrieved by the refusal of the Building Commissioner to issue a permit under the provision of this bylaw may appeal to the Board of Appeals. The Board of Appeals will hold a public hearing and render a decision accordingly to the procedure of the Zoning Bylaw for appeals of refusal to grant a building permit.

303.8.3 Signs not requiring permits. Temporary Real Estate signs, Political signs, Residential Construction site sign, Commercial Construction site sign, Roadway Banners, Menu and Directory Signs, Commercial Real Estate sign, signs indicating the name of the occupant of a dwelling, other Residential Decorative Signs, any sign erected by any governmental agency to promote traffic safety, and window signs, except as required by section 303.5.3, shall not require a permit.

303.8.4 Transfer of Permits. Transfer of permits from one business owner to another will be allowed. When there is a change in ownership of a business, the new owners of a business must request the transfer of the permits for signs.

303.8.5 Fees. Fees for sign permits shall be determined by the Board of Selectmen. No fee is required for signs not requiring permits per Section 303.8.3, accessory signs, Public Service signs, On-premises Directional signs, and temporary and off-premise signs for religious, civic and nonprofit organizations or for Special Event Signs for Temporary Outdoor Recreation.

303.9 Measurement. Measurement of sign area shall be by standard geometric methods. In cases where this is not possible, the area shall be determined within straight lines encompassing the face of the sign. Cut-out letters shall be allowed as an attached sign whose area shall be measured within the intersections of lines extended from the extreme edges of the lettering.

303.10 Maintenance and Safety.

303.10.1 All signs and their supporting structures must be kept properly maintained, repaired and in proper condition as determined by the Building Commissioner. If the Building Commissioner finds that a sign is unsafe or otherwise improperly maintained, he shall issue a written notice to the permit holder and the property owner informing him of how the situation must be corrected.

303.10.2 If the specified conditions are not corrected within three (3) business days (or 30 days for non-safety related issues) of receipt of the written notice, the permit holder will be liable for penalties prescribed under this bylaw.

303.10.3 Abandoned Signs. When the Building Commissioner determines that a sign(s) is abandoned, as defined by this bylaw, he will notify the property owner of said determination and request that the abandoned sign(s) be removed. The property owner will have thirty (30) business days after the receipt of the request to remove said sign(s). Failure to remove the abandoned sign(s) within the thirty day period shall subject the property owner to all penalties prescribed under this bylaw. This section of the Zoning Bylaw is not intended to abridge any property right(s) granted by Massachusetts General Laws, chapter 40A, section 6.

303.11 Violations.

303.11.1 Definition. Any deviation from the foregoing rules constitutes a violation of this bylaw. Violators must be given written notification of any violations.

303.11.2 Fines for Permanent and Temporary Signs. Any violator of any of the provisions of this bylaw will be given three (3) business days for correction of the defect or removal of the offending permanent sign, and one (1) working day for correction of the defect or removal of an offending temporary sign. If correction is not made in the allowed time, the owner will be fined fifty dollars (\$50) per day for the first seven (7) days and two hundred fifty dollars (\$250) per day thereafter. Violations of display of signs will be cumulative with consecutive violations accruing fines as outlined above.

303.12 Nonconforming Signs. Lawfully pre-existing Nonconforming signs may be maintained, but may not be enlarged or redesigned or altered in any way, except to conform to the requirements of this bylaw. Any such sign which has deteriorated to such an extent that the cost of restoration would exceed thirty-five percent (35%) of the replacement cost of the sign at the time of the restoration, shall not be repaired or rebuilt or altered except to conform to the requirements of this bylaw. A nonconforming sign may be reworded, provided that the new wording continues to advertise goods and/or services of the same type as those displayed prior to the change. Any exemption provided in this section shall terminate with respect to any sign which:

1. shall have been abandoned;
2. shall not have been repaired or properly maintained within thirty (30) days after notice to that effect has been given by the Building Commissioner.

303.13 Relief. Relief from the requirements of sections 303.3.10, 303.5.4.2, 303.5.4.3, 303.5.5.2 and 303.5.5.3 may be granted by the Board of Appeals by special permit, provided the Board finds, in addition to the requirements of section 103.2, that the relief requested meets the spirit and intent of this bylaw and that the result will be visually and aesthetically beneficial to the neighborhood. All other relief shall be in the form of a variance, as provided in section 102.2.2.

The validity of any section in this bylaw does not effect the validity of any other section of the bylaw.

304. STORMWATER MANAGEMENT

304.1 All applicable projects shall comply with the Town of Yarmouth Stormwater Management Regulations.

IV. SPECIAL REGULATIONS

400 RESERVED

401 ACCESSORY USES.

401.1 Camping and Recreational Equipment.

401.1.1 At no time shall parked or stored camping and recreational equipment be occupied or used for living, sleeping or housekeeping purposes.

401.1.2 If camping or recreational equipment is parked or stored outside of a garage, it shall be parked or stored to the rear of the front building line of the lot, except for loading and unloading.

401.2 Accessory Scientific Uses. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit by the Board of Appeals, provided that the Board finds that the proposed accessory use does not substantially derogate from the public good.

401.3 Commercial Outdoor Display. Except in the VCOD, the outdoor display of any of the following items for sale or rent, shall not be allowed at any commercial establishment in any district: clothing, household furnishings and all other items not intended for outdoor use. No outdoor displays are allowed to be placed in the required buffer zones of any commercial lot. Outdoor display of retail goods in the VCOD shall only occur along the façade of those commercial or mixed use structures where the goods are sold, shall not be within a public right of way, and shall not occur outside of normal business hours.

401.4 Temporary Commercial Outdoor Display. The Building Commissioner may approve, through application and permit, Temporary Commercial Outdoor Displays to take place at commercial establishments in the B1 and B2 Zoning Districts, or for properties which have developed under the Village Centers Overlay District (VCOD), with the following provisions:

1. A maximum of three events with a total maximum duration of 17 days per calendar year per parcel.
2. Retail goods shall be for sale only and shall not occur outside of normal business hours.
3. No temporary display, parking, or structures shall be located within required buffer areas and/or yard setbacks.
4. Temporary commercial signs for temporary commercial outdoor display shall not exceed 18 square feet and shall be permitted for the duration of the outdoor display event. The location must be approved by the Building Commissioner. A permit from the Building Commissioner is required and a fee will be charged.

5. Safe pedestrian circulation shall be provided between the temporary display area, main building(s) and parking.
6. If located within a parking area, the remaining parking shall be sufficient to meet the minimum parking requirements of Section 301.5 for the commercial use(s).
7. Location of temporary display shall not impede fire and public safety access or circulation.
8. No cooking, display, or sale of food shall be allowed outdoors, except in accordance with Board of Health Regulations.
9. Applicant shall provide a Sketch plan to include, but not limited to, dimensions and location of the temporary display area, building(s), parking spaces, pedestrian circulation, lot lines, buffer areas and yard setbacks.

The Building Commissioner may require an applicant to go through the Informal Site Plan Review process, at his/her discretion, if deemed necessary to obtain input from other Town Departments.

402 SINGLE & MULTI-FAMILY CLUSTER DEVELOPMENTS, PLANNED RESIDENTIAL DEVELOPMENTS, AND CONGREGATE LIVING HOUSING

402.1 Definitions.

Single-family Cluster Development – a group of single-family dwellings on reduced sized lots, with an area of dedicated common open space associated with the development.

Multi-family Cluster Development – a group of multi-family dwellings with an area of dedicated common open space associated with the development. For the purposes of this section, a two-family dwelling unit shall fall under the definition of a multi-family dwelling.

Planned Residential Development – a group of multi-family dwellings, or a mix of multi-family and single family dwellings, along with one or more neighborhood convenience stores, as specified below, with an area of dedicated common open space associated with the development. For the purposes of this section, a two-family dwelling unit shall fall under the definition of a multi-family dwelling.

Congregate Living Housing – either a town operated, state or federally aided housing development, or it may be a self-contained retirement community on twenty (20) acres or more of land, which consists of multi-family dwellings designed and reserved specifically to accommodate the semi-independent elderly population. Such multi-family housing shall include group facilities for dining, food preparation and social interaction. For purposes of this section, elderly shall mean those persons aged fifty-nine (59) or older.

Common Open Space – the area, no less than 30% of the total development acreage, which is preserved for recreation and/or conservation, and does not include land designated for streets, drives, sidewalks, parking areas, building lots, or non-functional areas, such as yards, space between buildings, narrow strips, etc.

402.2 Objectives. The objectives of all developments under this section are: to allow relatively intensive use of land locally while not increasing the population density on a large scale; to preserve open space for conservation and recreation; to introduce variety and choice

into residential development; to meet housing needs; and to facilitate economical and efficient provision of public services. In the case of congregate living housing, it is the further objective to provide housing for the elderly population who may not be capable of total independence but are not in need of institutional living.

402.3 Applicability. A Special Permit to allow the use of land for any development outlined in this section may be granted by the appropriate authority with the uses and dimensional requirements as specified below in lieu of those elsewhere specified in this bylaw, provided that all regulations and procedures are complied with.

Section 402 shall not be applicable to projects developing or redeveloping under Section 414, VCOD.

402.4 Permit Granting Authority. A Special Permit for a Single-Family Cluster Development or a Planned Residential Development may be issued by the Planning Board. A Special Permit for a Multi-Family Cluster Development or a Congregate Living Housing Development may be issued by the Board of Appeals.

402.5 General Application Procedures.

402.5.1 Preapplication Review. Applicants are required to submit preliminary material for review by the Site Plan Review Team under section 103.3, prior to formal application, in order to avoid the discovery of fundamental problems with a proposed plan at the time of the public hearing on the granting of a special permit. Preliminary subdivision plans, if any, should be submitted to the appropriate permit granting authority prior to application for a special permit.

402.5.2 Application. Applicants for a special permit under this section shall submit to the appropriate permit granting authority (1) copy of an application and fifteen (15) copies of the overall development plan.

402.5.3 Overall Development Plan. The overall development plan for any development under this section shall include all information required for a Definitive Subdivision Plan, as outlined in the Yarmouth Planning Board's Rules & Regulations Governing the Subdivision of Land, section 3.4.2. In addition, the development plan must indicate: proposed land and building uses; proposed building locations and dimensions; any required yards or setback area; location and boundaries of common open space and area calculations; parking areas and calculations, areas of proposed and retained vegetation, and; sewage facilities.

402.5.4 Other Materials. The application materials shall indicate each landowner's interest in the land to be developed, the firm or organization proposed to own and maintain the common open space, the substance of covenants and grants of easement to be imposed upon the use of land and structures, and a development schedule.

402.5.5 Review and Decision. Upon their receipt of application and required plans, the permit granting authority shall transmit one (1) copy of each to the Board of Health, the Conservation Commission, the Town Engineer, the Water Department, the Building Commissioner, the Fire Chief, and the Planning Board, if applicable. Within thirty-five (35) days of receipt of the application by the agencies named above, reports shall be submitted to the permit granting authority, which shall make no decision until receipt of all such reports or until the expiration of

thirty-five (35) days following receipt of the application by those agencies.

402.5.6 **Criteria for Approval.** Approval of a cluster development or a planned residential development shall be granted upon a determination by the Permit Granting Authority that the plan furthers the objectives stated in section 402.2 and complies with the requirements of section 402.5 and that the plan enhances the preservation of open space for conservation or recreation; utilizes natural features of the land; and allows more efficient operation of streets, public utilities and other public services. In addition, there shall be minimum disruption of established neighborhoods, especially with regard to unusually heavy traffic, visual impact, etc.

402.6 **General Regulations and Requirements.** The following regulations and requirements are applicable for all the development types found in this section.

402.6.1 The development plan shall encompass land which is contiguous, and of area at least ten (10) times the minimum single family lot area required in that zone.

402.6.2 Common open space shall be preserved for recreation or conservation and shall include not less than thirty percent (30%) of the land area within the development plan. Such open space shall either be conveyed to the town and accepted by it for park or open space use or be conveyed to a nonprofit corporation or trust, owned, or to be owned, by the owners of the lots or residential units within the plan. If such a corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots or residential units. In any case where such land is not conveyed to the town, a restriction enforceable by the town shall be recorded, providing that such land be kept in an open or natural state and not be built upon or developed for accessory uses such as parking or roadway, and the town shall be granted a perpetual easement over the land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such open space shall be delineated on the plan.

402.6.3 All developments shall be designed and built in accordance with the Yarmouth Planning Board's Rules and Regulations Governing the Subdivision of Land, as amended.

402.6.4 Sewage disposal shall be in accordance with all applicable requirements of Massachusetts General Law and Board of Health regulations, as amended.

402.6.5 Parking shall be in accordance with section 301 of this bylaw. Parking lots shall be designed, built, and screened in the manner outlined in section 301 for commercial parking lots, regardless of the number of parking spaces.

402.6.6 Other than for those properties to which Section 404 applies, no multi-family structure shall contain more than twenty (20) dwelling units. In the case of congregate living housing, this requirement may be waived if the Board of Appeals specifically finds that there is sufficient buffering to prevent a larger building from being disruptive to the character of surrounding neighborhoods. In the case of congregate living housing on properties to which Section 404 applies, this requirement may be waived if the Planning Board specifically finds that there is sufficient buffering to prevent a larger building from being disruptive to the character of surrounding neighborhoods.

402.6.7 Other than for those properties to which Section 404 applies, multi-family dwellings shall be located not less than one hundred fifty (150) feet from any wetland or land subject to

flooding. Single-family dwellings shall be no less than one hundred (100) feet away.

402.6.8 Occupancy permits for any structure shall be granted only in accordance with the requirements of section 103.3.6 of this bylaw.

402.6.9 Long-term Compliance. Subsequent to approval of a development under this section, no land therein shall be sold and no lot line or structure altered from that shown on the overall development plan so as to increase the extent of nonconformity with the standard dimensional regulations of this bylaw (see section 203). Prior to sale of any lot within a cluster development or a Planned Residential Development, or issuance of a building permit for construction therein, such lots shall be shown on a plan recorded in the Registry of Deeds or registered with the Land Court, which plan shall make references to the recorded land agreements referred to in section 402.6.2. Unless the Special Permit granting authority has specifically approved staged development, such plan shall show all lots to be included in the development.

402.7 Special Requirements – Single and Multi-Family Cluster Developments and Planned Residential Developments.

402.7.1 Number of Dwelling Units. The maximum number of dwelling units allowed shall be calculated by dividing the area of developable land in the tract by the minimum lot size specified in section 203.5 for a single family dwelling in that district. The developable land is the total tract minus: wetlands; ninety percent (90%) of the land area in existing utility easements, and; land which does not meet state or local health regulations for septic systems. For this purpose, any land designated on the U.S. Department of Agriculture Soil Conservation maps as having severe limitations for septic systems shall, without proof to the contrary, be deemed as not meeting these criteria.

402.7.2 Allowable Uses. Single-family cluster developments, multi-family cluster developments, and planned residential developments may be allowed by special permit in all residential districts, except RS-40, as well as in B1 and B2 districts, as shown in section 202.5. Planned residential developments, as defined in section 402.1, may include neighborhood convenience stores, provided that: the gross commercial floor area shall not exceed five percent (5%) of the gross residential floor area, or five thousand (5000) square feet, whichever is less; the stores are attractively designed as an integral part of the overall development; provision is made for their continued maintenance and operation for the benefit of residents in the development; and they be so located that residents of the neighborhood outside of the development may use them without disturbing normal traffic patterns within the development, infringing on parking spaces reserved for the use of residents of the development, or unduly disturbing the amenities of those residences.

402.7.3 Dimensional requirements.

402.7.3.1 Single-family cluster development:

Minimum Lot Size.	10,000 sq. ft.
Minimum Lot Width at Proposed Building Line	100 ft.
Minimum Frontage	100 ft.*
Minimum Front Yard	25 ft.
Minimum Side Yard.	12 ft.

Minimum Rear Yard.	20 ft.
Maximum Lot Coverage.	25%
Maximum Height: Floors	See Section 203.4
Feet.	See Section 203.4

Setback from boundary of development: No dwelling within a cluster development may come closer to the boundary of the development than fifty (50) feet. No accessory structure shall be placed within 30 feet of the front lot line, within 10 feet of a side lot line, or within 12 feet of any other building. Accessory structures of up to 150 square feet may not be placed closer than 10 feet from a rear lot line. Accessory structures of 150 square feet or more may not be placed closer than 20 feet from a rear lot line.

* The minimum required frontage may be reduced to fifty (50) feet if the lot is capable of containing a square, each side of which is 100 ft. No point on any side of the requisite square shall exceed a distance from the street greater than 250 feet.

402.7.3.2 Multi-Family Cluster Development or Planned Residential Development:

1. Single family dwellings in a planned residential development shall be on lots and conform to the requirements of section 402.7.3.1, above.
2. Multi-family buildings shall conform to the setback requirements stated below. The absence of reference to lots for multi-family dwellings shall not prohibit a building or dwelling unit from being shown on, or associated with, a lot or lots.
3. The minimum building setback from streets, ways or parking areas shall be the greater of one (1) times the building height or twenty five (25) feet. The minimum distance between buildings shall be the greater of the sum of the heights of the buildings measured from the average ground level at the side between said buildings or thirty five (35) feet.
4. The permitting authority may reduce these dimensional requirements upon clear demonstration that the proposed development offers exceptional advantages. In no case shall an exception be granted to increase the allowable density of a cluster or planned residential development.

402.8 Special Requirements – Congregate Living Housing Developments.

402.8.1 Congregate living housing shall be made up of one (1) or two (2) bedroom units. Such units shall be designed to accommodate one (1) or two (2) elderly persons. Aside from the bedroom(s) and bath(s), the unit may have, but is not required to have, a small kitchen and/or small living room. Congregate living housing shall have no more than twenty percent (20%) two (2) bedroom units. The number of congregate dwelling units allowed shall be the number allowed for other cluster developments, as stated in section 402.7.1, except that the following bonus may be allowed:

an increase in the maximum number of congregate dwelling units equal to the percentage of one (1) bedroom congregate living units in the development.

403 FLOOD AREA PROVISIONS.

403.1 Development – All applicable development and uses in all Flood Zones A and V, as identified on Federal Emergency Management Agency Flood Insurance Rate Map (FIRM) panels, whether permitted as a matter of right, by special permit, or by variance, shall meet the effective provisions of 780CMR (State Building Code). These maps are on file in the Building Division, the Engineering Division, the Planning Division, and the Town Clerk.

403.2 Floodway Data

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.

403.3 Notification of Watercourse Alteration

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

- Adjacent Communities
- NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104
- NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110

403.4 Use Regulations

1. Within Zone AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
2. Man-made alteration of sand dunes within Zones V1-30, VE, and V which would increase potential flood damage are prohibited.
3. All new construction within Zones V1-30, VE, and V must be located landward of the reach of mean high tide.

404. MOTELS

404.1. Motels in the Hotel/Motel Overlay District 1 (HMOD1).

404.1.1 Goals and Purposes in the HMOD1. During the 1950's and 60's, the Town of Yarmouth became a popular summer destination with the construction of many traditional seasonal motels and hotels along Route 28. Since that time, many of these properties have fallen into disrepair and opportunities for their redevelopment have been limited and constrained by existing zoning regulations regarding use, lot size and density. It is the intent of this section to remedy these difficulties for property owners by:

1. Providing a carefully controlled mechanism that promotes public welfare, community and economic opportunities, including business and housing, through the redevelopment of motel properties into new commercial, mixed, and/or multifamily housing uses, while on the one hand preserving and enhancing the ambiance of our historic community, and on the other, providing for safe living, eating and cooking facilities within housing units;
2. Allowing and encouraging mixed use buildings with residential use over retail, commercial, and/or office uses;
3. Allowing for the creation and/or redevelopment of multiple units on a single lot, consisting of commercial space, and singles, duplexes, townhouses, and apartments, non-year-round vacation dwelling units, and affordable housing;
4. Providing the owners of applicable properties with the ability to improve, renovate, and/or replace their properties to maximize the uses of limited lot size by easing bulk regulations and allowing for an increase in density.

404.1.2 Applicability in the HMOD1. The provisions of this subsection shall apply to those properties or lots which are within the Hotel/Motel Overlay District 1 (HMOD1) for which a motel or lodging license has been issued, pursuant to M.G.L. c. 140, § 32B, prior to and is in effect on April 11, 2006 or was issued a motel or lodging license after April 11, 2006 ("Applicable Property").

Properties that meet the specific applicability requirements of Section 404.1.2 may acquire and combine adjacent parcel(s) located within the HMOD1 zoning overlay district that do not meet the applicability requirements of Section 404.1.2, and develop the entire combined site under Section 404.1 provided the total of the additional parcels are no more than 100% of the area of the original applicable property. (Example: A 1.0 acre applicable motel property may add up to an additional 1.0 acre of non-applicable property or properties in the HMOD1 to the original 1.0 acre and develop the entire 2.0 acres under Section 404.1).

404.1.3 Project Approval in the HMOD1. The creation of commercial uses, office uses, motel uses and housing, as subsequently defined, on the same lot shall be permitted if all specific provisions of this section are met.

Projects meeting all of the specific provisions of this section shall be deemed to meet the criteria for as-of-right development on those properties to which this section applies and may

be approved by the Building Commissioner. Projects which do not meet the criteria for as-of-right development on those properties to which this section applies, or requires a Special Permit for use as described in Section 202.5, or which requires a Special Permit for non-conformity pursuant to Section 104.3, can be approved through issuance of a Special Permit by the Yarmouth Planning Board.

404.1.4 Change, Extension or Alteration of Motels in the HMOD1. Lawfully pre-existing non-conforming structures to which this section applies, and lawfully pre-existing structures located on non-conforming lots to which this section applies, may be altered, extended or razed and replaced, by right, provided the alteration, extension or raze and replacement complies with the provisions of this section, and satisfies the requirements of the Site Plan Review Team.

404.1.5 The provisions of the Table of Dimensional Requirements in Section 203.5 shall continue to apply to the applicable properties in the HMOD1 to which this section applies, unless specifically addressed in section 404.1.11.

404.1.6 Any property owner or agent thereof who seeks a change, extension, alteration or to raze and replace a building and/or property to which this section applies shall be subject to Site Plan Review, as referred to in section 103.3. In the case of land or buildings subject to this section, no occupancy permit for full or partial occupancy of the site shall be issued until all required site improvements serving the structure to be occupied have been completed. This requirement shall apply to any project for which changes or alterations, whether interior and/or exterior, are sought. Development and redevelopment of buildings and sites are subject to the provisions of the Yarmouth Architectural and Site Design Standards (Standards), as outlined in section 103.4. The Standards are to be applied to an entire site, including the landscape, parking, lighting, signs, buffers and all existing and new buildings and structures on a site; it is not the intent of the Standards to allow a partial site compliance.

404.1.7 Lighting. Exterior lighting shall meet the requirements of Section 301 – Parking and Loading Requirements.

404.1.8 Top Of The Shop And Multi-Family Housing in the HMOD1. Any housing created at an applicable property must be created by virtue of a Raze and Replacement or new construction and may not be created by utilizing the existing motel structures, and must comply with the requirements of this section.

404.1.8.1 Minimum Dwelling Unit (DU) Size in the HMOD1. The minimum square footage of any housing created pursuant to Section 404.1 of this Bylaw, shall be a minimum of 600 square feet.

404.1.8.2 Allowed Residential Densities and the Affordable Housing Requirement in the HMOD1. For purposes of this subsection, there will be an allowed density of up to 16 dwelling units per acre as long as affordable housing units, as defined in Section 500, are provided at the following rates:

Units per Acre	Affordable Units per Acre
1-4	0
5-7	1
8-11	2
12-15	3
16	4

Through a Special Permit from the Planning Board, an increase in allowed density of up to 20 units per acre may be granted, provided that 50% of the additional units beyond 16 units per acre shall be affordable housing units. The required number of affordable units shall be rounded up.

The purpose and Intent of the affordable housing requirement is to encourage development of new housing that is affordable to low- and moderate-income households. At a minimum, affordable housing produced through this regulation should be in compliance with the requirements set forth in M.G.L. c. 40B, § 20 – 23 and other affordable housing programs developed by state, county and local government. It is intended that the affordable housing units that result from this bylaw be considered Local Action Units, in compliance with the requirements for the same, as specified by section 412 of this Zoning Bylaw.

For purposes of determining density of applicable properties in the HMOD1 upon which mixed use developments are created containing both housing and motel uses, the density of the housing units shall be determined by reducing the total square footage of lot area of the applicable property by 1,000 square feet per motel guest unit, and then calculating the density as displayed in Sections 404.1.8.2 of this section.

404.1.9 Maximum Building Coverage in the HMOD1. For any property to which this subsection applies, Building coverage shall be as outlined in Zoning Bylaw section 203.5 for properties in the HMOD1.

404.1.10 Maximum Allowed Heights in the HMOD1. For any property to which this subsection applies, the maximum building height shall be as follows:

404.1.10.1 On a single parcel or combined parcels in the HMOD1 having a minimum of 100,000 square feet of contiguous upland area, the maximum building height of properties to which this section applies shall be as follows:

- 45 feet height with a maximum of 3 stories, as measured from average natural grade at the front of the foundation side facing Route 28, with a maximum of 3 stories, all of which may be habitable and none of which must comply with the definition of habitable attic. At no time shall the number of floors be allowed to exceed three regardless of the number of stories used for commercial purposes;
- Building eave or cornice heights shall not exceed 30 feet from bottom of eave/cornice to the average finished grade at the foundation side facing Route 28;
- 35 feet maximum height within 50 feet of adjoining residential zoning districts or from Route 28.

404.1.10.2 On a parcel in the HMOD1 having less than 100,000 square feet of contiguous upland area, the maximum building height shall be 35 feet high, as measured from average natural grade at the front of the foundation side facing the street, with a maximum of 3 stories, all of which may be habitable and none of which must comply with the definition of habitable attic. At no time shall the number of floors be allowed to exceed three regardless of the number of stories used for commercial purposes.

404.1.10.3 For the creation of new hotels on a single parcel or combined parcels in the HMOD1 having a minimum of 2 acres of contiguous upland area, and for projects that will be a complete raze and replace of existing buildings, the maximum building height of properties to which this section applies shall be as follows:

- 45 feet maximum height, as measured from average natural grade at the front of the foundation side facing Route 28, with a maximum of 4 stories, any or all of which may be habitable and none of which must comply with the definition of habitable attic. Setbacks for the building of this height must meet Section 203.5 (Table of Dimensional Requirements) and be a minimum of 50' from adjoining residential zoning districts or Route 28;
- Building eave or cornice heights shall not exceed 40 feet from the bottom of eave/cornice to average finished grade at the foundation side facing Route 28;
- 35 feet maximum height within 50 feet of adjoining residential zoning districts or from Route 28.

404.1.11 Setbacks in the HMOD1. Section 203.5 shall apply, except that the setbacks from an existing lot-line at the property may be maintained for structures with a maximum height of 35'. For any expansion of the pre-existing footprint, that new portion of the structure shall comply with the provisions of Section 203.5. For all other structures on applicable properties in the HMOD1, the setbacks for such properties shall comply with the provisions of Section 203.5.

In addition, for purposes of any housing involving more than one building on a lot, no building need be more than 12 feet from any other building on the same lot. Also, no structure which abuts a residentially zoned parcel or Route 28 may exceed 35 feet in height, unless that portion of the structure which does exceed 35 feet is located 50 feet from the abutting residentially zoned parcel or Route 28.

404.1.12 Motel Conversions in the HMOD1. Deleted (ATM 05/05/18). Lawfully pre-existing uses and structures shall be governed by Section 104.3 of the Zoning Bylaw.

404.1.13 Deleted (ATM 04/02/12).

404.1.14 Kitchens. Guest units with a minimum of 600 square feet may have a full kitchen.

404.2 Motels in the Hotel/Motel Overlay District 2 (HMOD2).

404.2.1 Goals and Purposes in the HMOD2. South Shore Drive is a traditional seaside motel area located in a residential zoning district. It is the intent of this bylaw to provide South Shore Drive motel owners with the ability to renovate, reconstruct and/or replace their properties by right and by doing so, encourage improvement of this unique waterfront lodging area to benefit

the town and to meet the needs of today's travelers.

404.2.2 Applicability in the HMOD2. The provisions of this subsection shall apply to those properties or lots which are within the Hotel/Motel Overlay District 2 (HMOD2) for which a motel license has been issued, pursuant to M.G.L. c. 140, § 32B, or an Innkeeper's License, prior to and is in effect on April 08, 2008 ("Applicable Property").

Any property on a lot within the HMOD2 for which a common victualler's license has been issued and which was in effect on April 11, 2006 shall be considered an Applicable Property.

404.2.3 Project Approval in the HMOD2. The lawful use of any structure or land in the HMOD2, existing at the time of enactment or subsequent amendment of this section of the bylaw may be continued, although such structure or use does not conform with any other provision of the zoning bylaw.

Projects meeting all the criteria for as-of-right development on those properties to which this section applies will be approved by the Building Commissioner. Projects which do not meet the criteria for as-of-right development on those properties to which this section applies or require a Special Permit for use as described in Section 202.5 or which require a Special Permit for non-conformancy pursuant to Section 104.3 can be approved through issuance of a Special Permit by the Yarmouth Planning Board.

404.2.4 Change, Extension or Alteration of Motels in the HMOD2. Lawfully pre-existing non-conforming structures to which this section applies, and lawfully pre-existing structures located on non-conforming lots to which this section applies, may be altered, extended or razed and replaced, by right, provided the alteration, extension or raze and replacement complies with the provisions of this section, and satisfies the requirements of the Site Plan Review Team.

404.2.5 The provisions of the Table of Dimensional Requirements in Section 203.5 shall continue to apply to the applicable properties in the HMOD2 to which this section applies, unless specifically addressed in this section.

404.2.6 Any property owner or agent thereof who seeks a change, extension, alteration or to raze and replace a building and/or property to which this section applies shall be subject to Site Plan Review, as referred to in section 103.3. In the case of land or buildings subject to this section, no occupancy permit for full or partial occupancy of the site shall be issued until all required site improvements serving the structure to be occupied have been completed. This requirement shall apply to any project for which changes or alterations, whether interior and/or exterior, are sought. Development and redevelopment of buildings and sites are subject to the provisions of the Yarmouth Architectural and Site Design Standards (Standards), as outlined in section 103.4. The Standards are to be applied to an entire site, including the landscape, parking, lighting, signs, buffers and all existing and new buildings and structures on a site; it is not the intent of the Standards to allow a partial site compliance.

404.2.7 Lighting. No development in the HMOD2 shall be illuminated in such a way that causes glare for motorists, pedestrians or neighboring premises. Exterior lighting shall meet the requirements of Section 301 – Parking and Loading Requirements.

404.2.8 Maximum Building Coverage. Building Coverage shall be as outlined in section 203.5 for all properties in the HMOD2.

404.2.9 Maximum Allowed Heights in the HMOD2. For applicable properties in the HMOD2, maximum building heights shall be as follows:

1. On a parcel or contiguous parcels in the HMOD2, owned by an entity, or operated under common management as of April 8, 2008, having a combined minimum of 100,000 square feet of contiguous area, not including any parcels divided by a public way, the maximum building height of hotels or motels shall be:
 - a. 48 feet high with a maximum of 4 stories, any or all of which may be habitable. Height shall be measured from the existing average natural grade at the street side of the foundation, as said natural grade was existing on April 8, 2008. If the building is located in a FEMA Flood Zone AE, height shall be measured from 1 foot above Base Flood Elevation (BFE). If the building is located in a FEMA Flood Zone AO, height shall be measured from 1 foot above the Depth of Water shown on the Flood Insurance Rate Maps, measured from the average natural grade at the front face of the building foundation. If located in a FEMA Flood Zone VE, height shall be measured from the top of "freeboard", as defined in the Massachusetts Building Code 780 CMR (as amended).
 - b. 35 feet maximum within 50 feet of the property line of any adjoining non-motel residential use not owned, managed or controlled by that entity. Height shall be measured from average natural grade at the street side of the foundation, as said natural grade was existing on April 8, 2008, with a maximum of 3 stories, any or all of which may be habitable. If the building is located in a FEMA Flood Zone AE, height shall be measured from 1 foot above Base Flood Elevation (BFE). If the building is located in a FEMA Flood Zone AO, height shall be measured from 1 foot above the Depth of Water shown on the Flood Insurance Rate Maps, measured from the average natural grade at the front face of the building foundation. If located in a FEMA Flood Zone VE, height shall be measured from the top of "freeboard", as defined in the Massachusetts Building Code 780 CMR (as amended).
2. On a parcel or contiguous parcels in the HMOD2 having less than 100,000 square feet of contiguous area, not including any parcels divided by a public way, the maximum building height of motels shall be 35 feet high, measured from the average natural grade at the street side of the foundation, with a maximum of 3 stories, any or all of which may be habitable.
3. On a parcel in the HMOD2 on which any other applicable property is located, the maximum building height shall be 35 feet high, measured from the average natural grade at the street side of the foundation, with a maximum of 2 habitable stories.

404.2.10 Setbacks in the HMOD2. For any applicable property to which a change, alteration or raze and replace shall occur, and which structure will be a maximum of 35 feet, or less, in height, the setbacks recited in Section 203.5 shall apply, except that the setbacks from an existing lot-line at the property may be maintained. For any expansion of the pre-existing

footprint, that new portion of the structure shall comply with the provisions of Section 203.5. For all other structures on applicable properties, the setbacks for such properties shall comply with the provisions of Section 203.5 for the R25 Zoning District.

404.2.11 Deleted (ATM 04/02/12).

404.2.12 Kitchens. Guest units with a minimum of 600 square feet may have a full kitchen.

404.2.13 Accessory Uses. Motels may include incidental and accessory uses, primarily for guests, which may include, but not limited to: pools, beach cabanas, restaurants, cafes, conference & meeting rooms, bars, gift shops, apparel shops, beauty & barber shops, game rooms, and laundromats. Accessory uses shall be secondary to normal motel operations.

404.2.14 (Deleted ATM, 05-04-09).

404.3 Extended Stay Hotels:

404.3.1 Purpose: The purpose of this bylaw is to permit the development of extended stay hotels to safely accommodate longer stays for hotel guests in accordance with minimum operational standards.

404.3.2 Design Review and Site Plan Review: Formal Design Review is required and adherence to the Yarmouth Architectural and Site Design Standards are mandatory. Formal Site Plan Review is required.

404.3.3 HMOD1 & HMOD2: Full redevelopment and replacement of an existing motel/hotel on a property meeting the Applicability criteria under 404.1 – Motels in the Hotel/Motel Overlay District 1 (HMOD1), or under 404.2 – Motels in the Hotel/Motel Overlay District 2 (HMOD2), into an Extended Stay Motel, may be developed under Section 404 - Motels, if they also meet all of the criteria contained in section 404.3 for Extended Stay Hotels.

404.3.4 Building Height: Height of Extended Stay Hotels shall adhere to Section 203.4.2 – Table of Maximum Building Height, or if applicable, section 404.1 or 404.2.

404.3.5 Dimensional Requirements: Dimensional Requirements for Extended Stay Hotels shall be the same as for motels/hotels and shall adhere to Section 203.5 – Table of Dimensional Requirements, or if applicable, section 404.1 or 404.2.

404.3.6 Parking and Loading Requirements: Parking and Loading requirements for Extended Stay Hotels shall adhere to Section 301 - Parking and Loading Requirements.

404.3.7 Signs: Signs for extended stay hotels shall adhere to section 303 - Signs.

404.3.8 Operational Standards for Extended Stay Hotels: Extended stay hotels shall have the following features:

1. All extended stay units shall be a minimum of 300 square feet (sf) of gross floor area.

2. Two or more bedroom units shall have a fully-equipped kitchen, to include sink, microwave, minimum 14 cubic foot (cf) refrigerator/freezer combination, stove (oven/cooktop combination) with hood and dishwasher. All other extended stay units to have an efficiency kitchen to include at a minimum a sink, microwave, and minimum 10 cf refrigerator/freezer. Permanently installed 2-burner cooktop with hood, or stove with hood, are allowed, but no portable cooktops are permitted. All kitchens to include counter top, cupboards, cookware, dishes and flatware.
3. For any building which contains extended stay units, the entire structure shall have a fire suppression system.
4. Each guest room shall be accessed through a center interior hallway and shall not provide direct primary egress to the exterior of the building.
5. Staff or management shall be on property twenty-four (24) hours a day. Any on-site property manager unit shall meet the definition of a dwelling unit per the building code, health code and all other applicable codes. For Extended Stay Hotels with less than 100 guest units, one year-round on-site property manager dwelling unit may be allowed. For 100 guest rooms or more, two on-site property manager units may be allowed.
6. Extended stay hotels shall have a lobby or public gathering area.
7. A heated/air-conditioned indoor laundry area shall be available on-site exclusively for guest use, and shall include a minimum of two washers and two dryers.
8. All extended stay hotel guests must be able to demonstrate that they maintain a principal place of residence elsewhere.
9. Extended Stay Hotels shall keep records of guests including name, permanent address and length of stay. All documentation to be provided upon request.
10. To be considered an Extended Stay hotel, one hundred percent (100%) of all guest rooms shall meet the operational standards established herein.
11. Extended Stay Hotels shall be permitted to have continuous occupancy of up to ninety (90) calendar days. No entity, corporation or person may occupy or book a unit or units for more than ninety (90) continuous calendar days, without prior approval of the Building Commissioner. Such approval shall only be granted when an occupant has a verifiable employment contract or agreement coincident with the length of stay requested.

404.4 On-Site Property Managers at Motels/Hotels:

404.4.1 Purpose: The purpose of this bylaw is to allow Motel or Hotel owners to provide year-round on-site residence(s) for property manager(s) for the purpose of managing, maintaining and securing the property.

404.4.2 Applicability: The Building Commissioner may approve, through application and permit, On-Site Property Manager units at currently licensed Motels or Hotels in accordance with the provisions outlined herein. If an Applicant cannot meet all the provisions outlined herein as determined by the Building Commissioner, a Special Permit from the Zoning Board of Appeals is required.

404.4.3 Operational Standards for On-Site Property Managers at Motels and Hotels: Accommodations for on-site property manager units shall have the following features:

1. For Hotels or Motels with less than 100 guest units, one on-site property manager

may be allowed. For Hotels or Motels with 100 or more guest units, two on-site property managers may be allowed. In addition, one owner occupied unit may be allowed per property, if the unit meets all the operational criteria outlined for On-Site Property Managers.

2. Immediate family members of the on-site manager are allowed to reside in the on-site managers unit, depending on the size of the unit.
3. On-site property manager unit shall be a minimum of 300 square feet (sf) of gross floor area for up to 2 persons per unit. An additional 70 sf of gross floor area is required for each additional person. Each property manager unit shall include a kitchen or kitchenette with refrigerator/freezer combination, microwave and stove (cooktop/oven combination) with hood.
4. On-site property manager units shall meet the definition of a dwelling unit per the building code and all other applicable codes.
5. Creation of a dwelling unit or renovations would have to comply with the current edition of the Existing Building Code. Applicant to provide the Building Commissioner a narrative from a registered design professional indicating which level of alteration they have designed the project under.
6. On-site property manager unit shall meet all the Board of Health and State of Massachusetts regulations regarding building and fire codes, health codes, water supply and wastewater disposal.

404.5 Seasonal Employee Housing at Motels/Hotels

404.5.1 Purpose: The purpose of this bylaw is to provide standards to ensure safe and adequate housing for temporary seasonal employees at motels/hotels.

404.5.2 Applicability: The Building Commissioner may approve, through annual application and permit, Seasonal Employee Housing units at currently licensed motels/hotels in accordance with the provisions outlined herein. If an Applicant cannot meet all the provisions outlined herein as determined by the Building Commissioner, a Special Permit from the Zoning Board of Appeals is required.

404.5.3 Operational Standards for Seasonal Employee Housing at Motel/Hotels: Accommodations for Seasonal Employee Housing at Motels/Hotels shall have the following features:

1. Seasonal employee housing shall be for no more than seven months between April 1st and October 31st annually.
2. Seasonal employees shall be housed in motel/hotel rooms only. Seasonal employees may not be housed in camp sites, tents, RVs, mobile homes or campers located on the motel/hotel property.
3. Seasonal employee housing shall meet all the Board of Health and State of Massachusetts regulations regarding building and fire codes, health codes, water supply and wastewater disposal.
4. Maximum occupancy rate of each unit to be determined per the Health Codes.
5. Seasonal Employee housing shall be used solely by employees and shall not include family members of employees, or other non-employees.
6. The employer shall designate an on-site proctor for each property utilized as employee housing. The on-site proctor shall ensure that all seasonal employees are

apprised of the rules and code of behavior prior to occupancy. The name and contact information for the on-site proctor shall be submitted to the Yarmouth Police Department.

7. All employees shall have access to cooking facilities, which shall include at a minimum a microwave, sink, cooktop and refrigerator /freezer.
8. No more than 15% of any hotel or motel rooms at a single parcel may be used for employee housing. Each room used for employee housing shall be identified on a locus map of the site and submitted to the Building Commissioner, Board of Health and Yarmouth Police Department.
9. All employees must be able to demonstrate that they maintain a principal place of residence elsewhere.
10. The property owner shall keep records of all employees utilizing employee housing, including name, permanent address and length of stay. All documentation to be provided upon request.
11. The permit issued by the Building Commissioner shall be valid for one year only.

405. WETLANDS.

405.2 In all districts, any dwelling shall be set back a minimum of one hundred (100) feet from the top of the bank of any cranberry bog.

406. AQUIFER PROTECTION OVERLAY DISTRICT.

406.1 Findings. The Town of Yarmouth finds that:

406.1.1 The ground water underlying this town is the sole source of its existing and future drinking water supply;

406.1.2 The groundwater in the aquifer is integrally connected with, and flows into, the surface waters, lakes, streams and coastal estuaries which constitute significant recreational and economic resources of the Town used for water-related recreation, shell fishing and fishing;

406.1.3 Accidental spills and discharges of petroleum products and other toxic and hazardous materials and sewage discharge have repeatedly threatened the quality of such groundwater supplies and related water resources throughout towns in Massachusetts, posing potential public health and safety hazards and threatening economic losses to the affected communities.

406.2 Objective. The objective of this section of the bylaw is to protect the public drinking water supply in Yarmouth from the effects of high density land development and from potentially hazardous materials associated with specific land uses.

406.3 Applicability. The district as shown on the Zoning Map shall be considered superimposed over any other district established in this bylaw. The more restrictive provisions of either the Overlay or underlying zoning districts shall apply. The boundaries of the Aquifer Protection Overlay District are based upon a delineation of the zones of contribution to public supply wells completed by Whitman & Howard, Inc. (1984, 1985). Where the boundaries of the Aquifer Protection Overlay District are in doubt or dispute, the burden of proof shall be upon the owner(s) of the land in question to show where the boundaries should be located.

Proof shall be based upon evidence provided by a professional hydrogeologist. Where the boundary line of the Aquifer Protection Overlay District divides any lot existing at the time such line is established, the regulation established hereunder shall apply only to the area of the lot which falls within the district.

406.4 Use Regulation. Uses, except as noted below, within the Aquifer Protection Overlay District shall be controlled by Section 202.5 of the Zoning Bylaw, Use Regulation Schedule, and by the provisions of this bylaw. All uses listed in Section 202.5 which require a Special Permit in this District shall be subject to the requirements listed below.

406.4.1 Prohibited uses: landfills and open dumps, as noted in 310 CMR 22.21(2)(A)1; land filling of sludge and septage, as noted in 310 CMR 22.21(2)(a)2; automobile graveyards and junkyards; stockpiling and disposal of snow or ice from outside the Zone II (APD), which contains deicing chemicals, as noted in 310 CMR 22.21(2)(A)4; non-sanitary wastewater treatment facilities, except for replacement, repair, or systems treating contaminated ground or surface water, as noted in 310 CMR 22.21(2)(a)6, and; facilities that generate, treat, store or dispose of hazardous waste, as noted in 310 CMR 22.21(2).

The following uses and activities are prohibited, unless designed in accordance with specified performance standards approved by DEP. Uses involving storage of sludge and septage, deicing chemicals, commercial fertilizers, animal manures (as noted in 310 CMR 22.21(2)(b)4), liquid hazardous materials, or liquid petroleum products. Earth removal activities within 4 feet of historic high water table (as noted in 310 CMR 22.21(2)(b)6).

Fuel delivery in the APD shall only be allowed for the duration required to dispense, pump or transfer fuel and must be under the constant supervision of the fuel delivery personnel.

406.5 Special Permit Requirements.

406.5.1 Pre-application Review. Applicants are encouraged to submit preliminary material for informal review by the Site Plan Review Team under Section 103.3, prior to formal application, in order to avoid the discovery of fundamental problems with a proposed plan at the time of the public hearing on the granting of a special permit.

406.5.1.1 Special Permit Non-Applicability. Applicants, who believe that their proposed use will pose no substantial risk to the public drinking water supply, may apply to the Building Commissioner for a Determination of Non-Applicability of the Special Permit requirements of Section 406.5. This application may be made either by itself or in connection with the application for a building and/or occupancy permit. The applicant shall include with his/her application all of the Application Submittal Requirements set forth in Section 406.5.2. The Building Commissioner may determine that the applicant need not apply for a Special Permit hereunder only if all of the following conditions are met:

1. The applicant has fully complied with the Submittal Requirements of Section 406.5.2
2. The proposed use meets all of the Design and Operation requirements of Section 06.5.7, and
3. The chemicals, pesticides, fuels and other potentially toxic or hazardous materials used

or stored at the site, or produced by the proposed use, will be in quantities not greater than those commonly associated with normal household use, and

4. The proposed use will meet all of the Objective and Water Quality Criteria of this Bylaw.

The Building Commissioner may require the applicant to submit the matter to the Health Agent or Board of Health, and may require the applicant to demonstrate that he/she has received a favorable report from the Health Agent or Board of Health. The Determination, if made, shall apply only to the individual applicant and proposed use and shall automatically expire upon any change of use or transfer of ownership of the business. There shall be no appeal from an unfavorable Determination of any such application, nor from a failure to act, except for filing by the applicant for a Special Permit from the Board of Appeals as otherwise provided herein.

Copies of the Determination shall be filed with all other Town Agencies listed in Section 406.5.4 and with the Town Clerk within seven (7) days. Any such Town Agency, or other Person Aggrieved of the Determination, may appeal such Determination to the Board of Appeals in the same manner as provided in Section 102.2.3.

406.5.2 Application Submittal Requirements. When applying for a special permit required by this section, the information listed below, when applicable, shall be submitted with the application.

1. A complete list of chemicals, pesticides, fuels and other potentially toxic or hazardous materials (with Materials Safety Data Sheets [MSDS]) and quantities to be used or stored on the premises in quantities greater than those associated with normal household use, accompanied by a description of measures proposed to protect all storage containers/facilities from vandalism, corrosion and leakage, and to provide for control of spills.
2. A description of potentially toxic or hazardous wastes to be generated, including storage and disposal methods and a spill response plan.
3. Proof of registration with the Yarmouth Board of Health, as outlined in the Board of Health Regulation entitled "Handling and Storage of Toxic and Hazardous Materials."
4. Proof of submittal of a "Notification of Hazardous Waste Activity" form to the Massachusetts Department of Environmental Protection.
5. Preparation of Water Quality Assessment (Section 406.5.5) and Toxic and Hazardous Waste Generation Assessment (Section 406.5.6).
6. Any site plan or facility design drawings necessary to show compliance with the design and operational requirements of this bylaw.

406.5.3 Criteria for Approval. Such special permit shall be granted if the Board of Appeals determines, in conjunction with other town agencies as specified in Section 406.5.4, below, that the intent of this bylaw as well as its specific criteria are met (see section 406.5.5 below). In making such determination, the Board of Appeals shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree of threat to water

quality which would result if the control measures fail.

The Board of Appeals shall explain any departures from the recommendations of the other town agencies in its decision.

406.5.4 Review by Other Town Agencies. Upon receipt of the special permit application, the Board of Appeals shall transmit one copy to any other relevant town agency/board or department (including the Water Division, the Engineering Division, the Fire Department, the Board of Health, the Planning Board, and the Conservation Commission) for their written recommendations. Failure to respond in writing within 30 days upon receipt shall indicate approval or no desire to comment by said agency. The necessary number of copies of the application shall be furnished by the applicant.

406.5.5 Water Quality Criteria. Special permits under section 406 shall be granted only if the applicant demonstrates to the satisfaction of the Board of Appeals that groundwater quality resulting from on-site waste disposal and other on-site operations will not violate federal or state standards for drinking water at the downgradient property boundary. For nitrate-nitrogen the Cape Cod Commission guideline of five parts per million (5 ppm) will be used.

Projections of nitrate-nitrogen concentrations shall be based upon current Board of Health regulations for nitrogen loading.

406.5.6 Toxic or Hazardous Waste Generation Criteria. No use that can be classified as a small quantity generator (SQG) of hazardous waste shall be allowed in the Aquifer Protection Overlay District.

A small quantity generator is defined as a use which:

1. generates more than one hundred kilograms (100 Kg) or two hundred pounds (200 lbs.) of hazardous waste a month*
2. accumulates more than six hundred kilograms (600 Kg) of hazardous waste at any one time*
3. generates or accumulates any quantity greater than one kilogram (1 Kg) of acutely hazardous waste* in a month.

*As defined in the State Regulations; 310 CMR 30.00.

406.5.7 Design and Operation Requirements. The following design and operation guidelines shall be observed within the Aquifer Protection Overlay District:

1. Safeguards. Provision shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage or vandalism through measures such as spill control provisions in the vicinity of chemical or fuel delivery points, secured storage areas for toxic or hazardous materials, and indoor storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system approved by DEP shall be provided for each such

structure to prevent discharge of contaminated condensate into the groundwater.

2. Location. Where the premises are partially outside of the Aquifer Protection Overlay District, potential pollution sources such as on-site waste disposal systems shall be located outside the District to the extent feasible.
3. Disposal. For any toxic or hazardous wastes to be produced in quantities greater than those associated with normal household use, the applicant must demonstrate the availability and feasibility of disposal methods which are in conformance with M.G.L., ch. 21C. The discharge of sewage shall be in conformance with Title V and Town of Yarmouth Health Regulations.
4. Drainage. All runoff from impervious surfaces shall be recharged on the site and diverted towards areas covered with vegetation for surface infiltration. Leaching basins shall be used only where other methods are not feasible, and shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants. Such traps shall be maintained (with records) on a regular basis. Drainage serving the site must also comply with Section 304 – Stormwater Management.

406.6 Violations. Written notice of any violation of this bylaw or any permit issued under this bylaw shall be provided by the Building Commissioner to the owner of the premises, specifying the nature of the violations and a schedule of compliance, including cleanup of any spilled materials. Copies of this violation notice shall be distributed to other relevant boards as specified in section 406.5.4. This compliance schedule must be reasonable in relation to the public health hazard involved and the difficulty of compliance. In no event shall more than thirty (30) days be allowed for either compliance or finalization of a plan for longer-term compliance.

406.6.1 Definition. Toxic or Hazardous Materials. Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this town. Toxic or hazardous materials include, without limitation, organic chemicals, petroleum products, heavy metals, radio-active or infectious wastes, acids and alkalis, and include products such as pesticides, herbicides, solvents and thinners.

407. ACCESSORY APARTMENTS.

407.1 Purpose and Intent. It is the intent of this bylaw to provide a variety of housing types to meet the changing needs of the community. In doing so, the bylaw is also intended to protect the character and property values of single-family residential neighborhoods.

The purpose of family-related accessory apartments is to provide an opportunity for family members who choose to live in a close proximity, but separate from other family members, to remain within that family environment.

The purpose of affordable accessory apartments is to create rental housing for Yarmouth's year-round residents with rents limited by State affordability guidelines.

407.2 Standards and Requirements. The Board of Appeals may authorize accessory apartments only by special permit, provided that the following standards and criteria are met:

1. accessory apartments shall be complete and separate housekeeping units that function independently from a primary single-family dwelling unit;
2. only one accessory apartment per lot shall be allowed;
3. the lot on which the accessory apartment is located must have a minimum lot size of 10,000 square feet;
4. the accessory apartment shall be designed so that the appearance of the building remains that of a one-family residence as much as is feasibly possible. To ascertain this, architectural plans may be required by the Board of Appeals;
5. an accessory apartment may be located within, or attached to, a principal residential structure or in a detached accessory building on the same lot. Pre-existing, non-conforming accessory structures must receive a special permit from the Board of Appeals as outlined in section 104. New accessory structures must meet the dimensional requirements of section 203.5;
6. an accessory apartment, whether located within a principal residential structure or within a detached accessory structure, shall clearly be a subordinate to the principal structure. Any new entrance for an accessory apartment must be located on the side or rear of the building, as long as it meets the requirements of existing codes;
7. an accessory apartment shall be no larger than 800 square feet, including all habitable space, closets, and storage;
8. no accessory apartment shall be held in separate ownership from the principal structure/dwelling unit, and it shall be so stated in the "Declaration of Covenants";
9. the owners of the principal structure shall occupy, as their primary residence, either the principal dwelling unit or the accessory apartment; if the owner intends to occupy the accessory apartment rather than the principal structure, the principal structure will then be designated in the special permit as the "accessory apartment".

407.2.1 Standards and Requirements specific to family-related accessory apartments:

1. at least 3 off street parking spaces shall be available on the premises for use by the residents of the main residence and the family-related accessory apartment.
2. all family-related apartments must be occupied by a family member related to the owner(s) by blood, marriage or law. That relationship shall be certified every two years at the time of inspection by the Building Commissioner.

407.2.2 Standards and Requirements specific to affordable accessory apartments:

1. at least 2 off street parking spaces on the premises shall be required for use by

residents of the main residence and 2 additional parking spaces shall be required for use by the residents of the affordable accessory apartment.

2. all affordable accessory apartments must be rented to households meeting the guidelines for low- or moderate-income households. All occupants of an affordable accessory apartment shall, upon an initial application, and on an annual basis thereafter, submit to the town, or its agent, the necessary documentation to confirm their eligibility for the dwelling unit.

407.3 Permit Procedure and Requirements. The procedure for the submission and approval of a special permit for an accessory apartment shall be the same as prescribed in section 103.2 of this bylaw.

1. No Building Permit or Occupancy Permit for either a family-related accessory apartment or an affordable accessory apartment shall be issued until the Special Permit and Declaration of Covenants are recorded at the Barnstable County Registry of Deeds.

407.3.1 Permit Procedure and Requirements for family-related accessory apartments:

1. A notarized letter of application from the owner(s) stating that (s)he/they will occupy a portion of the residence and that a family related member shall occupy the other portion shall be required with the application. The name and relationship of the family member shall be stated in this letter of application.
2. Upon receiving a Special Permit for a family-related accessory apartment, the owner(s) must file a Declaration of Covenants on the subject property at the Barnstable County Registry of Deeds. The Declaration of Covenants shall state that the right to use an accessory apartment may cease upon transfer of title. A time-stamped copy of the recorded Declaration of Covenants shall be provided to the Board of Appeals, the Building Division and the Board of Health.
3. The Special Permit for a family-related accessory apartment shall terminate upon the sale of the property or transfer of title to the dwelling unless the new owner(s) files on the subject property a new Declaration of Covenants at the Barnstable County Registry of Deeds at the time of transfer or within 45 days of the sale, agreeing to abide by the prior restrictions of the Special Permit. The new Declaration of Covenants must contain the endorsement of the Building Commissioner that the family-related accessory apartment and the tenant continue to conform to eligibility requirements. The new Declaration of Covenants shall state that the right to use a family-related accessory apartment may cease upon transfer of title. A time-stamped copy of the recorded Declaration of Covenants shall be provided to the Board of Appeals, the Building Division and the Board of Health.

If no action is taken by the new owner(s) at the time of transfer or within 45 days of the sale, then the new owner(s) must apply for re-approval of the Special Permit by the Board of Appeals for a family-related accessory apartment, stating that the conditions at the time of the original approval remain unchanged.

4. The Special Permit and Declaration of Covenants for a family-related accessory apartment may be terminated by the owner(s) provided the family-related accessory apartment is removed and upon a satisfactory inspection of the Building Commissioner.

407.3.2 Permit Procedure and Requirements for affordable accessory apartments:

1. Maximum rents permitted. Affordable accessory apartments shall be rented only to low-income households for periods not less than one year. Maximum rent paid shall be equal to no more than 30% of the theoretical income of a household in the Barnstable-Yarmouth Metropolitan Statistical Area (MSA) earning 70% of the Area Median Income (AMI), as published annually by the U.S. Department of Housing and Urban Development (HUD). At the time of application for a Special Permit, property owners are required to submit to the town, or the town's agent, information on the rent to be charged. On the first weekday of September of each year thereafter, the property owners shall submit to the town, or the town's agent, information about annual rents. A form for this purpose will be provided. These affordability requirements shall be recorded in the Declaration of Covenants and the Affordable Housing Restriction.
2. Guidelines for income eligibility. All applicants for occupancy of an affordable accessory apartment shall, at the time of initial rental application, submit to the town, or to the town's agent, all necessary documentation to confirm their eligibility for the unit. For the purpose of this bylaw, low-income households shall be those having an income of no more than 80% of the current Area Median Income (AMI) in the Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and assets meeting program guidelines.
3. Upon receiving a Special Permit for an affordable accessory apartment, the owner(s) must file a Declaration of Covenants and an Affordable Housing Restriction on the subject property at the Barnstable County Registry of Deeds. The Affordable Housing Restriction must be approved by the Affordable Housing Committee and signed by the Board of Selectmen. The Declaration of Covenants and the Affordable Housing Restriction shall state that the right to use an accessory apartment may cease upon transfer of title. A time-stamped copy of the recorded Declaration of Covenants and the Affordable Housing Restriction shall be provided to the Board of Appeals, the Building Division and the Board of Health.
4. The Special Permit for an affordable accessory apartment shall terminate upon the sale of the property or transfer of title to the dwelling unless the new owner(s) files on the subject property a new Declaration of Covenants and a Affordable Housing Restriction at the Barnstable County Registry of Deeds at the time of transfer or within 45 days of the sale, agreeing to abide by the prior restrictions of the Special Permit. The new Declaration of Covenants must contain the endorsement of the Building Commissioner and the Town's delegated affordable housing inspector that the affordable accessory apartment and the tenant continue to conform to eligibility requirements. The new Declaration of Covenants shall state that the right to use an affordable accessory apartment may cease upon transfer of title. A time-stamped copy of the recorded Declaration of Covenants shall be provided to the Board of Appeals, the Building Division and the Board of Health.

If no action is taken by the new owner(s) at the time of transfer or within 45 days of the sale, then the new owner(s) must apply for re-approval of the Special Permit by the Board of Appeals for an affordable accessory apartment, stating that the conditions at the time of the original approval remain unchanged.

5. The Special Permit, Declaration of Covenants and Affordable Housing Restriction for an affordable accessory apartment may be terminated by the owner(s) provided the affordable accessory apartment is removed and upon a satisfactory inspection of the Building Commissioner and in accordance with the Affordable Housing Restriction.
6. No occupancy permit shall be issued for an affordable accessory apartment until an Affordable Housing Restriction has been recorded at the Barnstable County Registry of Deeds.

407.4 Records and Inspections.

407.4.1 Accessory apartments shall be inspected at least once every two (2) years by the Building Commissioner for which there shall be an additional users fee in the amount stipulated by the Board of Selectmen, payable at the date of inspection.

407.4.2 The Building Commissioner shall maintain a running, up-to-date log of approved and/or inspected accessory apartments.

407.4.3 Failure to pass inspection shall allow the Building Commissioner to require removal of cooking, sanitary, sleeping facilities or structural portions previously approved, associated with the addition of the accessory apartment to the single-family residence.

407.5 Amnesty. In an effort to meet the town's housing needs, real property containing an accessory apartment, as described in this bylaw section, for which there does not exist a validly issued variance, special permit, building permit, or occupancy permit, may apply to the Board of Appeals for a special permit to legally continue the use as an accessory apartment. The Board of Appeals shall be empowered to grant a special permit, waiving any portion of bylaw sections 104, 201, 202, and 203, as they pertain to a single-family dwelling. The Board of Appeals shall not waive the provisions of this bylaw section, except by variance, and any accessory apartment created under this amnesty provision shall comply to the requirements of this bylaw section.

To qualify for amnesty under this bylaw, the unlawful accessory apartment must be a single accessory dwelling unit that is accessory to an owner occupied single-family dwelling and must have been in existence before April 8, 2008. It shall be the burden of the applicant to prove to the Board of Appeals that the unlawful apartment was in existence before that date. No more than one unlawful accessory apartment in a single family residence may apply for amnesty.

The amnesty provisions of this bylaw will expire on and will no longer be available after July 1, 2011.

408. COMMUNICATION ANTENNAS, BUILDINGS, AND TOWERS

408.1 Purpose. The purpose of this Bylaw is to establish guidelines for the siting of all communication antennas, communication buildings, and communication towers in the Town of Yarmouth.

408.2 Goals. The goals of this Bylaw are to:

1. To comply with all existing state and federal law and to facilitate the availability of wireless service to the residents of Yarmouth while minimizing adverse visual and environmental effects and impact of communication antennas, communication buildings, and communication towers on the vistas of the community through careful design, siting, and vegetative screening;
2. manage the placement of all communication antennas, communication buildings, and communication towers so as to minimize the total number throughout the community, and;
3. avoid potential damage to adjacent properties from the failure of communication antennas and communication towers by careful engineering and siting.

408.3 Non-Applicability. This section is not intended to be applicable to equipment accessory and incidental to residential and other business uses, such as satellite dishes under two feet in diameter for television reception, television antennas, or antennas under 75 feet in height used by federally licensed amateur radio operators.

408.4 Special Permit. No communication antennas, communication buildings, or communications towers shall be erected, constructed, installed, without first obtaining a Special Permit from the Board or Appeals. The Board of Appeals may retain a technical expert in the field of RF engineering to review an application. The cost for such a technical expert will be at the expense of the applicant.

Guyed towers, lattice towers, utility towers and monopoles in existence at the time of adoption of this Bylaw may be reconstructed, altered, extended or replaced on the same site by Special Permit, as outlined in Bylaw section 104.3.2. In making such a determination, the Board of Appeals shall also consider whether the proposed reconstruction, alteration, extension or replacement will promote the intentions, goals, and purposed of this bylaw and will create public benefits such as opportunities for co-location, improvements in public safety, and/or reduction in visual and environmental impacts.

408.4.1 The Board of Appeals may alter or waive one or more of the requirements of section 408 if it finds that the alteration or waiver of the requirement(s) will not derogate from the intent of the bylaw.

408.5 Application Procedures.

408.5.1 Application to the Board of Appeals for a Special Permit shall be as outlined in section 103 of this Bylaw.

408.5.2 Site Plan Review, per section 103 of this Bylaw, shall be required prior to application to the Board of Appeals.

408.6 Application Filing Requirements.

The following shall be submitted to Site Plan Review and included with an application to the Board of Appeals for all Communications Facilities:

408.6.1 General Filing Requirements. Plans, Per section 103.3.4, are required.

408.6.2 Location Filing Requirements.

1. Tax map and parcel number of subject property
2. Zoning district designation for the subject parcel.
3. Proposed location of any antenna, mount, tower, mount, or equipment shelter.
4. Proposed security barrier, indicating type and extent as well as point of controlled entry.
5. If the application is for a Personal Wireless Service Facility a town-wide map showing other existing Personal Wireless Service Facility in the Town and outside the Town within one mile of its corporate limits.
6. If the application is for a Personal Wireless Service Facility, a plan showing the proposed locations of all existing and future Personal Wireless Service Facilities in the Town on a Town-wide map for this carrier.

408.6.3 Siting Filing Requirements

1. A one inch equals 40 feet (1"=40') Vicinity Plan showing the following:
 - A. Property lines for the subject property.
 - B. Property lines of all properties adjacent to the subject property within 300 feet.
 - C. Tree cover on the subject property and adjacent properties within 300 feet, by dominant species and average height, as measured by or available from a verifiable source.
 - D. Outline of all existing buildings and accessory structures, including purpose (e.g. residential buildings, garages, accessory structures, etc.) on subject property and all adjacent properties within 300 feet.
 - E. Proposed location of antenna, mount and equipment shelter(s).
 - F. Proposed security barrier, indicating type and extent as well as point of controlled entry.

- G. Location of all roads, public and private, on the subject property and on all adjacent properties within 300 feet including driveways proposed to serve the Communications Facility.
 - H. Distances, at grade, from the proposed Communications Facility to each building on the vicinity plan.
 - I. Contours at each two feet above mean sea level for the subject property and adjacent properties within 300 feet.
 - J. All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.
 - K. Representations, dimensioned and to scale, of the proposed mount, antennas, equipment shelters, cable runs, parking areas and any other construction or development attendant to the Communications Facility.
 - L. Lines representing the sight line showing viewpoint (point from which view is taken) and visible point (point being viewed) from "Sight Lines" sub-section below.
2. Sight lines and photographs as described below:
- A. Sight line representation. A sight line representation shall be drawn from any public road within 300 feet and the closest facade of each residential building (viewpoint) within 300 feet to the highest point (visible point) of the Communications Facility. Each sight line shall be depicted in profile, drawn at one inch equals 40 feet. The profiles shall show all intervening trees and buildings. In the event there is only one (or more) residential building within 300 feet there shall be at least two sight lines from the closest habitable structures or public roads, if any.
 - B. Existing (before condition) photographs. Each sight line shall be illustrated by one four-inch by six-inch color photograph of what can currently be seen from any public road within 300 feet.
 - C. Proposed (after condition). Each of the existing condition photographs shall have the proposed Communications Facility superimposed on it to show what will be seen from public roads if the proposed Communications Facility is built.
 - D. Visual Impact. Photographic simulations from a distance of one hundred, one thousand, and five thousand feet and from four different locations of approximately ninety degrees apart of the proposed Communication Facility.
3. Siting elevations, or views at-grade from the north, south, east and west for a 50-foot radius around the proposed Communications Facility plus from all existing public and private roads that serve the subject property. Elevations shall be at either one-quarter inch equals one foot or one-eighth inch equals one foot scale and show the following:
- A. Antennas, mounts and equipment shelter(s), with total elevation dimensions and AGL of the highest point.

- B. Security barrier. If the security barrier will block views of the personal wireless service facility, the barrier drawing shall be cut away to show the view behind the barrier.
- C. Any and all structures on the subject property.
- D. Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.
- E. Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two-foot contours above mean sea level.

408.6.4 Design Filing Requirements

1. Equipment brochures for the proposed Communications Facility such as manufacturer's specifications or trade journal reprints shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
2. Materials of the proposed Communications Facility specified by generic type and specific treatment (e.g., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the antenna, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
3. Colors of the proposed Communications Facility represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
4. Dimensions of the Communications Facility specified for all three directions: height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters, and security barrier, if any.
5. Appearance shown by at least two photographic superimpositions of the Communications Facility within the subject property. The photographic superimpositions shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any, for the total height, width and breadth.
6. Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species.
7. Within 30 days of the pre-application conference, or within 21 days of filing an application for a Special Permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the Town at least 14 days, but not more than 21 days prior to the test.
8. If lighting of the site is proposed, the applicant shall submit a manufacturers computer-generated point-to-point printout, indicating the horizontal footcandle levels at grade,

within the property to be developed and twenty-five (25) feet beyond the property lines. The printout shall indicate the locations and types of luminaries proposed.

408.6.5 Noise Filing Requirements

The applicant shall provide a statement listing the existing and maximum future projected measurements of noise from the proposed personal wireless service facilities, measured in decibels Ldn (logarithmic scale, accounting for greater sensitivity at night), for the following:

1. Existing, or ambient: the measurements of existing noise.
2. Existing plus proposed Communications Facilities: maximum estimate of noise from the proposed facility plus the existing noise environment.

Such statement shall be certified and signed by an acoustical engineer, stating that noise measurements are accurate and meet the Noise Standards of this Bylaw.

408.7 Design.

408.7.1 General. All Communications Facilities shall be designed and sited so as to have the least adverse visual effect on the environment. Only self-supporting monopole type towers are permissible. Lattice towers, or the use of ground anchors and/or guy wires, are prohibited.

All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal, state, and county government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and/or antennas governed by this ordinance shall bring such towers and/or antennas into compliance with such revised standard and regulations within six (6) months of the effective date of such standards and regulations unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and/or antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

408.7.2 Location. No Communications Facility, antenna, or tower may be located in the Town of Yarmouth except as noted in this bylaw.

408.7.2.1 Allowed Areas.

1. The siting of Personal Wireless Service Facilities shall be allowed in any zoning district, but is especially encouraged on existing structures, where appropriate, and on sites shown on a map entitled "Town of Yarmouth Inventory of Existing Antenna Sites and Possible Antenna Sites," as currently amended. This map may be amended by Town Meeting action.
2. Communication antennas, buildings, or towers other than those for Personal Wireless Service Facilities (i.e., those not defined in the Telecommunications Act of 1996) shall be allowed, by Special Permit, only on sites shown on a map entitled "Town of Yarmouth Inventory of Existing Antenna Sites and Possible Antenna Sites," as currently amended.

408.7.3 Co-location. If feasible and appropriate, Personal Wireless Service Facilities shall be located on existing structures, including but not limited to buildings, water towers, existing Communications Facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more Personal Wireless Service Facilities. The applicant shall have the burden of proving that there are no existing structures upon which it is feasible to locate.

408.7.3.1 Licensed carriers shall share Personal Wireless Service Facilities and sites where feasible and appropriate, thereby reducing the number of Personal Wireless Service Facilities that are stand-alone facilities. All applicants shall demonstrate a reasonable good faith effort to co-locate with other carriers. Such reasonable good faith effort includes:

1. A survey of all existing structures that may be feasible sites for co-locating Personal Wireless Service facilities;
2. Contact with all the other licensed carriers for commercial mobile radio services operating in the County, and;
3. Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.

408.7.3.2 In the event that co-location is found to be not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Board of Appeals. The Board of Appeals may retain a technical expert in the field of RF engineering to verify if co-location at the site is not feasible or is feasible given the design configuration most accommodating to co-location. The cost for such a technical expert will be at the expense of the applicant. The Board of Appeals may deny a Special Permit to an applicant that has not demonstrated a reasonable good faith effort to provide for co-location.

408.7.3.3 If the applicant does intend to co-locate or to permit co-location, the Board of Appeals shall request drawings and studies, at the applicant's expense, which show the ultimate appearance and operation of the Personal Wireless Service Facility at full build-out.

408.7.4 Historic Buildings and Districts

1. Any Personal Wireless Service Facilities located on or within an historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
2. Any alteration made to an historic structure to accommodate a Communications facility shall be fully reversible.
3. Personal Wireless Service Facilities within the Old King's Highway Regional Historic District shall be concealed within or behind existing architectural features, or shall be located so that they are not discernable from public roads and viewing areas within the district.

4. The siting of Communications Facilities which are located in the Old King's Highway Regional Historic District require the additional approval of the appropriate authority.

408.7.5 Scenic Landscapes and Vistas

1. Personal Wireless Service Facilities shall not be located within open areas that are discernable from public roads, recreational areas, or residential development.
2. Any Communications Facility that is located within 300 feet of a scenic road, as designated by the town, shall not exceed the height of vegetation at the proposed location. If the facility is located farther than 300 feet from the scenic road, the height regulations described in 408.7.6.1 shall apply.
3. Personal Wireless Service Facilities shall not be located within the Viewshed as designated and located in the VCOD.

408.7.6 Dimensional Requirements. All Communications Facilities shall comply with the dimensional and setback requirements of Bylaw section 203 (Intensity of Use Regulations).

408.7.6.1 Height, General. Regardless of the type of mount, Personal Wireless Service Facilities shall be no higher than ten feet above the average height of buildings within 300 feet of the proposed facility. Personal Wireless Service Facilities may locate on a building that is legally non-conforming with respect to height, provided that the facilities do not project above the existing building height.

408.7.6.2 Height, Ground-Mounted Facilities. Ground-mounted Personal Wireless Service Facilities shall not project higher than ten feet above the average building height or, if there are no buildings within 300 feet, these facilities shall not project higher than ten feet above the average tree canopy height, measured from ground level (AGL). In no case may height exceed 200 feet above ground level.

408.7.6.3 Height, Side- and Roof-Mounted Facilities. Side- and roof-mounted Personal Wireless Service Facilities shall not project more than ten feet (10') above the height of an existing building nor project more than ten feet above the height limit of the zoning district within which the facility is located. Personal Wireless Service Facilities may locate on a building that is legally non-conforming with respect to height, provided that the facilities do not project above the existing building height.

408.7.6.4 Height, Existing Structures. New antennas located on any of the following structures existing on the effective date of this bylaw shall be exempt from the height restrictions of this bylaw provided that there is no increase in height of the existing structure as a result of the installation of a Communications Facility: guyed towers, lattice towers, and monopoles.

408.7.6.5 Height, Existing Structures, (Utility). New antennas located on any of the following existing structures shall be exempt from the height restrictions of this bylaw provided that there is no more than a twenty foot (20') increase in the height of the existing structure as a result of the installation of a Communications Facility: electric transmission and distribution towers, water towers, telephone poles and similar existing utility structures. This exemption shall not

apply in the Old King's Highway Regional Historic District, within 300 feet of the right-of-way of any scenic roadway.

408.7.6.6 Microwave antennas exceeding 12 inches in diameter on a roof or building-mounted facility shall not exceed the height of the structure to which they are attached, unless fully enclosed.

408.7.7 Parking Requirements. All Communications Facilities must meet the parking and buffer requirements of Bylaw section 301 (Parking and Loading Requirements).

408.7.8 Fall Zones. Communications towers, whether free-standing or part of another structure or building, must be set back from all property lines by at least the total height of the tower structure and its appurtenances.

408.7.9 Aesthetics.

408.7.9.1 Landscaping. Existing mature tree growth and natural land forms on sites shall be preserved to the maximum extent possible. Screening for sites buffers and parking lots must meet the criteria outlined in section 301 Parking and Loading. In addition, the base of communication towers shall be screened from view by a minimum four (4) foot wide planting strip maintained with densely planted shrubs not less than six (6) feet in height. Shrubs shall be at least seventy-five percent (75%) evergreens. Fences or walls may be a part of such screening where deemed necessary, as approved by the Site Plan Review Team. In locations where the visual impact of communications towers would not be an issue, these requirements may be reduced or waived by the Building Commissioner upon unanimous vote by the Site Plan Review Team.

408.7.10 Color and Camouflage

408.7.10.1 Color. Communications towers and antennas shall maintain a light gray or light blue finish, unless otherwise required by the Board of Appeals. Communication towers and/or antennas installed on an existing building or structure shall be camouflaged to match the building or structure to which they are attached or the background against which they are most commonly seen.

408.7.10.2 Camouflage by Existing Buildings or Structures:

1. When a Communications Facility extends above the roof height of a building on which it is mounted, a reasonable good faith effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.
2. Communications Facilities which are side mounted shall blend with the existing building's architecture and shall be painted or shielded with material which is consistent with the design features and materials of the building.

408.7.10.3 Camouflage by Vegetation:

If Communications Facilities are not camouflaged from public viewing areas by existing buildings or structures, they shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Ground-mounted Personal Wireless Service Facilities shall provide a vegetated buffer of sufficient height and depth to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both. The Board of Appeals shall determine the types of trees and plant materials and depth of the needed buffer based on site conditions.

408.7.11 Lighting and Signage

1. Communications Facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. There shall be total cutoff of all light at the property lines of the parcel to be developed, and footcandle measurements at the property line shall be 0.0 initial foot candles when measured at grade.
2. Signs shall meet the design and display criteria of Bylaw section 303.
3. All ground mounted Communications Facilities shall be surrounded by a security barrier, where appropriate and necessary.

408.7.12 Equipment Shelters

Equipment shelters for Communications Facilities shall be designed consistent with one of the following design standards:

1. Equipment shelters shall be located in underground vaults; or
2. Equipment shelters shall be designed consistent with traditional Cape Cod architectural styles and materials, with a roof pitch of at least 10/12 and wood clapboard or shingle siding; or
3. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed shelter, and/or a fence. The Board of Appeals (and/or the Old King's Highway Regional Historic District Committee) shall determine the style of any fencing and landscape buffer that is compatible with the neighborhood.

408.7.13 Environmental Standards.

408.7.13.1 The location of any Communications Facility in or near wetlands is subject to the Wetlands Protection Regulations of the Yarmouth Conservation Commission.

408.7.13.2 The handling, storage, or disposal of hazardous materials is subject to Yarmouth Board of Health regulations and, when applicable, section 406 of this Bylaw.

408.7.13.3 Ground-mounted equipment for Personal Wireless Service Facilities shall not, during normal operation, generate noise in excess of 50 db (non-continuous) at the property line.

408.7.13.4 Roof-mounted or side-mounted equipment for Personal Wireless Service Facilities shall not, during normal operation, generate noise in excess of 50 db (non-continuous) at ground level at the base of the building closest to the antenna.

408.7.14 Safety Standards.

408.7.14.1 Radio-frequency Radiation (RFR) Standards. All equipment proposed for a Communications Facility shall be authorized per the FCC Guidelines for Evaluating the Environmental Effects of Radio-frequency Radiation (FCC Guidelines).

408.8 Accessory Equipment Storage. Mobile or immobile equipment not used in direct support of a Communications Facility shall not be parked on site unless repairs are being made to said facility

408.9 Leases. No Special Permit granted under this section shall be effective for town-owned property used for the construction of a Communication Facility until a lease setting forth the particular terms, conditions, and provisions have been executed by the applicant and the Town of Yarmouth.

408.10 As-Built Plans. Within 60 days of completion of the initial construction and/or any additional construction or reconstruction, the owner or franchisee of any Communications Facility shall furnish 2 complete sets of plans, drawn to scale and stamped by a Registered Professional Land Surveyor, depicting the location of all towers and appurtenant facilities.

408.11 Inspection. At least every 24 months, all communication towers shall be inspected by an expert who is regularly involved in the maintenance, inspection, and/or erection of communication towers. At a minimum, this inspection shall be conducted in accordance with the tower inspection check list provided in the Electronics Industries Association (EIA) Standard 222, "Structural Standards for Steel Antenna Towers and Antenna Support Structures" and the State Building Code. A copy of each such inspection record shall be provided to the Building Commissioner. The town may retain a technical expert in the field of RF engineering, at the expense of the carrier, to verify the inspection report. If, upon inspection, the communication tower fails to comply with such codes and standards, and constitutes a danger to persons or property, then upon notice being provided to the owner of the communication tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to comply may result in an order to remove such tower at the owner's expense.

408.12 Abandonment or Discontinuation of Use.

408.12.1 At such time that a carrier plans to abandon or discontinue operation of a Communications Facility, such carrier will notify the Building Commissioner by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that a licensed carrier fails to give such notice, the Communications Facility shall be

considered abandoned upon such discontinuation of operations.

408.12.2 Upon abandonment or discontinuation of use, the carrier shall physically remove the Communications Facility within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

1. Removal of antennas, mount, equipment shelters and security barriers from the subject property;
2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations, and;
3. Restoring the location of the Communications Facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.

408.12.3 If a carrier fails to remove a Communications Facility in accordance with this section of this Bylaw, the Town shall have the authority to enter the subject property and physically remove the facility. The Board of Appeals may require the applicant to post a bond at the time of construction to cover costs for the removal of the Communications Facility in the event the Town must remove the facility.

409. (Deleted 4/15/98)

410. ADULT USES

410.1 Authority, Purpose and Intent

410.1.1 This bylaw is enacted pursuant to M.G.L., Chapter 40A, Section 9A and pursuant to the Town's authority under Home Rule Amendment to the Massachusetts Constitution. It is the purpose and intent of this bylaw to address and mitigate the secondary effects of the Adult Entertainment Enterprises and sexually oriented businesses referenced and defined herein. Such secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town, adverse impacts on the property values of residential and commercial properties, and adverse impacts on the quality of life in the Town, all of which secondary impacts are adverse to the health, safety and general welfare of the Town of Yarmouth and its inhabitants.

410.1.2 The provisions of this bylaw have neither the purpose nor intent of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this bylaw to restrict or deny access by adults to Adult Entertainment Enterprises and to sexually oriented matter or materials protected by the Constitutions of the United States of America and of the Commonwealth of Massachusetts, nor restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute, or exhibit such matter or materials. Neither is it the purpose or intent of this bylaw to legalize the sale, rental, distribution, or exhibition of obscene or other illegal matter or materials.

410.1.3 Nothing in this bylaw is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any Town Bylaw 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.

410.1.4 If any section, subsection, sentence, clause, phrase or any portion of this bylaw is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this bylaw.

410.2 Rules and Application Requirements

410.2.1 No Special Permit shall be granted by the Board of Appeals for an Adult Entertainment Enterprise unless the following conditions are satisfied:

1. The Board of Appeals shall be the Special Permit granting authority. The application requirements and procedures shall be conducted pursuant to sections 102 and 103 of this Zoning Bylaw.
2. No Special Permit shall be issued to any applicant, if any applicant, principal(s), or manager(s) have been convicted of violating the provisions of M.G.L., chapter 119, section 63, or Chapter 272, section 1 through 35A, or equivalent statutes in other jurisdictions. Application shall include authorization for the Board of Appeals to confirm criminal record information through the appropriate authorities.
3. No Special Permit shall be granted pursuant to this section unless the Board of Appeals shall have made detailed findings, in addition to the findings required by section 103 of this bylaw, based upon the required submissions in the following subsections d and e and in section 103 of this bylaw that:
 - A. the specific site is an appropriate location for such use located in the Adult Entertainment District (AED);
 - B. the use, as developed and carried on, will not adversely affect the neighboring properties or people;
 - C. the use, as developed and carried on, will not create a nuisance or serious hazard to vehicles or pedestrians traveling into, out of, or about the premises, and;
 - D. the use, as developed, shall provide adequate and appropriate facilities for its proper operation, taking into account the public health and welfare of its patrons and the surrounding environs of the property.
4. In addition to the submittal requirements outlined in section 103 of this Bylaw, each applicant for a Special Permit under this section shall submit:
 - A. a security plan detailing how the property will be policed so as to avoid unruly and/or illegal activities from taking place upon the applicant's property and to deter and prevent incidents of vandalism, loitering, and other associated activities upon its property;

- B. a plan to protect adjacent or neighboring properties against noise, glare, unsightliness, or other objectionable features, and;
 - C. evidence that the adult entertainment establishment will not generate excessive noise, or other objectionable characteristics off the premises, so as to create a disturbance and nuisance to adjacent or other neighboring properties.
5. No pictures, publications, videotapes, movies, covers, or other implements, items, or advertising that fall within the definition of Adult Entertainment Enterprise merchandise or are erotic, prurient, or related to sadism, or sexual exploitation shall be displayed in the windows of, or on the building of any Adult Entertainment Enterprise, or be visible to the public from pedestrian sidewalks or walkways or from other areas, public or semi-public, outside of such establishment.
 6. A Special Permit issued under this section shall lapse upon any transfer of ownership or legal interest or change in contractual interest in the subject premises or property. The Special Permit may be renewed thereafter only in accordance with the procedures outlined in section 410.2.
 7. Special Permits issued hereunder shall lapse unless substantial use thereof is made within six (6) months of being granted, exclusive of the time, if any, consumed during any appeals pursuant to M.G.L. ch. 40A, sect. 17, except for good cause shown. Any application for an extension of this period shall be filed prior to the lapse of the Special Permit.
 8. As provided in M.G.L., chapter 40A, section 9A, any pre-existing Adult Entertainment Enterprise shall, within 90 days of the final approval of this bylaw, or any subsequent amendment hereof, apply for and secure any Special Permits which would be required hereunder. Any such Adult Entertainment Enterprise which does not secure such permits shall be considered to be in violation of this bylaw.
 9. All other applicable provisions of the Yarmouth Zoning Bylaw shall also apply.

411 REVITALIZATION OVERLAY ARCHITECTURAL DISTRICT

411.1 Goals & Purposes.

411.1.1 The Town of Yarmouth is an historic seaside village. Many of the attributes associated with Old Cape Cod have been overlooked in the course of developing the town's business zones. Any rehabilitation and/or development of existing business properties should be consistent with the preservation and enhancement of the community's innate charm and beauty.

The intent of this ROAD is to provide a carefully controlled mechanism that promotes business opportunities through the use and reuse of business properties while preserving and enhancing the ambiance of our historic community.

411.1.2 Development incentives, such as compact land uses, different parking requirements, mixed uses, and adjusted lot dimensional requirements may be desirable to encourage commercial and business owners and developers to upgrade the quality of their sites and buildings and proposed developments, but such land uses should require owners and/or developers to submit to a high standard of site and building architectural review. This process promotes quality development and redevelopment, that reflects Yarmouth's seaside location, historic background, and natural environment. All development under this section shall be consistent with the *Yarmouth Architectural and Site Design Standards*, as established by the Yarmouth Planning Board. Substantial adherence, as determined by the Planning Board, to the *Yarmouth Architectural and Site Design Standards* shall be compulsory.

411.2 Objectives. The objectives of this section are:

1. to respect and accomplish the intent and purposes of the Yarmouth Zoning Bylaw underlying this ROAD District;
2. to encourage the development and redevelopment of sites and buildings within commercial districts through the incentive of zoning flexibility. If new development is proposed on a site where existing building(s) are to remain, then no approval shall be granted unless the existing building(s) and the entire site are redeveloped and revitalized to meet the criteria of the Yarmouth Architectural and Site Design Standards;
3. to require, in exchange for said flexibility, submission to design standard review so as to further encourage variety and choice within commercial and business development, to further encourage mixed commercial, business and residential uses, to stimulate economic development and, to further encourage the construction of projects with Historic, Seaside, Village, Colonial, and/or Old Cape Cod style themes and designs, while preserving and protecting Yarmouth's natural environment and aesthetic values.

411.3 Applicability. The district shall be superimposed over that property or lots which are within the B1, B2, or B3 zoning districts south of Route 6. Projects developing or redeveloping under Section 414, VCOD, shall not be permitted to submit a proposal under the Revitalization Overly Architectural District.

411.3.1 Voluntary Submission. Submission to this ROAD zoning district shall be voluntary. Any applicant for a development permit, as contemplated by this zoning bylaw, for property on lot(s) located within this ROAD district may choose to voluntarily submit a ROAD proposal, for a development or redevelopment project, rather than to the requirements of the B1, B2 or B3 zoning districts.

411.3.2 ROAD District Development Special Permit. The Board of Appeals, by Special Permit, may grant ROAD District Development Special Permit approval, with or without conditions, and within said Special Permit, the Board of Appeals may waive any portion of these zoning bylaw sections: 202, 203, 301, 303, 402, and 407 (except as set forth in section 411.3.3 hereof) if an applicant:

1. submits in accordance with this ROAD district section;
2. meets the criteria for the grant of a Special Permit as set forth in section 103.2;

3. completes the process of site plan review, if applicable, as set forth in section 103.3;
4. meets the criteria for approval pursuant to section 411.5, and;
5. receives approval of the Planning Board pursuant to section 411.6.

411.3.3 Waiver Limitations. The following portions of sections 202 and 203 shall not be waived by the Board of Appeals by Special Permit granted pursuant to this section, (except by Variance):

1. section 202.5 Use Regulation Table:

A7. Hotel and motel shall not be applicable to the provisions of this Bylaw section.

A8. Mobile home use being "no" in all districts shall not be waived;

A9. Mobile home park use being "no" in all districts shall not be waived;

A12. Multi-family shall not be applicable to the provisions of this Bylaw section for any project in the B3 Business Zone. In the B1 and B2 Business Zones, only mixed-use projects shall be allowed where the residential component is not more than 50% of a project's total building floor area.

Footnote #8. Provided that all but minor work and storage shall be conducted within a building sufficiently sound-insulated to confine disturbing noise to the premises;

Footnote #9. Provided that such use is not hazardous by reason of potential fire, explosion radiation nor injurious or detrimental to the neighborhood by reason of dust, odor, fumes, noise, vibration, or other noxious objectionable features, nor harmful to surface or ground water, and;

Footnote #16. Subject to the provisions of section 406, Aquifer Protection Overlay District.

2. section 203.4.1 Building height, shall not be waived.

411.3.4 Permit Modification and Enforcement. Once granted hereunder, a ROAD District Development Special Permit or Special Permit with conditions may not be modified without further grant of a Special Permit, including prior approval by the Planning Board pursuant to section 411.6. Planning Board approval of a proposed modification shall not be necessary if the Site Plan Review Team unanimously determines that there is no substantial architectural change. Any ROAD District Development Special Permit and any conditions imposed therewith shall be strictly enforced by the Building Commissioner pursuant to section 101.

411.4 General Application Procedures.

411.4.1 Application. Applicants for an approval under this section shall submit to the Planning Board the following:

1. completed application;
2. eleven (11) copies of the development plan (which shall be distributed as follows: one (1) to the Town Clerk, seven (7) to the Planning Board, one (1) to the Planning Department, one (1) to the Community and Economic Development Committee and one (1) to the Design Review Committee, and;
3. a site plan review report

411.4.2 ROAD District Development Plan. The overall development plans for any development under this section shall include:

1. all information required for a site plan review, as outlined in bylaw section 103.3.4;
2. a landscape plan;
3. a sign design plan;
4. a statement, by the applicant, of economic and other benefits to the town;
5. an abutters list, and;
6. the application fee in an amount set by the Planning Board.

411.5 Criteria for approval. The Planning Board when considering approval of a ROAD District Development Plan and the Board of Appeals when considering a petition for a Special Permit for a ROAD District Development Plan shall consider the following criteria, standards, objectives and recommendations:

1. General Criteria. All proposals shall be reviewed according to the following general criteria. These criteria are evaluated under the discretion of the Planning Board, and a proposal need not necessarily satisfy all criteria in order to receive the approval of any of the reviewing boards or authorities.
 - A. site plan review objectives pursuant to section 103.3.1;
 - B. the criteria, standards and objectives of design review pursuant to section 103.3.3.1;
 - C. the goals, purpose and objectives of this section 411;
 - D. the economic benefits of the proposed development;
 - E. the recommendations of the Site Plan Review team and the Community and Economic Development Committee;
 - F. supplementary ROAD District standards:

- (1.) architectural styles. Site, elevation, landscape, and sign plans (plans shall be drawn in the context of one (or a mixture of) the following styles: Historic, Seaside Village, Colonial, and/or Old Cape Cod (style) which shall have their common and ordinary meaning. Portions of the overall plans may include contemporary design where necessary for public health and safety or to eliminate architectural barriers;
 - (2.) design. Plans shall be evaluated in the context of the findings, objectives and criteria set forth in this section 411;
 - (3.) intrinsic or reproduction style value and significance;
 - (4.) aesthetic and/or artistic quality of the style;
 - (5.) balance and mixture within the general style design of factors to include, but not limited to:
 - a. relative size and setting;
 - b. color;
 - c. material, and;
 - d. arrangement;
 - (6.) respect for the need to balance economic well being and stability, economic growth, and employment with protection of the natural environment.
 - (7.) balance. The benefits of the ROAD District development plan shall outweigh its detriments. Further, the benefits of any deviation or relief from the underlying zoning bylaw shall outweigh any detriments as determined by the Planning Board.
2. Mandatory Criteria: In order to grant a Special Permit hereunder the Board of Appeals must find that the ROAD District Development as proposed satisfies the following criteria:
- A. those criteria as set forth for the grant of a Special Permit pursuant to section 103;
 - B. that the goals, purpose and objectives of the ROAD district bylaw will be accomplished;
 - C. that the project as a whole substantially accomplishes the purposes of the underlying zoning bylaw;
 - D. that the benefits to the neighborhood, district and Town from the ROAD District development's approval under this bylaw section 411 outweigh the effects of any deviation or relief from the requirements of the underlying zoning bylaw, and;
 - E. the architectural and site designs of the proposed development plan is as previously approved by the Planning Board, pursuant to 411.6.

411.6 Decision of the Planning Board. The Planning Board shall consider the application for approval of a ROAD District Development Plan and grant its approval or disapproval after a duly advertised public meeting of the Planning Board within forty five (45) days of the filing of the application and plan with the Town Clerk and the Planning Board. The plan must be approved by a majority of the Planning Board membership. In no case may the Planning Board approve a plan with less than 3 affirmative votes. If the Planning Board fails to grant approval or render disapproval of the application and plan within said forty five (45) day period the application and plan shall be deemed disapproved without prejudice. Said requirement of approval or disapproval within forty five (45) days of filing with the Town Clerk and the Planning Board, may be extended by written agreement between the Planning Board and the applicant. If the Planning Board disapproves an application, it is incumbent on the applicant to either resubmit a revised ROAD application for approval, or proceed by complying with the Yarmouth Zoning Bylaws. Only after approval by the Planning Board of a ROAD District Development Plan (said approval to be noted by the applicant as an endorsement on said development plan) may the applicant file for a ROAD District Development Special Permit with the Board of Appeals pursuant to section 411.5 and section 103.2.

412 AFFORDABLE HOUSING

412.1 Affordable Housing

412.1.1 Purpose. The purpose of this bylaw is to increase the supply of housing that is available and permanently affordable to low or moderate income households.

It is intended that the affordable housing units created under this bylaw qualify as low or moderate income units for purposes of M.G.L. ch. 40B, sec. 20-23 and shall be in compliance with 760 CMR 56.00 the Local Initiative Program (LIP) and meet the guidelines and standards promulgated thereunder by the Department of Housing and Community Development (DHCD) for inclusion in the DHCD Ch 40B Subsidized Housing Inventory as Local Action Units.

Nothing in this bylaw shall preclude a developer from providing more affordable housing units than required hereunder.

412.1.2 Applicability. This bylaw section is applicable to affordable housing units created in accordance with Bylaw sections 404 Motels, 414 Village Centers Overlay District, 412.2 Inclusionary Zoning, 412.5 Affordable Lots or by a Special Permit Granting Authority. This bylaw does not apply to affordable dwelling units created with a Comprehensive Permit.

412.1.3. Preservation of Affordability & Restrictions. Each affordable housing unit shall be subject to an encumbrance such as an affordable housing restriction and/or regulatory agreement as defined by M.G.L., ch. 184, sec. 31 and as approved by the Town which shall ensure that the affordable housing shall be affordable in perpetuity. The affordable housing restriction and/or a regulatory agreement shall be, recorded at the Barnstable County Registry of Deeds and shall be in force in perpetuity, or for the maximum period of time allowed by law, so as to be binding on and enforceable against any person claiming an interest in the property and shall conform to the following:

1. The affordable housing restriction shall meet the requirements of the Local Initiative Program (LIP), 760 CMR 56.00 Local Initiative Program (LIP) and guidelines

promulgated thereunder. The affordable housing restriction shall have seniority to any encumbrance on the property which would put at risk the perpetual nature of this restriction. The developer shall submit to the Town a title search and certification by counsel whose selection shall be approved in advance by the Town that demonstrates the seniority of the affordable housing restriction and regulatory agreement;

2. Affordable housing rental units shall be rented only to a qualified low or moderate income household at a rent not to exceed the maximum affordable rent established under the DHCD requirements and guidelines under LIP;
3. Initial sale of an affordable housing unit shall be made to a qualified low or moderate income household at a sale price not to exceed the maximum affordable sale price established under the DHCD requirements and guidelines under LIP;
4. Subsequent resale of an affordable housing unit shall be made to a qualified low or moderate income household, at a sale price based on the initial discount rate, formula or description of the resale price applied to the initial sale of the unit, which shall be recorded at the time of sale. This resale formula or description shall be applied to any subsequent resale of the unit and shall meet the requirements and guidelines of the Local Initiative Program;
5. A right of first refusal upon the transfer of an affordable unit shall be granted to the Town or its designee for a period not less than 120 days after notice thereof;
6. The continuing enforcement of the affordable housing restriction shall be the subject of a monitoring agreement, and;
7. To the extent possible, any restriction created shall survive any bankruptcy, foreclosure, insolvency or other action and shall not be nullified for any reason.

412.1.4 Selection of Qualified Purchasers or Renters. The selection of qualified purchasers and renters shall be carried out under an affirmative marketing plan approved by DHCD and the Community Housing Committee and which meets the requirements of the DHCD Local Initiative Program. The affirmative marketing plan shall describe how the affordable housing units will be marketed to potential homeowners or renters. The affirmative marketing plan shall describe the lottery or other process to be used for selecting buyers or renters. The marketing plan must describe how the developer will accommodate local preference, if any, established by the Town, in a manner that complies with the nondiscrimination in tenant or buyer selection guidelines of the Local Initiative Program.

412.1.5 Local Preference. To the extent permissible by law, local preference will apply to the selection of tenants and purchasers of affordable dwelling units. Local Preference Criteria is set by the Community Housing Committee and approved by the Board of Selectmen.

412.1.6 Income Verification. Potential purchasers of affordable housing units are required to submit, at a minimum, copies of the last three years federal and state income tax returns, and to verify, in writing, prior to purchasing the unit, that his and/or her household income does not exceed the maximum allowed.

412.1.7 Location of affordable housing units. The affordable housing units shall be dispersed throughout a development. For multi-family developments, affordable housing units shall be dispersed throughout the buildings and the floors of each building such that no single building or floor therein has a disproportionate percentage of affordable housing units.

412.1.8 Comparability of affordable housing units. The affordable housing units shall be comparable to market-rate dwelling units in exterior building materials and finishes, overall construction quality, and energy efficiency, including mechanical equipment, plumbing, insulation, windows and heating and cooling systems. In addition:

1. When the affordable housing units are detached-single family dwellings, the affordable housing units shall be similar in size to the market-rate detached single-family dwellings in the development unless the Planning Board grants a Special Permit to authorize smaller units, and;
2. In any two-family or in any multi-family dwelling, the affordable housing units may differ from market-rate units in gross floor area, provided that the bedroom mix in affordable housing units shall be generally proportional to the bedroom mix in market-rate units, unless the Planning Board grants a Special Permit to authorize a different mix for the affordable housing units.

412.1.9 Timing of Issuance of Building Permits, Construction and Certificates of Occupancy.

1. No Building Permit shall be issued by the Building Commissioner for any project which contains affordable dwelling units until the affordable dwelling units have been shown to qualify as low or moderate income units for purposes of M.G.L., ch. 40B, sec. 20-23 and have been approved by the DHCD as eligible for the DHCD Ch 40B Subsidized Housing Inventory under 760 CMR 56.00, the LIP Program, as Local Action Units. The developer shall be responsible for preparing and complying with any documentation that may be required by the DHCD and the Town to qualify the affordable housing units for listing in the Chapter 40B Subsidized Housing Inventory.
2. No Building Permit shall be issued by the Building Commissioner for a rental development with affordable housing units until a regulatory agreement and monitoring agreement has been approved by the Community Housing Committee and Board of Selectmen and has been duly executed and recorded at the Barnstable County Registry of Deeds.
3. No Certificate to Occupy shall be issued by the Building Commissioner for a homeownership or rental affordable housing unit until the developer submits an affordable housing restriction, monitoring agreement and regulatory agreement that has been approved by the Community Housing Committee and Board of Selectmen, and the regulatory agreement has been duly executed and recorded at the Barnstable County Registry of Deeds.
4. In the event no building permits are required, then no Certificate to Occupy shall be issued by the Building Commissioner for any project which contains affordable dwelling units until the affordable dwelling units have been shown to qualify as low or moderate income units for purposes of M.G.L., ch. 40B, sec. 20-23 and have been

approved by the DHCD as eligible for the DHCD Ch 40B Subsidized Housing Inventory under 760 CMR 56.00, the LIP Program, as Local Action Units. The developer shall be responsible for preparing and complying with any documentation that may be required by the DHCD and the Town to qualify the affordable housing units for listing in the Chapter 40B Subsidized Housing Inventory.

5. At a minimum, every third unit out of four issued a Certificate to Occupy by the Building Commissioner shall be an affordable unit. Compliance with this regulation shall be determined on the basis of Certificates to Occupy for the affordable housing units and the market-rate units. The affordable unit(s) will not be the last to be built in any development.

412.2 Inclusionary Zoning.

412.2.1 Purpose. The purpose of this bylaw is to increase the supply of housing that is available and permanently affordable to low or moderate income households by requiring a portion of new dwelling units be restricted as affordable housing units and to promote geographic distribution of affordable housing units throughout the Town.

It is intended that the affordable housing units created under this bylaw qualify as low or moderate income units for purposes of M.G.L., ch. 40B, sec. 20-23 and shall be in compliance with 760 CMR 56.00 the Local Initiative Program (LIP) and meet the guidelines and standards promulgated there under by the Department of Housing and Community Development (DHCD) for inclusion in the DHCD Ch 40B Subsidized Housing Inventory as Local Action Units.

412.2.2 Applicability.

The inclusionary zoning provisions of this bylaw are applicable to:

1. Any project that results in a net increase of five (5) or more residential dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space, including mixed used developments/redevelopments, and/or;
2. Any subdivision of land for development that results in a net increase of five (5) or more dwelling units.

This bylaw section is not applicable to:

1. Congregate Living Housing as defined in Bylaw section 402;
2. Properties subject to the provisions of Bylaw section 404, the Motel Bylaw, or;
3. Pre-existing, legal housing that is merely being rehabilitated or repaired, provided there is no increase in the number of units resulting from said rehabilitation or repair.
4. Assisted Living Retirement Communities as applicable under Section 414, VCOD, pursuant to Section 202.5 Use Regulation Table (Use P5) and defined in Section 500.

Developments may not be segmented or phased to avoid compliance with this bylaw. For example, the divisions of land that would cumulatively result in an increase by five or more residential lots above the existing on a parcel of land or contiguous parcels in common ownership as of May 1, 2009 shall be subject to this bylaw.

412.2.3 Mandatory Provision of affordable housing units. In any development subject to this bylaw, one in five of the dwelling units shall be restricted affordable in perpetuity, as per the following schedule:

Total Number Units Created	Number of Affordable housing units required
1-4	0
5-9	1
10-14	2
15-19	3
20-24	4
25-29	5
30 or more	1 for every 5

This requirement continues even if the total number of units exceeds 29. The affordable housing units must be in compliance with Section 412 of this bylaw.

Affordable units must be constructed or rehabilitated on the locus of the development unless the developer provides the required homeownership units by donation as described in Section 412.3 Off Site Provision of Affordable Housing, or through a cash payment as described Section 412.4 Fees in Lieu or combination thereof.

412.2.4 Bonus Density. Except for cluster subdivision as outlined in Sec 402 of this Bylaw, and for projects developing under VCOD regulations of this bylaw, a bonus density shall be allowed, provided the affordable housing units are restricted in perpetuity. The minimum lot area required in the applicable zoning area may be reduced up to 20% and the side and rear setbacks may be reduced by up to 20% in order to permit up to one additional market rate unit on the property for each affordable unit required by this bylaw. Bonus density shall be allowed when the affordable housing units required are provided offsite by donation or through a payment of fees in lieu of providing the units in the locus of the development. No more than three (3) bonus units shall be allowed per development and no development shall be segmented or phased to avoid compliance with this limit.

412.2.5 No Building Permit shall be issued by the Building Commissioner until the developer has demonstrated that all of the applicable requirements of 412.1 have been met.

412.3 Off Site Provision of Affordable Housing.

412.3.1 Purpose. The purpose of this section is to provide a means by which developers may meet the affordable housing requirements of Section 412.2 by donating an acceptable dwelling unit to the Town in lieu of all or part of the required affordable housing.

412.3.2 Applicability. The provisions of this section shall apply to affordable residential dwelling units created under Section 412.2.

412.3.3 Off Site Provision. Donation of safe and decent fully finished housing units to the Yarmouth Municipal Affordable Housing Trust (Trust), as created under M.G.L., ch. 44, sec. 55C, for the Town's affordable housing program may be made by the developer in lieu of providing the required affordable unit(s) within the locus of the development. In the event that a developer wishes to make such a donation, the developer shall apply to the Zoning Board of Appeals for a Special Permit for permission to do so in accordance with the following provisions.

The off site unit(s) may be newly constructed unit(s) or fully rehabilitated existing unit(s). The off site unit(s) must be substantially comparable in all material respects, including, without limitation, comparability of value, fit, finish, and amenities, to the units within the locus of the development.

If the unit(s) to be donated are not substantially comparable to the unit(s) being replaced in the development, the Zoning Board of Appeals may, in its discretion, require either an additional payment to the Trust of the difference in value between the units within the locus of the development and the off-site unit(s) to be donated, or a donation of additional units, or both, to be used for the creation of affordable housing. All donated unit(s) must be provided in Yarmouth.

For the purpose of determining substantial comparability and value the Zoning Board of Appeals may require that the developer submit one or more appraisal(s) by a Massachusetts Appraisal Institute-qualified appraiser approved in advance by the Zoning Board of Appeals of the properties in question performed at the developer's expense. Donations must be provided per Section 412.1.9.

412.3.4 Affordability. No Building Permit or Certificate to Occupy shall be issued by the Building Commissioner for the development until the developer has demonstrated that all of the applicable requirements of 412.1 have been met.

412.4 Fees in Lieu of Affordable Housing.

412.4.1 Purpose. The purpose of this section is to provide a means by which developers may meet the affordable housing requirements of 412.2, Inclusionary Zoning, by making a payment to the town in lieu of all or part of the affordable housing requirement. Said payment shall be used to create no less than the equivalent number of affordable housing units as would be required under Section 412.2.

412.4.2 Applicability. The provisions of this section shall apply to affordable dwelling units created under the Section 412.2 Inclusionary Zoning Bylaw.

412.4.3 Fees in Lieu of all or part of the affordable housing requirement. Developers of affordable housing units required by Section 412.2 Inclusionary Zoning Bylaw may, by right, make a cash payment to the Yarmouth Municipal Affordable Housing Trust (Trust), as created under M.G.L., ch. 44, sec. 55C, or to a special account established specifically for the creation and preservation of affordable housing, in lieu of providing the required affordable housing units within the locus of the development. Cash payments made to the Town are to be used for the creation of new affordable units by the Town, or its designee, in a manner outlined in

the Town's affordable housing plan, as amended.

412.4.4 Agreement. No building permit shall be issued for any project utilizing 412.4 until an agreement specifying, among other items, the fee and fee payment schedule, has been approved by the Trust, and fully executed by the Town and the developer/property owner.

412.4.5 Calculation of cash payment. For each affordable unit not provided within the locus of the development, the fee shall be the greater amount of the following:

1. 125% of the current Median Income (MI) for the Metropolitan Statistical Area (MSA) which includes Yarmouth as determined by the U.S. Department of Housing and Urban Development on an annual basis;
2. \$100,000.

412.4.6 Fee payment schedule. Payment of fees in lieu of affordable housing to the Trust shall be made according to the same schedule found in Section 412.1.9 Paragraph 5, that is, the fee in lieu payment shall be made upon the issuance for every third out of four Certificates of Occupancy by the Building Commissioner.

412.5 Affordable Lots.

412.5.1 Purpose: The purpose of this bylaw is to increase the supply of housing that is available and permanently affordable to low or moderate income households by allowing affordable dwelling units to be build on non-complying lots, provided the lots meet the criteria listed herein.

It is intended that the affordable housing units created under this bylaw qualify as low or moderate income units for purposes of M.G.L. ch. 40B sec. 20-23 and shall be in compliance with 760 CMR 56.00 the Local Initiative Program (LIP) and meet the guidelines and standards promulgated thereunder by the Department of Housing and Community Development (DHCD) for inclusion in the DHCD Ch 40B Subsidized Housing Inventory as Local Action Units.

412.5.2 Applicability. This bylaw applies to lots of record as of January 1, 2009 which do not meet the zoning requirements for a buildable lot. Any increase in tax assessment for an applicable lot shall only occur upon an issuance of a building permit for an affordable single-family dwelling on that applicable lot.

412.5.3 The Building Commissioner may allow construction of a single family home, to be restricted as an affordable homeownership or rental dwelling unit in perpetuity or the maximum time period allowed by law, on an eligible parcel of land that meets the following criteria:

1. Each lot is within a residential zoning district;
2. Each lot is vacant of any residential dwelling;
3. Each lot contains at least 10,000 square feet of upland area;
4. Each lot satisfies applicable Board of Health requirements;

5. Each lot satisfies applicable Town of Yarmouth Conservation Commission Wetlands Protection Regulations;
6. Each lot has a minimum of twenty (20) feet of frontage on a way previously approved by the Planning Board or a public way, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide the needs of vehicular traffic. Lots without suitable frontage may be buildable under this section if there is an adequate recorded access easement of at least twenty (20) feet in width from the lot to a previously approved by the Planning Board or a public way, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide the needs of vehicular traffic and emergency response apparatus;
7. The applicable side setbacks shall be determined by establishing an average setback based upon the principal structures on the lots immediately adjacent to the lot to be built upon as a separate lot or shall conform to current setbacks. In no case shall the side setbacks be less than ten (10) feet, nor shall a dwelling be built within twelve (12) feet of the any other dwelling. The existing setbacks of principal structures on the lots immediately adjacent to the subject lot must be shown on the plans;
8. No lot shall be built upon if it was purposely created as an unbuildable lot as part of a subdivision open space or park, or by any other condition or agreement with the Town;
9. No part of any access driveway shall be within twenty (20) feet of a principle structure on an adjoining lot, and;
10. No part of any affordable structure shall be placed within 80' of an existing principle structure for those lots where the affordable lot is located behind an existing lot.

412.5.4 The Board of Appeals, as the Special Permit Granting Authority under this section, may grant a special permit to allow construction of a single family home, to be restricted as an affordable homeownership or rental dwelling unit in perpetuity or the maximum time period allowed by law, on a lot less than 10,000 square feet if:

1. The lot is similar in nature, i.e. in size and shape, to the lots immediately adjacent to the lot to be built upon as a separate lot, and;
2. The Board finds that such a reduction in size would further the purposes of the bylaw without causing any undue nuisance, hazard or congestion in the Town or neighborhood.
3. All criteria outlined in section 412.5.3, except the minimum 10,000 square foot requirement of 412.5.3, paragraph 3, must be met for Board of Appeals approval of a lot with an area under 10,000 square feet in size.

412.5.5 Transfer or Sale. The Board of Appeals, as the Special Permit Granting Authority under this section, may allow the lot owner to transfer or to rent the constructed single family home to an income eligible immediate family member (sibling, parent or child), at an affordable price or rent per the applicable standards in Bylaw section 412.1, provided that the unit is

restricted in such a way that future transference or leasing to non-family members comply with the applicable affordability requirements in Bylaw section 412.1.

412.5.6 Affordability. No Building Permit or Certificate to Occupy shall be issued by the Building Commissioner until the developer has demonstrated that all of the applicable requirements of 412.1 have been met.

412.5.7 Conditions and Restrictions. The Special Permit Granting Authority may impose conditions and restrictions on the special permit, including, but not limited to, a) restricting the total number of bedrooms or occupants in the dwelling, b) requiring that a Regulatory Agreement and/or Deed Rider, in an acceptable form, be executed and recorded by the applicant, c) such other restrictions or limitations as are considered necessary or appropriate to carry out the intent and purposes of the bylaw.

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

413 WIND ENERGY FACILITIES

413.1 Residential Wind Energy Systems (RWES) Facilities.

413.1.1 Applicability, Purpose & Intent. This zoning bylaw shall control the siting, installation and use of Residential Wind Energy Systems (RWES) for single or two-family dwellings in residential districts R-87, R-40, RS-40 and R-25. It is the intent of this bylaw to facilitate the use of renewable, sustainable energy while at the same time protecting the public from any adverse effects of residential wind turbines on the character of neighborhoods, property values and the scenic, historic and environmental resources of the town. Residential Wind Energy Systems shall be allowed by right as an accessory to a single or two-family dwelling, except that a special permit shall be required from the Zoning Board of Appeals for the installation of any of the following:

1. More than one turbine on a single lot;
2. A RWES that requires an easement;
3. A RWES that will have an equipment shelter in excess of 150 square feet in floor area or multi-story;
4. A RWES that serves multiple properties;
5. A RWES that has a total extended height greater than 125';
6. Above ground wiring, cables, or power lines.

413.1.2 Siting Requirements.

1. A RWES located on a residentially zoned lot must have its fall zone located completely within that property's lot lines unless the lot owner is granted a written easement(s) by

an abutting property owner(s). Said easement(s) shall be in force at least as long as the turbine is erected and shall be duly recorded at the Barnstable County Registry of Deeds.

2. The base of the RWES tower shall be set back from all public and private rights-of-way and public utility lines a distance equal to the total extended height plus ten feet. Under no condition shall the RWES interfere with public utility lines or rights of way, public or private.
3. Anchors for guy wires which support a RWES may be located within building setbacks, as those setbacks are outlined in section 203.5, Table of Dimensional Requirements.

413.1.3 Sound Requirements. Sound produced by the RWES under normal operating conditions shall not exceed 10 dBA above ambient noise, as measured at the property line. Sound produced by the RWES shall conform to MA 310CMR 7.10

413.1.4 Height Limitation. The total extended height of a RWES shall be less than or equal to 125' unless a special permit is granted by the Zoning Board of Appeals.

413.1.5 Access. No climbing foot pegs or ladder rungs shall be allowed below the first twelve (12) feet of a tower in order to prevent unauthorized access.

413.1.6 Equipment Shelter. An accessory structure used exclusively for battery storage pertaining to a RWES shall be no more than 150 square feet in floor area and single story unless a special permit is granted by the Zoning Board of Appeals.

413.1.7 Aesthetics.

1. Wind turbines, blades, towers and all equipment mounted on towers shall have a white, light gray or light blue non-reflective finish to minimize contrast with sky and clouds.
2. Lattice towers shall not be allowed.
3. All electrical wiring, cables and power lines of a RWES shall be placed underground.

413.1.8 Signage. Except for appropriate warning signs, all signs, banners, messages or markings on a wind turbine, tower, building or other structure associated with a RWES shall be prohibited.

413.1.9 Lighting. No illumination of a RWES, or any lighting mounted on a RWES, shall be allowed unless required by the Federal Aviation Administration (FAA).

413.1.10 Inspection. Each RWES shall be inspected every two years by a Registered Professional Structural Engineer who is regularly involved in the maintenance, inspection or erection of wind energy facility towers and other structures. All inspections shall be conducted according to the provisions of 780CMR (MA State Building Code). Structures deemed unsafe shall be cited according to 780CMR and MGL Chapter 143, Sections 6, 7, 8, 9 and 10 "Unsafe Structures" provisions. A copy of each citation shall be provided to the Building Commissioner. As part of this inspection, proof shall also be submitted that the RWES is

generating electricity.

1. If, upon inspection, the RWES is found not to comply with the State Building Code, or is deemed to constitute a danger to persons or property, then upon notice being provided to the owner, the owner shall immediately cease operation of the RWES and shall be granted 60 days in which to bring the system into compliance. A RWES that is not brought into compliance within the allowed time frame shall be deemed abandoned.
2. If, upon inspection, the RWES is not capable of generating electricity, then upon notice being provided to the owner, the owner shall have 6 months in which to restore the RWES to operating condition. A RWES that has not been restored to operating condition within the allowed time frame shall be deemed abandoned.

413.1.11 Abandonment. If a RWES is deemed abandoned by Section 413.1.10, paragraph 1 or 2, above, then the owner shall be required, at their expense, to remove the RWES from the site within 60 days. Removal of the RWES shall include:

1. Removal of the tower, turbine, blades, transmission lines, equipment shelters and foundations from the subject property.
2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

If a RWES has not been removed within the time frame required by Section 413.1.11, then the town shall be authorized to remove the equipment at the owner's expense and the cost placed as a lien on the property.

413.1.12 Requirements for Building Permit.

1. Building permit applications for an RWES shall be accompanied by standard drawings of the wind turbine structure and stamped engineering drawings of the tower, base, footings and /or foundations as provided by the manufacturer.
 - A. For building mounted turbines, a stamped design prepared by a registered professional engineer shall be provided for the structure on which the turbine shall be mounted.
2. Electrical permit applications for an RWES shall be accompanied by a line drawing of the electrical components, as supplied by the manufacturer, in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code.
 - A. Building permit applications for an RWES shall be accompanied by a signed interconnection agreement from the electric utility. Off-grid systems shall be exempt from this requirement.

413.2 [Reserved]

413.3 Municipal Wind Energy Facilities.

413.3.1 Purpose. The purpose of this bylaw section is to provide regulations to facilitate the development and operation of energy generating wind facilities on municipal property in the Town of Yarmouth, for the economic benefit of the Town. Further, the intent of these regulations is to minimize any adverse impacts of wind turbines on the character of neighborhoods, property values, scenic, historic, and environmental resources of the town; and to protect the health and safety of its inhabitants, while allowing wind energy technologies to be utilized. Any application to erect a structure that utilizes energy from the wind to generate electricity on municipally owned or controlled land shall comply with the requirements of this bylaw section.

413.3.2 Goals. The goals of this bylaw section are to facilitate the installation of Municipal Wind Energy Facilities that comply with all applicable existing local, state and federal laws so as to minimize any adverse effects and impact of wind facilities on the community through careful design and siting, and to avoid potential damage to adjacent properties from the failure of such facilities

413.3.3 Non-Applicability. This bylaw section is not intended to be applicable to wind energy facilities located on land not owned or controlled by the Town of Yarmouth. This bylaw section is not intended to prohibit applications for Non-Municipal Wind Energy Facilities under the provisions of bylaw sections 202.1 and 102.2.3.

413.3.4 Special Permit. The Board of Appeals may, by Special Permit, alter or waive one or more of the requirements of this bylaw section if it determines that the alteration or waiver of the requirement(s) will not derogate from the intent of the bylaw.

413.3.5 Application Procedures.

413.3.5.1 Application to the Board of Appeals for a Special Permit shall be as outlined in bylaw section 103.

413.3.5.2 Site Plan Review, per bylaw section 103, shall be required prior to application to the Board of Appeals.

413.3.6 Application Filing Requirements.

The following documentation shall be submitted for Site Plan Review and included with an application to the Board of Appeals for all Municipal Wind Energy Facilities:

413.3.6.1 General Filing Requirements. Plans, per Bylaw section 103.3.4, are required.

413.3.6.2 Location Filing Requirements.

1. Tax map and parcel number of the subject property.
2. Zoning district designation for the subject parcel.
3. Proposed location of any tower, equipment shelter and other major structures.

413.3.6.3 Siting Filing Requirements.

1. A one inch equals 100 feet (1"=100') overall plan showing the following:
 - A. Property lines for the subject property.
 - B. Property lines of all properties adjacent to the subject property within 300 feet.
 - C. Tree cover on the subject property and adjacent properties within 300 feet, by dominant species and average height, as measured by or available from a verifiable source.
 - D. Outline of all existing buildings and accessory structures, including purpose (e.g. residential buildings, garages, accessory structures, etc.) on subject property and on all adjacent properties within 300 feet.
 - E. Proposed location of tower, equipment shelter(s), and other major structures.
 - F. Location of all roads, public and private, on the subject property and on all adjacent properties within 300 feet including driveways proposed to serve the wind energy facility.
 - G. Distances, at grade, from the proposed wind energy facility to each building on the vicinity plan.
 - H. Contours at each two feet above mean sea level for the subject property and adjacent properties within 300 feet.
 - I. All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.
 - J. Detailed plans, dimensioned and to a one-inch equals 40 feet (1"=40') scale, of the proposed tower, equipment shelters, cable runs, parking areas and any other construction or development attendant to the wind energy facility.
 - K. Lines representing the sight line showing viewpoint (point from which view is taken) and visible point (point being viewed) from "Sight Lines" sub-section below.
2. Sight lines and photographs as described below:
 - A. Sight line representation. A sight line representation shall be drawn from any public road within 300 feet and the closest facade of each residential building (viewpoint) within 300 feet to the highest point (visible point) of the wind energy facility. Each sight line shall be depicted in profile, drawn at one inch equals 40 feet. The profiles shall show all intervening trees and buildings. In the event there is only one (or more) residential building within 300 feet there shall be at least two sight lines from the closest habitable structures or public roads, if any.

- B. Existing (before condition) photographs. Each sight line shall be illustrated by one four-inch by six-inch color photograph of what can currently be seen from any public road within 300 feet.
 - C. Proposed (after condition). Each of the existing condition photographs shall have the proposed wind energy facility superimposed on it to show what will be seen from public roads if the proposed wind energy facility is built.
 - D. Visual Impact. Photographic simulations from a distance of one hundred, one thousand, and five thousand feet and from four different locations of approximately ninety degrees apart of the proposed wind energy facility.
3. Siting elevations, or views at-grade from the north, south, east and west for a 50-foot radius around the proposed wind energy facility plus from all existing public and private roads that serve the subject property. Elevations shall be at either one-quarter inch equals one foot or one-eighth inch equals one foot scale and show the following:
- A. Tower and equipment shelter(s), with total elevation dimensions and AGL of the highest point.
 - B. Any and all structures on the subject property.
 - C. Existing trees and shrubs at current height and proposed trees and shrubs proposed height at time of installation, with approximate elevations dimensioned.
 - D. Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two-foot contours above mean sea level.

413.3.6.4 Design Filing Requirements.

1. Equipment brochures for the proposed wind energy facility such as manufacturer's specifications or trade journal reprints shall be provided for the turbine, tower and any equipment thereon, equipment shelters, cables and accessory equipment.
2. Materials of the proposed wind energy facility specified by generic type and specific treatment (e.g., steel, anodized aluminum, stained wood, painted fiberglass, etc.), and shall be provided for the tower and equipment thereon, equipment shelters, cables and accessory equipment.
3. Colors of the proposed wind energy facility represented by a color board showing actual colors proposed. Colors shall be provided for the tower and equipment mounted thereon and equipment shelters.
4. Dimensions of the wind energy facility specified for all three directions: height, width and breadth. These shall be provided for the tower and equipment thereon, foundations, and equipment shelters.
5. Appearance, shown by at least two photographic superimpositions of the wind energy facility within the subject property. The photographic superimpositions shall show the

tower and equipment thereon and equipment shelters, for the total height, width and breadth of the proposed facility.

6. Landscape plan including existing trees and shrubs and those proposed to be added, identified by size and species for installation.
7. Within 30 days of the pre-application conference, or within 21 days of filing an application for a Special Permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the Town at least 14 days, but not more than 21 days prior to the test.
8. If lighting of the site is proposed, the applicant shall submit a manufacturers computer generated point-to-point printout, indicating the horizontal footcandle levels at grade, within the property to be developed and twenty-five (25) feet beyond the property lines. The printout shall indicate the locations and types of luminaries proposed.

413.3.6.5 Noise Filing Requirements.

The applicant shall submit a study report identifying the existing and calculated maximum projected noise levels from the proposed facility, measured in decibels Ldn (logarithmic scale, accounting for greater sensitivity at night), for the following:

1. Existing, or ambient: the measurements of existing noise levels.
2. Existing plus proposed wind energy facility: calculated estimate of maximum noise level from the proposed facility plus the existing noise level.

The study report shall be prepared and signed by an engineer, Board Certified by the Institute of Noise Control Engineering (INCE) of the USA, certifying that noise measurements are accurate and meet the Noise Standards of bylaw section 413.3.7.8.3.

413.3.7 Design.

413.3.7.1 General.

Notwithstanding the other provisions of bylaw section 203.5, wind energy facilities shall also conform to the following requirements.

All Municipal Wind Energy Facilities shall be designed and sited so as to have the least adverse visual and audible impact on the neighborhood and the Town. Only self-supporting monopole type towers are permissible and shall avoid features allowing avian perches. Lattice towers, or the use of ground anchors and/or guy wires, are prohibited.

All towers must meet or exceed current standards and regulations of the FAA, and any other agency of the federal, state, and county government with the authority to regulate towers. If such standards and regulations are changed, then the owner of the tower governed by this ordinance shall bring such tower into compliance with such revised standard and regulations within six (6) months of the effective date of such standards and regulations unless a more

stringent compliance schedule is mandated by the controlling federal agency. Failure to bring a tower into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower at the operator's expense.

413.3.7.2 Location.

413.3.7.2.1 Allowed Areas.

The siting of Municipal Wind Energy Facilities shall be allowed by Special Permit in any zoning district on property owned or under control of the Town of Yarmouth.

413.3.7.2.2 Historic Buildings and Districts

Municipal Wind Energy Facilities to be located within the Old King's Highway Regional Historic District shall be located so that they are not discernable from public roads and viewing areas within the district and require the additional approval of the appropriate authority for the District.

413.3.7.2.3 Scenic Landscapes and Vistas.

1. Any wind energy facility that is located within 300 feet of a scenic road, as designated by the Town or the Commonwealth, shall not exceed the height of vegetation at the proposed location. If the facility is located farther than 300 feet from the scenic road, the height regulations set forth in bylaw section 413.3.7.4 shall apply.
2. Clearing of natural vegetation shall be limited to only that which is necessary for the construction, operation and maintenance of the wind energy facility and is otherwise as governed by applicable laws, regulations and ordinances, and shall comply with the provisions of bylaw section 302.
3. Wind Energy Facilities shall not be located within the Viewshed as designated and located in the VCOD.

413.3.7.3 Electrical Connections. All electrical wiring, cables and power lines of the wind energy facility shall be placed underground, unless impractical due to soil conditions, shape, and topography of the site as well as any requirements of the local utility. Electrical transformers, if required for the utility connection may be above ground. All electrical design and construction of the wind energy facility shall comply with the requirements of the National Electrical Code.

413.3.7.4 Dimensional Requirements. All wind energy facilities shall comply with the dimensional and setback requirements of bylaw section 203 (Intensity of Use Regulations).

413.3.7.4.1 Overall Height Calculation. For purposes of calculating the overall height of a wind turbine, the height shall be calculated as the vertical distance from ground level (AGL) at the base of the tower to the uppermost extension of any blade or the maximum height reached by any part of the wind turbine.

413.3.7.4.2 Setback for Fall Zone Protection. The minimum setback of a wind turbine tower

from all property lines and any other wind turbine tower shall be not less than the overall height, as calculated by 413.3.7.4.1, of the turbine or 300 feet, whichever is greater. The minimum setback of a wind turbine tower from residential structures shall be 1.5 times the tower overall height.

413.3.7.4.3 Hub Height. The hub height of the wind turbine, as measured from average natural grade at the base of the tower to the horizontal centerline of the hub around which the blades rotate, shall be not more than two hundred fifty (250) feet, and the blade clearance from the ground immediately below each wind turbine shall be at least thirty (30) feet. A waiver from this provision may be granted only if the Board of Appeals makes a finding that additional height is demonstrated by the applicant to be necessary for adequate operation of the wind energy facility, and the facility will otherwise fulfill the intent and purpose of this bylaw.

413.3.7.4.4 Structure Height. Equipment shelters and any other ground mounted structures shall conform to the requirements of bylaw section 203.4.1.

413.3.7.4.5 Minimum Lot Area. Municipal Wind Energy Facilities shall only be located on a parcel of land containing at least ten acres, and shall be configured such that all setback requirements of this section are met.

413.3.7.4.6 Parking Requirements. All wind energy facilities shall meet the parking and buffer requirements of Bylaw Section 301 (Parking and Loading Requirements).

413.3.7.5 Aesthetics.

413.3.7.5.1 Landscaping. Existing mature tree growth and natural land forms on sites shall be preserved to the maximum extent possible so as to provide camouflage of the wind energy facility from public view. Screening for sites, buffers and parking lots shall meet the criteria outlined in Section 301 Parking and Loading. In addition, the base of towers shall be screened from view by a minimum four (4) foot wide planting strip maintained with densely planted shrubs not less than six (6) feet in height. Shrubs shall be at least seventy-five percent (75%) evergreens. Fences or walls may be a part of such screening where deemed necessary, as approved by the Site Plan Review Team. In locations where the visual impact of towers would not be an issue, these requirements may be reduced or waived by the Building Commissioner upon unanimous vote by the Site Plan Review Team.

413.3.7.5.2 Color. Wind turbines, blades and towers and equipment thereon shall have a light gray or light blue non-reflective finish to minimize contrast with sky and clouds, unless otherwise required by the Board of Appeals. Buildings and structures on the site shall be camouflaged to blend in with the background against which they will be most commonly seen.

413.3.7.6 Lighting and Signage

1. Wind energy facility towers shall be lighted only if required by the Federal Aviation Administration (FAA), and then shall comply with all appropriate FAA specifications and regulations. Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. There shall be total cutoff of all light at the property lines of the parcel to be developed, and footcandle measurements at the property line shall be 0.0 initial foot candles when measured at grade.

2. Signs shall meet the design and display criteria of bylaw section 303. Turbine housings shall display only the manufacturer's logo, and housings and towers shall not display any signs.

413.3.7.7 Equipment Shelters

Equipment shelters for wind energy facility equipment shall be designed consistent with one of the following design standards:

1. Equipment shelters shall be located in underground vaults; or,
2. Equipment shelters shall be designed consistent with traditional Cape Cod architectural styles and materials, with a roof pitch of at least 10/12 and wood clapboard or shingle siding; or,
3. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed shelter, and/or a fence. The Board of Appeals (and/or the Old King's Highway Regional Historic District Committee) will determine the style of any fencing and landscape buffer required so as to be compatible with the neighborhood.

413.3.7.8 Environmental Standards.

413.3.7.8.1 Wetlands. The location of any wind energy facility in or near wetlands is subject to the Wetlands Protection Regulations of the Yarmouth Conservation Commission.

413.3.7.8.2 Hazardous Materials. The handling, storage, or disposal of hazardous materials is subject to Yarmouth Board of Health regulations and, when applicable, section 406 of this Bylaw. If any hazardous materials or wastes are to be used on site, there shall be provisions for full containment of such materials or waste. A containment enclosure, designed to contain at least 110 percent of the volume of the hazardous materials or waste used on the site may be required in order to meet these conditions.

413.3.7.8.3 Noise. Wind turbines shall have a noise reduction design such as not to, during normal operating conditions, generate excessive or unreasonable noise so as to be injurious or detrimental to the neighborhood or the Town. Except during short-term service events such as high windstorms or utility outages, noise from a wind turbine shall comply with Massachusetts noise regulations (310 CMR 7.10). A noise analysis shall be performed within ninety days of initial operation and a certified test report, prepared by an engineer Board Certified by the INCE, shall be submitted after initial operation of the facility to demonstrate compliance with these noise regulations and with the noise level analysis submitted by the applicant. Additional tests shall be performed from time to time upon the request of the Building Commissioner and certified test reports submitted. If any analyses indicate noise levels in excess of those permitted by regulations, remedial measures shall be undertaken to bring noise levels into compliance. Test methods shall be consistent with Massachusetts Department of Environmental Protection guidelines for noise measurement.

413.3.7.8.4 Flicker. Wind energy facilities shall be sited and designed such as to minimize shadow or flicker effect impacts on site, adjacent and neighboring uses. Turbine rotational speed shall be such as to limit flicker frequency to a maximum of 3 Hz. An analysis shall be submitted to identify the visual flicker zone and flicker frequency for all operating conditions.

413.3.8 Accessory Equipment Storage. Mobile or immobile equipment not used in direct support of a wind energy facility shall not be stored on site unless it is being used in the repair of said facility.

413.3.9 Leases. No Special Permit granted under this section shall be effective for town-owned property used for operation of a municipal wind energy facility by an entity other than the Town until a lease setting forth the particular terms, conditions, and provisions has been executed by the applicant and the Town of Yarmouth.

413.3.10 As-Built Plans. Within 60 days of completion of the initial construction and/or any additional construction or reconstruction, two complete sets of plans shall be submitted to the Building Commissioner, drawn to scale and stamped by a Registered Professional Land Surveyor, depicting the location of all towers and appurtenant facilities on the site.

413.3.11 Inspection. At least every 24 months, all wind energy facilities shall be inspected by a registered Professional Structural Engineer who is regularly involved and expert in the maintenance, inspection, and/or erection of wind energy facility towers and other structures. All inspections shall be conducted according to the provisions of 780CMR (State Building Code), as amended. Structures deemed to be unsafe shall be cited according to 780CMR and MGL Chapter 143, Sections 6, 7, 8, 9, and 10 Unsafe Structures provisions. A copy of each such citation shall be provided to the Building Commissioner.

If, upon inspection, the wind energy facility is found to not comply with the State Building Code and is deemed to constitute a danger to persons or property, then upon notice being provided to the operator, the operator shall immediately cease operation of the facility and shall be granted sixty days in which to bring the facility into compliance with such standards. Failure to comply may result in an order to remove the facility at the operator's expense.

413.3.12 Abandonment or Discontinuation of Use, and Removal.

413.3.12.1 Notification by Operator. At such time that the operator plans to discontinue operation of a Municipal Wind Energy Facility, the operator shall notify the Building Commissioner by certified U.S. mail of the proposed date of discontinuation of operations. Such notice shall be given no less than 30 days prior to discontinuation of operation. In the event that the operator fails to give such notice, the wind energy facility will then be considered abandoned upon such discontinuation of operation.

413.3.12.2 Notification by Building Commissioner. If the Building Commissioner has determined the facility to have been abandoned or its use discontinued, the Building Commissioner will notify the operator by certified U.S. mail of the Town's intention to begin the process of removal of the wind energy facility after 60 days.

413.3.12.3 Removal Process by Operator. Upon the operator's decision and notification of discontinuation of use, the operator shall physically remove the wind energy facility within 90

days from the date of discontinuation of use. "Physically remove" shall include, but not be limited to:

1. Removal of tower, equipment shelters, and foundations from the subject property;
2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations, and;
3. Restoring the location of the wind energy facility to its natural condition, except where any landscaping and grading are deemed site improvements by the Town, in which case they shall remain in the improved condition.

413.3.12.4 Removal Process by Town. If the operator fails to remove a wind energy facility in accordance with this bylaw section, the Town shall have the authority to enter the subject property and physically remove the facility. The Board of Appeals will require the applicant at the time of granting a Special Permit to post a bond or establish an escrow account to ensure adequate funds are available for the removal of the wind energy facility in the event the Town must remove the facility. Posting of a bond for removal costs will not be required if the applicant is the Town as the proposed operator. Bond and escrow account creation and administration shall conform to Town practices and procedures.

414. VILLAGE CENTERS OVERLAY DISTRICT (VCOD)

414.1 Purpose. The purpose of the Village Centers Overlay District (VCOD) is to guide and encourage growth and redevelopment to areas with significant opportunities for infrastructure in order to preserve and revitalize the Town of Yarmouth's natural, cultural and economic resources, while supporting sustainable development that enhances and improves the community's character and sense of place. The district will provide incentives for economic development that will promote year round tourism and employment while requiring strict design standards including compliance with the Yarmouth Architectural and Site Design Standards as adopted and amended by the Planning Board.

The district will establish a series of contiguous but distinctive mixed use village centers that will create both a destination for tourists and a neighborhood for residents and business owners. Site and building design will encourage pedestrian and bicycle traffic by:

- reducing the number of curb cuts,
- providing walkable connections between properties,
- incorporating centralized parking facilities,
- allowing shared parking,
- encouraging public transportation facilities, and bike paths; and
- requiring sidewalks, and attractive lighting and streetscape design reflective of Yarmouth's community character.

414.1.1 Villages in the Overlay District - The Village Centers Overlay District has been divided into four (4) distinct classes of districts:

1. Village Center 1 (VC1) – The purpose of VC1 is to encourage development and redevelopment that will enhance the character of Parker's River, promote public recreational activities and create a mix of uses in a village setting that encourages pedestrian activity.
2. Village Center 2 (VC2) – The purpose of VC2 is to encourage development and redevelopment that focuses on residential uses with a mix of compatible, smaller commercial uses that will encourage people to live, work and shop in the district to promote a walk-able, livable neighborhood.
3. Village Center 3 (VC3) – The purpose of VC3 is to create opportunities for economic development that will provide year-round family-oriented activities that are appealing to residents and visitors, and create jobs for local residents.
4. Village Center 4 (VC4) – The purpose of VC4 is to encourage opportunities for economic development and redevelopment that focuses primarily on commercial uses that support year-round residents and provide year-round companion commercial businesses and accommodations to enhance the family-oriented activities area of VC3.

414.2 Applicability. The provisions of this subsection shall apply to those properties or lots which are located within the Village Centers Overlay District as shown on the map entitled "Zoning Map of the Town of Yarmouth," as most recently amended.

414.2.1 Overlay. The VCOD shall be construed as overlaying other existing zoning districts. The VCOD confers additional development opportunities that may be pursued at the discretion of the property owner and through the permit processes described herein. VCOD provisions

may be voluntary or required in accordance with the following conditions:

1. Where a site has not been previously reviewed and developed under the VCOD provisions, development may occur in accordance with the underlying zoning or the VCOD and submittal for VCOD development applications shall be voluntary.
2. Where development activity for a given site was reviewed and approved as part of VCOD provisions, but a building permit has not been issued by the Town of Yarmouth, future review for development applications on the site may either be under the VCOD provisions or those of the underlying district.
3. Where development activity for a given site has been reviewed and approved as part of the VCOD provisions, and a building permit has been issued by the Town of Yarmouth, any future development applications shall be reviewed in accordance with the procedures and standards of the VCOD.

414.2.2 Conflicts. If the applicant chooses development under this Section 414, and where conflicts exists between this Section 414 and the rest of the Town of Yarmouth Zoning Bylaw, this Section 414 and regulations specifically referencing the VCOD shall apply.

414.2.3 Motels/Hotels. Motels and Hotels that are located within the VCOD and also located within and meet the applicability of Section 404.1 (Hotel/Motel Overlay District 1 (HMOD1), may opt for development under Section 404.1 (HMOD1) or this Section 414.

414.2.4 ROAD Applicability. Development pursued under this Section 414 shall not be permitted to submit a proposal under the Revitalization Overlay Architectural District (ROAD) under Section 411 (ROAD).

414.2.5 Severability. The provisions of this Section 414 and other sections relating to the VCOD and classes of districts therein are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

414.3 Permit Review Thresholds The following permit thresholds shall be used to determine which permit process is required for any proposed VCOD development.

414.3.1 Building Commissioner Review. Applications for as-of-right VCOD development with the following characteristics shall be reviewed by the Building Commissioner.

1. The proposal would create less than 1,000 square feet of new or reconfigured floor area; or
2. The proposal would create or require fewer than five (5) new or additional parking spaces.

414.3.2 VCOD Site Plan Review. Applications for as-of-right development that exceed the thresholds for Building Commissioner review shall be reviewed by the Planning Board in accordance with the procedures and requirements listed in Section XVI of the Operational Regulations of the Yarmouth Planning Board. The Building Commissioner shall not issue a building permit without Planning Board Site Plan Review. No application for Special Permit under Section 414 may be filed prior to completion of the Planning Board Site Plan Review process. Any appeal of Planning Board Decision on Site Plan Review shall be made to the

Zoning Board of Appeals.

414.3.3 Special Permits. The Board of Appeals shall be the Special Permit Granting Authority (SPGA) for all districts within the VCOD except where otherwise specifically noted. All application materials customarily prepared for VCOD Site Plan Review shall be submitted to the SPGA. The SPGA shall consider the following criteria when acting on a Special Permit application and may use these criteria to approve, approve with conditions, or deny said application:

1. Where applicable, the Planning Board Site Plan Review Decision;
2. The development provides for or supports Mixed Use development, where appropriate;
3. The development maintains or improves pedestrian access and outdoor public spaces;
4. The development provides for open space;
5. The development uses low impact design techniques to mitigate hydrologic impacts consistent with any applicable town standards for erosion and sediments control, soil protection, and stormwater management;
6. The development eliminates or minimizes curb cuts on Route 28;
7. The development provides for or contributes to alternative transportation or travel demand management;
8. Any relief granted in yard setback requirements creates a better alignment of buildings, improves the design of the building façade, or where necessary better accommodates shop entrances, plazas, sidewalk cafes, and pocket parks;
9. Any relief granted in yard setback requirements creates a safe and visually attractive walkable access/egress to parking areas;
10. The relief granted in yard setback requirements 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;
11. The development provides for public access to Swan Pond, Parker's River, or public walkways and/or boardwalks;
12. The proposed development preserves significant viewshed to the Parkers River through site design and building scale and placement;
13. No undue nuisance, hazard or congestion will be created and there will be no substantial harm to the established or future character of the neighborhood or town;
14. The granting of a Special Permit would be consistent with the purpose of this Section 414;
15. The granting of a Special Permit would not decrease the degree to which the proposed development is consistent with the Yarmouth Architectural and Site Design Standards as adopted and amended; and
16. The granting of a Special Permit does not cause any violation of the Design Standards provided in Section 414.8.

Additionally, the SPGA shall follow other applicable criteria and procedures as set forth under the specific section of the Yarmouth Zoning Bylaw for which a Special Permit is being sought.

414.4 Non-Conforming Structures, Lots and Uses.

Lawfully pre-existing non-conforming structures; lawfully pre-existing non-conforming lots; and lawfully pre-existing non-conforming uses, may be continued, but shall not be extended or altered except as allowed for in the provisions stated herein:

414.4.1 Non-Conforming Structures and Lots:

414.4.1.1 Lawfully pre-existing structures that do not conform to the VCOD dimensional standards; other than single-family or two-family structures which are provided for in 414.4.4 below; located on conforming, or lawfully pre-existing non-conforming lots that are rendered dimensionally non-conforming by the VCOD minimum lot area or VCOD minimum lot frontage, may be extended, altered, or razed and replaced *by right* provided that:

- (a) the resulting development, in its whole, complies with all other applicable provisions of this Section 414, including bringing any existing structural non-conformity into conformity. Deviation from this standard of conformance for any buildings fronting along Route 28 shall require a variance. Deviation from this standard of conformance for buildings not fronting on Route 28 shall require a special permit; and
- (b) the lot, at the time of recording or endorsement, whichever occurred sooner, conformed to the then existing lot area and frontage requirements; and
- (c) the lot has at least eight thousand five hundred (8,500) square feet of area and fifty (50) feet of frontage; and
- (d) the lot is not held in common ownership with any other contiguous lot, or was not held in common ownership with any other contiguous lot at the time of, or since, the effective date of the increased requirements.

414.4.1.2 Single family and two-family structures on lawfully pre-existing non-conforming lots may be developed in accordance with Section 104.3.2(1) and 104.3.2(2) and shall not be developed under the VCOD Bylaw.

414.4.1.3 Dimensional relief for pre-existing lawfully established structures may be given in accordance with the provisions of Section 414.6.4 - Dimensional Relief.

414.4.1.4 Lots which do not conform to the dimensional requirements of this bylaw, as amended, shall not be individually built upon unless combined and/or re-subdivided so as to meet the revised dimensional requirements except as provided for in this Section 414.4, as enabled by 414.6.4, or as provided for in Section 104.3.4 of this bylaw.

414.4.1.5 Other Adjoining Non-conforming Lots. Lots which do not meet the exception of this Section 414.4 or Section 104.3.4, may be combined and/or re-subdivided pursuant to Section 104.3.5.

414.4.2 Non-Conforming Uses: Lawfully pre-existing non-conforming uses sited in lawfully conforming or lawfully pre-existing non-conforming structures may be continued but may not be extended or altered except as allowed for in the provisions as stated herein.

414.4.2.1 Abandonment. A non-conforming use which has been abandoned or discontinued for the period of two (2) years or more, from the date of adoption of this Section 414 bylaw shall not be reestablished under VCOD regulations, and any future use shall conform with this bylaw.

414.4.2.2 The change of a nonconforming use to another nonconforming use is prohibited in the VCOD.

414.4.2.3 The Building Commissioner shall decide whether uses are lawfully conforming or lawfully, pre-existing non-conforming.

414.4.2.4 Lawfully pre-existing non-conforming uses; (except a non-conforming use due to Maximum Commercial Tenant Size which follows the provisions as set forth in Section 414.4.3. below); sited in lawfully conforming or lawfully pre-existing non-conforming structures, may be extended, or altered, *by right*, if the following requirements are met:

- (a) the resulting development, in its whole, complies with all applicable provisions of this Section 414, including bringing any existing structural non-conformity into conformity. Deviation from this standard of conformance for any buildings fronting along Route 28 shall require a variance. Deviation from this standard of conformance for buildings not fronting on Route 28 shall require a special permit; and
- (b) the lawfully pre-existing non-conforming use is a permitted use in the underlying zoning district in which the property is located; and
- (c) there is no change of use to a non-conforming use of the VCOD.

414.4.3 Maximum Commercial Tenant Size. A non-conforming use based solely on a Maximum Commercial Tenant Size non-conformity, located on a lawfully conforming lot or a lawfully pre-existing non-conforming lot, may alter, extend, or raze and replace the structure housing the non-conforming Maximum Commercial Tenant Size use *by-right* if the following requirements are met:

- (a) the resulting development, in its whole, complies with all other applicable provisions of this Section 414, including bringing any existing structural non-conformity into conformity, other than Maximum Commercial Tenant Size use; and
- (b) the current tenant size unit may be decreased, but not increased; and
- (c) the existing use housed in the non-conforming tenant size unit is a permitted use either in the VCOD or in the underlying zoning district as provided for in the Table of Uses in Section 202.5; and
- (d) there is no change of use to a non-conforming use of the VCOD.

414.4.4 Change, Extension or Alteration of Single and Two-Family Structures:

Lawfully pre-existing non-conforming single- and two-family structures, and lawfully pre-existing single-family and two-family structures located on non-conforming lots, may be altered, extended or razed and replaced in conformance with Section 104.3.2(1) and 104.3.2(2) and shall not be developed under the VCOD Bylaw.

414.4.5 Restoration. Repairs and rebuilding shall be pursuant to Section 104.3.3 of this bylaw.

414.5 Allowed Uses. Allowed uses within the VCOD are referenced in Section 202.5, Use Regulation Table of this bylaw. The provisions of Section 202, Use Regulations, in its entirety, shall apply to all development within the VCOD. No use variances will be allowed in the VCOD.

414.5.1 Additional Use Regulations. The following additional regulations on use shall apply within the VCOD and districts therein.

1. Mixed Use. In keeping with the purpose of the VCOD, mixed use is not only allowed but encouraged with the following provisions:
 - a. The residential component of any Mixed Use development shall encompass between 40% and 85% of the Gross Floor Area of the development.
 - b. In VC1, 3 and 4, the ground floor of the building(s) facing Route 28 shall contain non-residential uses. For mixed use developments with minimal commercial use, some non-transient residential use (dwelling units) may be allowed on the ground floor of buildings that front on Route 28, if approved through the VCOD Site Plan Review process.
 - c. In VC1, 3 and 4 non-transient residential use (dwelling units) shall be allowed on the ground floor of properties that have their frontage on a public way, other than Route 28, that existed prior to October 22, 2012.
 - d. No commercial uses shall be allowed above a Residential Dwelling Unit.
2. Maximum Commercial Tenant Size. Within the VC1, there shall be a Maximum Commercial Tenant Size of 5,000 square feet calculated as Tenant Floor Area, as defined below, for each individual commercial use. Where an individual structure contains more than one tenant, these tenants shall be counted separately.

Tenant Floor Area: Tenant Floor Area to determine the maximum tenant size shall be calculated as follows:

For an individual commercial tenant, the sum of the area of all stories within the perimeter of a unit measured from the exterior face of the outside walls, or centerline of shared walls with no deductions for accessory unoccupied areas such as hallways, stairs, closets, thickness of walls, columns or other such features. Basements, mezzanines, attics, and crawl spaces used for storage and not designed for human occupancy shall not count towards Tenant Floor Area. Outdoor areas used for terraces, patios, uncovered decks, stoops, storage, sales, service, and display shall also be excluded from determining Tenant Floor Area. The Building Commissioner shall determine the Tenant Floor Area of any unit or structure.

3. Wastewater facilities. Public and private wastewater treatment facilities, including those shared by multiple property owners, shall be considered an accessory use to all uses served by said facility.
4. Parking Garages. Parking garages, including underground parking garages, public parking garages as a primary use, and parking garages as an accessory use to a

commercial use are allowed in the VCOD pursuant to Section 414.7.8(4) (Parking Garages/Structures).

414.5.2 Housing Provisions in the VCOD. The following housing provisions shall apply in the VCOD. Hotel / Motel redevelopment under Section 404.1 (HMOD1) of the bylaw are not subject to these provisions and shall be subject to the provisions as set forth in Section 404.1 (HMOD1).

1. Maximum Residential Density. Residential dwelling unit density in each district of the VCOD shall be as provided for in Section 414.6.3(1) – Table of Dimensional Requirements.
2. Unit Size. All residential dwelling units constructed under the provisions of this Section 414 shall consist of the following minimum square footage:
 - a. 400 square feet for a studio unit.
 - b. 700 square feet for a one-bedroom unit.
 - c. 900 square feet for a two-bedroom unit.
 - d. 1,200 square for three or more bedroom units.

Studio Unit Limit: The number of studio units allowed in a development shall be limited to less than, or equal to, twenty-five (25%) of the total number of residential units in the development.

3. Inclusionary Housing: The provisions of Section 412 (Affordable Housing) of the bylaw including the provisions of inclusionary housing therein shall fully apply for VC1, VC3, and VC4. The provisions of Section 412 shall fully apply in VC2 for projects developing less than 30 residential dwelling units. The provisions of Section 412 shall not apply in VC2 for projects developing 30 or more residential dwelling units for a period of 5-years from the passing of this Bylaw. After the end of the 5-year exclusionary period (October 22, 2017), the number of affordable housing units required shall be reduced by 50% from those outlined in Section 412.2.3 only in VC2 for projects developing 30 or more residential dwelling units. Applicants must have completed the VCOD Site Plan Review process and the Planning Board Decision issued within the 5-year period to be eligible for the exclusion. Any approval by the Planning Board for Site Plan Review will expire 2 years after the Decision has been issued. A project proponent may renew the approval by majority vote of the Planning Board anytime within the 2 year period. It is strongly recommended that project proponents give notice to the Planning Board of their desire to extend the approval at least 60-days before the expiration date. No Planning Board Site Plan Review Decision may be extended to a date beyond October 22, 2019.

414.6 Intensity of Use Regulations

414.6.1 Building Height. Building height in the VCOD shall not exceed that which is outlined in the Table of Maximum Building Height below.

1. Table of Maximum Building Height within the VCOD

	VC1(A)(B)	VC2(A)(B)	VC3(A)(B)	VC4(A)(B)
0 – 50 feet from all lot lines	35 feet 3 stories	35 feet 3 stories	35 feet 3 stories	35 feet 3 stories
Beyond 50 feet from all lot lines	48 feet 4 stories	48 feet 4 stories	48 feet 4 stories	48 feet 4 stories

- (A) Height shall be measured from the existing average natural grade at the street side of the foundation. No lot may be filled to a height greater than 4', as measured from natural grade at the street. If the building is located in a FEMA Flood Zone AE, height shall be measured from 1 foot above Base Flood Elevation (BFE). If the building is located in a FEMA Flood Zone AO, height shall be measured from 1 foot above the Depth of Water shown on the Flood Insurance Rate Maps, measured from the average natural grade at the front face of the building foundation. If located in a FEMA Flood Zone VE, height shall be measured from the top of the "freeboard", as defined in the Massachusetts Building Code 780 CMR (as amended). Parking located below a building shall not be counted as a story, but shall be taken into consideration when measuring building height.
- (B) Height limitations shall not apply to ancillary features, such as chimneys, spires, cupolas, antennas, pediments, cornices, mechanical equipment or screening for mechanical equipment, railings, or other similar structures not intended for human occupancy. These ancillary features shall have a maximum height of 8' above the maximum building height allowed.

414.6.2 Indoor Water Park. In VC3, a height of 65 feet is allowed for the specific use of an Indoor Water Park. This height of 65 feet is allowed for the indoor water slide component of the Indoor Water Park being necessary for the proper use and function of the water slide. If the Indoor Water Park includes an attached hotel and hotel amenities complex, the height of 65 feet shall also be allowed for the attached hotel complex; being necessary for the proper economic viability and aesthetic integration of the Indoor Water Park and hotel complex.

This 65 feet maximum height is allowed only for location within the property being 350 feet or more from the front lot line and being 100 feet or more from all other lot lines. For the remaining portions of the site, other than the Indoor Water Park and hotel complex, if applicable, the requirements as set forth in the Table of Maximum Building Height above shall apply.

414.6.3 Table of Dimensional Requirements. All buildings and structures within the VCOD shall meet the minimum requirements set forth in the following Table of Dimensional Requirements unless otherwise expressly provided for within this bylaw or by G.L. ch. 40A, sec. 6, as amended.

1. Table of Dimensional Requirements.

	VC1	VC2	VC3	VC4
Lot Size Minimum: (A)	20,000 sq. ft.	20,000 sq. ft.	20,000 sq. ft.	20,000 sq. ft.
Frontage Minimum:	125 ft.	125 feet	125 feet	125 feet
Yard Setbacks: (B) (C) (D)				
<ul style="list-style-type: none"> • Front Yard Setback Minimum: (E) (F) • Front Yard Setback Maximum: (G) (F) 	15 ft. 20 ft.	30 ft. n/a	15 ft. 25 ft.	15 ft. 25 ft.
<ul style="list-style-type: none"> • Side Yard Setback: (H) (I) 	at zero (0) ft. or 15 ft. minimum	25 ft.	at zero (0) ft. or 15 ft. minimum	at zero (0) ft. or 15 ft. minimum
<ul style="list-style-type: none"> • Rear Yard Setback Minimum: (I) 	20 ft.	20 ft.	20 ft.	20 ft.
Impervious Coverage Maximum: (J)	<ul style="list-style-type: none"> • 90% for lots less than ½ acre; • 85% for lots ½-1 acre; • 80% for lots greater than 1 acre 	80%	85%	80%
Maximum Commercial Tenant Size:	See Section 414.5.1(2)	NA		
Maximum Residential Density (K) (L) (M)				
<ul style="list-style-type: none"> • Residential development only • Mixed Use development (as part of) 	8 units/ acre 16 units/ acre	16 units/ acre (N) 16 units/ acre (N)	8 units/ acre 16 units/ acre	8 units/acre 16 units/acre

Footnotes:

- A. One hundred percent (100%) of the minimum lot size required must be upland (i.e., not a bank, beach, bog, dune, marsh, swamp or wet meadow under M.G.L. ch. 131, sec. 40).
- B. The following are specifically excluded from these regulations:
1. Fences, decorative walls, poles, posts, paving and other customary yard accessories, ornaments and furniture, ramps, landings and similar structures needed for compliance with the Americans with Disabilities Act.
 2. Cornices, window sills, belt courses and other ornamental features may project not more than eighteen (18) inches; bay/bow windows, greenhouse windows and eaves may project not more than twenty four (24) inches, and chimneys may project not more than thirty two (32) inches into any required yard.
 3. Any stairway and associated landing may project into a required yard setback if it is less than thirty (30) inches in height.

- C. Side and rear yard setbacks for accessory buildings less than one hundred fifty (150) square feet and single story shall be six (6) feet in all districts, but in no case built closer than twelve (12) feet to any other building.
- D. For an Indoor Water Park, any tube slides protruding from a wall or roof shall be included and shall comply with the yard setback regulations.
- E. Any building located within 100 feet of the intersection of Parker's River and Route 28 shall be set back from Route 28 a minimum of 30 feet.
- F. The front setback minimum and maximum (where applicable) provided in this table is applicable only to those properties that have their frontage on Route 28. Front yard setbacks are required along Route 28 to ensure a contiguous broad line of passage for pedestrians and/or bicyclists along the corridor. For lots with frontage on interior roads (not on Route 28 or on a public way that existed prior to October 22, 2012) the minimum front yard setback shall be zero provided all standards for pedestrian and bicycle circulation are met and there shall be no maximum front yard setback. Front yard setbacks on a public way other than Route 28 that existed prior to October 22, 2012 shall be in accordance with Section 203.5 – Table of Dimensional Requirements.

If a property has limited frontage on Route 28, with the bulk of the developable portion of the lot being in the rear (i.e. a flag shaped lot), the Route 28 streetscape can be developed into green space which shall include such amenities as a park, sitting areas, public art, and landscaping, rather than a building, if approved through the VCOD Site Plan Review process.

- G. A minimum of 75% of the building façade shall comply with the maximum setback requirements. Up to 25% of the façade may be recessed up to thirty (30) feet farther from the maximum front yard setback to accommodate alcoves for seating areas, public art, display areas or fountains.
- H. For those districts where an absolute at zero (0) side setback is allowed, this zero (0) side setback will be allowed only upon an agreement with an abutting property owner is entered into wherein the abutting property owner, and the developing parcel owner, shall (re)develop at an absolute zero (0) side setback on said side thereby creating an adjoining building to visually reinforce a building façade line of the street. Said agreement shall include provisions and plans for access and egress to any individual and/or shared parking areas. Said agreement shall be presented with site development plans at the time of applying for Site Plan Review, and/or Design Review and/or Special Permit relief.

If a proposal does not meet the above requirements for developing at a side setback of an absolute zero (0), then the side setback requirement shall be at the fifteen (15) foot minimum where the building frontage is on a public way that existed prior to the adoption of this Section 414 (October 22, 2012). For buildings that front on interior drives or roads created under this Section 414, side yard setbacks may be smaller than fifteen (15) feet, but shall not result in separated buildings being closer together than twelve (12) feet.

- I. Where the side or rear yard setback is applied to a structure that is adjacent to a residential district, the setback shall be in accordance with the value in the table or equal to the height of the structure, whichever is greater.
- J. Impervious surface calculations shall include the developed footprint of impervious surfaces (structures, pavement, etc.) including any unpaved parking areas. Pervious paving shall be counted as impervious in lot impervious coverage calculations. Impervious Coverage maximum shall be calculated based on the upland.
- K. Under the provisions and requirements as set forth in Section 414.5.2. In calculating the number of residential dwelling units permitted, the calculation shall be based on upland only. Any fractional units shall be rounded to the nearest whole number.
- L. Residential Density is calculated in addition to the commercial development of a mixed use development.
- M. Residential density limits apply to residential dwelling units, not to hotel, motel or other transient residential uses.
- N. Density may be increased to 20 units/acre for lots with 100,000 square feet or more of upland.

414.6.4 Dimensional Relief: The SPGA may provide dimensional relief within the VCOD. Said relief may be provided through a Special Permit for a reduction in minimum lot size, a reduction in minimum lot frontage, a reduction in minimum front yard setback, a reduction in the minimum side yard setback, a reduction in the minimum rear yard setback, and an increase in maximum impervious coverage. The SPGA shall consider the criteria listed under Section 414.3.3 (Special Permits) when reviewing any Special Permit application for dimensional relief. Relief from any other dimensional requirements, including building height or maximum front yard setback, would require a Variance. The SPGA shall not have jurisdiction over situations that are more specifically defined such as where relief is allowed by right or precluded under Section 414.4, or where the Table of Dimensional Requirements provides opportunity for relief related to flag shaped lots (footnote F).

414.6.5 Signs: No sign shall be erected nor maintained except as specifically allowed in Section 303 of the Town of Yarmouth Bylaw and in compliance with Section 414.8.11 (Signage).

414.7. – Parking Requirements

414.7.1 – Table of On-Site Parking Requirements

The following table shall apply to development proposals. Where on-street parking exists or is proposed along the lot line of any use, all spaces along that lot line shall be counted.

Use (1)	Use Table Code (1)	Minimum Parking Spaces Required (2, 3)	Maximum Allowable Parking Spaces (3)
Residential	A1, A2	1 space/unit	2 spaces/unit
	A5-A7	1 space/unit	1.2 spaces/unit
	A11, A12	1 space/unit	1.5 spaces/unit
Retail Trade	H10 (5)	1 space/3 occupants (4)	1 space/3 occupants (4)
	H1-H9; H11	1 space per 700 square feet of floor area	1 space per 350 square feet of floor area
Finance, Insurance, and Real Estate	I1-I5	1 space per 700 square feet of floor area	1 space per 200 square feet of floor area
Personal Services	J1-J5	1 space/4 occupants (4)	1 space/3 occupants (4)
Business Services	K1-K10	1 space per 1,000 square feet of floor area	1 space per 300 square feet of floor area
Motor Vehicle Services	L1, L3	1 space per 1,000 square feet of floor area	1 space per 300 square feet of floor area
Miscellaneous Repair Services	M1, M3	1 space per 1,000 square feet of floor area	1 space per 300 square feet of floor area
Amusement and Recreation Services	N1-N12	1 space/4 occupants (4)	1 space/3 occupants (4)
Professional Services	O1	1 space/3 occupants (4)	1 space/2 occupants (4)
	O2-O6	1 space per 500 square feet of floor area	1 space per 250 square feet of floor area
Institutional Services	P1-P10(6)	As determined to be adequate by the Building Commissioner on advice by the Site Plan Review Team.	NA
Other (incl. uses N6, 9, 11 & uses not elsewhere classified)		As determined to be adequate by the Building Commissioner on advice by the Site Plan Review Team.	As determined to be adequate by the Building Commissioner on advice by the Site Plan Review Team.

Notes:

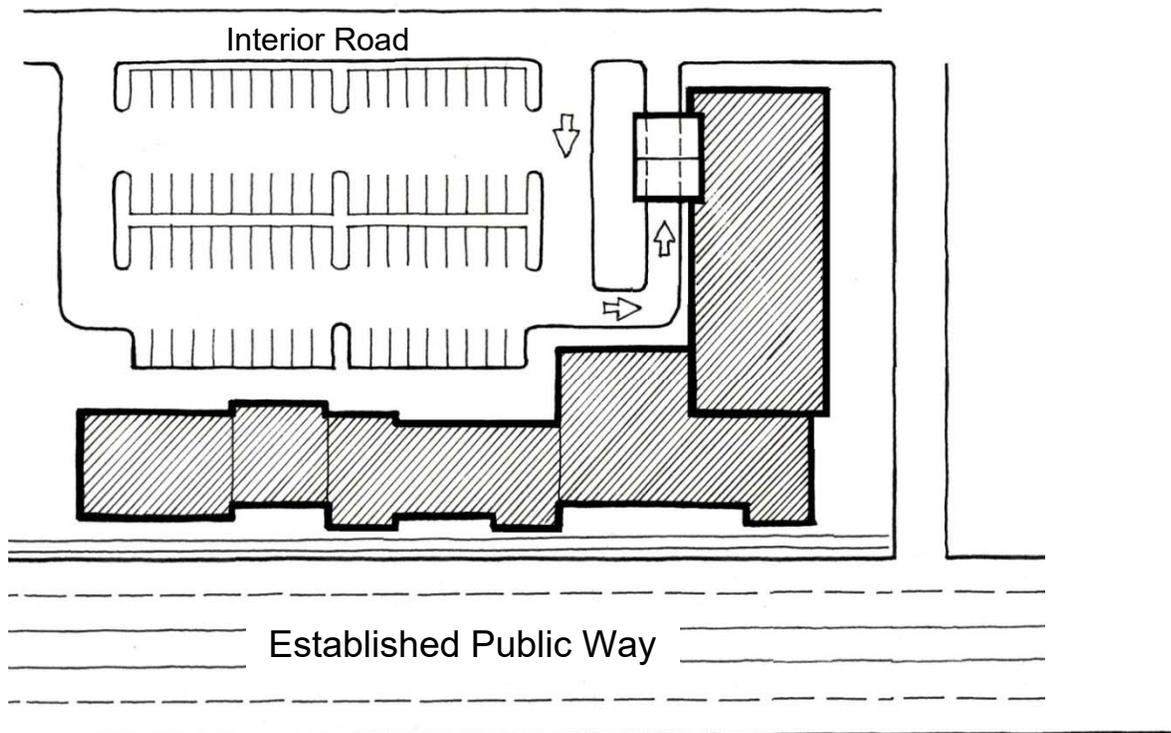
1. As listed in Section 202.5 Use Regulation Schedule.
2. Where a development proposal shows that a lot will only contain one structure, the proposal must demonstrate that the minimum amount of required parking shall be provided on-site.
3. Where parking spaces are based on occupancy, occupancy loads shall be tabulated in accordance with Massachusetts Building Code.
4. In cases where planned occupancy is to be below allowable occupancy, parking spaces may be constructed at a reduced number provided that the lot shall be capable of expansion to the spaces required in the table above. When the occupancy load of a building increases, the additional required spaces shall be constructed or identified.
5. Parking requirements for outside restaurant seating shall be calculated in the same manner as those for inside restaurant seating.

6. Parking for Day Care Centers: one parking space for every 8 children allowed at the facility, based on the maximum permitted occupancy, is required, plus 1 space for every 3 full-time employees.

414.7.2 Loading Requirements. Adequate off-street loading facilities and space must be provided to service all regular needs created by new construction, whether through new structures or additions to old ones, and by change of use of existing structures. Facilities shall be so sized and arranged that no vehicles need regularly back onto a public way or be parked on a public way while loading, unloading or waiting to do so.

414.7.3 Drive-through Facilities: Businesses utilizing drive-through facilities must provide stacking lanes pursuant to Section 301.8. Drive-through service windows shall only be located on the side or in the rear of properties which are internal to the block or accessible from an alley. An acceptable configuration example is shown in Figure 1 below.

Figure 1. Example of acceptable drive-through configuration.



414.7.4 Shared Parking for Non-Residential Uses. Where an applicant cannot meet the minimum parking requirements on-site pursuant to Section 414.7.1 (Table of On-Site Parking Requirements), the applicant may present evidence to the Planning Board as part of Site Plan Review that the configuration of uses and parking areas will be adequate based on a shared parking analysis. While residential use may share parking as part of a mixed use development, reduction in parking spaces for residential use on-site shall not be allowed. Evidence that shared parking areas will be adequate for more than one non-residential use shall be in the form of calculations that show acceptable reductions based upon whether different uses compete for the same parking area as part of daily operations.

1. For Two Non-Residential Uses Sharing Parking Areas:

- (a) Where peak parking demands for two non-residential uses overlap, the aggregate parking space requirement between those uses may be reduced by up to thirty (30) percent.
- (b) Where peak parking demands for two non-residential uses do not overlap, the aggregate parking space requirement may be served exclusively by the higher parking demand associated with an individual use.

Sample Calculations for Parking Areas Serving Two Non-Residential Uses

Competing Uses

1. Baseline Parking Demand Determination		
Use	Building Size/Occupancy	Minimum Demand
Bank	3,000 square feet	4 spaces
Doctor's Office Building	6,000 square feet	24 spaces*
Aggregate Parking Demand		28 spaces
2. Reduction		
30% Reduction		20 spaces

*Based on assumed occupancy rate.

Non-Competing Uses

1. Baseline Parking Demand Determination		
Use	Building Size/Occupancy	Minimum Demand
Doctor's Office Building	6,000 square feet	24 spaces*
Restaurant (dinner service only)	120 occupancy	40 spaces
Aggregate Parking Demand		64 spaces
2. Reduction		
Larger Individual Demand		40 spaces

*Based on assumed occupancy rate.

2. For More than Two Non-Residential Uses:

- (a) Where a proposed development would contain more than two non-residential uses and the applicant wishes to use shared parking to meet the minimum requirements of Section 414.7.1 (Table of On-Site Parking Requirements), the applicant shall first determine reductions for those uses with competing peak demands in accordance with the methodology in Section 414.7.4(1) (Shared Parking).
- (b) The result of competing peak demand calculations shall then be compared to determine which set of competing demands shall be used to provide the overall parking space count. For example, daytime demands may exceed nighttime demands and, in that case, the daytime demand would serve as the overall parking demand for that site.

Sample Calculations for Parking Areas Serving More than Two Non-Residential Uses

Sample Mixed Use Plaza Profile:

- Medical Office (10,000 square feet)
- Grocery Store (14,000 square feet)
- Retail, Daytime (5,000 square feet)
- Restaurant, Dinner Only (90 occupants)
- Restaurant, Lunch and Dinner (60 occupants)
- Bank (5,000 square feet)

Step 1: Competing Uses (Daytime)

1. Baseline Parking Demand Determination (Daytime Peak)		
Use	Building Size/Occupancy	Minimum Demand
Medical Office	10,000 square feet	42 spaces*
Grocery Store	14,000 square feet	20 spaces
Retail, Daytime	5,000 square feet	7 spaces
Restaurant, Lunch and Dinner	60 occupants	20 spaces
Bank	5,000 square feet	7 spaces
Baseline Parking Demand		96 spaces
2. Reduction Comparison (Daytime Peak)		
30% Reduction		67 spaces

*Based on assumed occupancy rate.

Step 2: Competing Uses (Nighttime)

1. Baseline Parking Demand Determination (Daytime Peak)		
Use	Building Size/Occupancy	Minimum Demand
Restaurant, Lunch and Dinner	60 occupants	20 spaces
Restaurant, Dinner Only	90 occupants	30 spaces
Grocery Store	14,000 square feet	20 spaces
Baseline Parking Demand		70 spaces
2. Reduction Comparison (Nighttime Peak)		
30% Reduction		49 spaces

Step 3: Non-Competing Uses (Nighttime vs. Daytime)

Daytime Demand	67 Spaces (larger demand is chosen)
Nighttime Demand	49 Spaces

414.7.5 Off-Site Parking for Residential or Non-residential Use. Where an applicant cannot meet the minimum parking requirements on-site pursuant to Section 414.7.1 (Table of On-Site Parking Requirements), the applicant may present evidence to the Planning Board as part of Site Plan Review that supplementary parking in the amount required to meet or exceed the minimum standard will be provided off-site. The Planning Board may approve off-site provision of up to 100% of the required on-site parking provided the following conditions are met:

1. Any parking required to meet the provisions of the Americans with Disabilities Act is provided on-site.
2. At least one parking space with a width of ten (10) feet shall be provided in close proximity to the primary structure to allow for loading and unloading of goods, people, and/or deliveries. Additional such parking spaces may be required on-site depending on the size and use of the development.
3. The off-site parking area shall be within 500 feet walking distance from the building which it will serve. The distance between the off-site parking and the building it is intended to serve shall be measured along an established pedestrian route from the nearest edge of the building to the nearest edge of a parking space. The pedestrian route shall be well-finished, safe, and unobstructed.
4. Where off-site parking is proposed, applicants shall provide a signed agreement between the property owners clearly stating the terms of the agreement to allow for parking access. Where the agreement may have an expiration date, failure to renew or to provide other acceptable arrangements shall place the subject property in non-conformity with regard to parking requirements.

414.7.6 Bicycle Parking. Bicycle parking facilities shall be provided within the development.

414.7.7 Exceeding the Parking Maximum. An applicant who wishes to provide more parking than the maximum allowable standard in Section 414.7 (Parking Requirements) on-site may do so in accordance with the following:

1. Exceeding the maximum may occur by-right through the provision of underground parking or through the use of structured elevated parking.
2. Exceeding the maximum may be allowed by the Building Commissioner upon unanimous recommendation in writing by the Site Plan Review Team if it is determined that special circumstances render a larger maximum provision necessary for typical parking needs.
3. Exceeding the maximum may be allowed through a Special Permit granted by the Board of Appeals.
4. In making any determination, the permitting authority shall consider present, as well as proposed and potential future parking needs, and such determination and/or special permit may contain any restrictions, limitations or conditions reasonably necessary to carry out the intention and purpose of this bylaw. Such restrictions, limitations, and conditions may include, among other things:
 - a. Provisions for establishing maximum allowable occupancy.
 - b. Provisions for expiration or forfeiture of the determination/permit upon stated conditions or upon substantial change of the "special circumstances" upon which the determination/permit was granted.
 - c. Provisions limiting the duration.
 - d. Such other provisions as are reasonably related to pursuing and carrying out the intent and purposes of this bylaw.

The burden of proof shall be on the applicant to demonstrate to the Town that there is evidence demonstrating a clear, regular need for such parking, that the purposes of this district are maintained, and that the design of these parking areas complies with the provisions of this section of the Zoning Bylaw.

414.7.8 Parking Lot Design Standards.

1. Relationship to Section 301 (Parking and Loading Requirements) of the Zoning Bylaw

Standards related to parking area design located in Section 301 of the Zoning Bylaw shall not apply to VCOD development.

2. Parking Space and Travel Lane Dimensions

For the purposes of this Bylaw, minimum parking space and travel lane dimensions for surface parking areas shall comply with the following table. Parking spaces and travel lanes in structured parking facilities may use different dimensions as may be necessary to construct the facility and provide safe passage for vehicles parking therein.

Minimum Parking Space and Travel Lane Dimensions

Parking Angle	Stall Width (parked car width)	Stall Depth*	Travel Lane (one way)	Travel Lane (two way)
Parallel	10.0'	22.0'	12.0'	24.0'
45°	10.0'	16.0'	11.0'	21.0'
60°	10.0'	17.0'	15.0'	21.0'
75°	10.0'	17.5'	17.0'	21.0'
90°	10.0'	18.0'	22.0'	24.0'

*Parallel parking depth is measured as the length of the space parallel to the adjacent travel lane. All other stall depth values are measured perpendicular to the adjacent travel lane.

All parking areas shall be designed with enough maneuvering space so that vehicles need not back onto a public way, the required screens, buffers, tree plots or other parking spaces. Driveways subject to this section shall have two hundred fifty (250) feet visibility in each travel direction and shall be comprised of two (2) travel lanes each not more than twelve (12) feet nor less than ten (10) feet in width; a minimum curb radius of 25 feet shall be provided.

3. Landscaping Requirements

Landscaping of parking areas shall be provided in accordance with the requirements in Section 414.8.9. The landscaping requirements in this section are intended to provide a set of standards toward reducing the visual impacts of large areas of pavement, improving the overall environment of parking areas by providing areas for shade and heat reduction, and enhancing the overall aesthetic appeal of parking areas.

4. Parking Garages/Structures

Parking garages/structures or entrances to such facilities shall not be located along the frontage of Route 28. On lots with frontage on Route 28, these structures shall be set back behind other buildings or integrated into the structural design of those buildings along the arterial frontage. All other dimensional requirements shall apply.

414.8. – VCOD Design Standards

Applicants for new development or redevelopment who elect the use of VCOD provisions relative to use, intensity of use, buildings, parking and other applicable standards provided as part of this section of the Zoning Bylaw shall comply with the following design standards. Compliance with these standards shall be demonstrated through Site Plan Review materials as required in the Operational Regulations of the Yarmouth Planning Board. Members of the Site Plan Review Team, the Design Review Committee, and the Planning Board shall also use the most recent version of the Town of Yarmouth Architectural and Site Design Standards to review applications within the VCOD. Compliance with the Yarmouth Architectural and Site Design Standards shall be mandatory for all VCOD projects. The VCOD Design Standards are to be applied to an entire site and existing and new buildings and structures on a site; it is not the intent of the VCOD Standards to allow for partial site compliance.

414.8.1. Site Design.

The location of buildings, parking areas, walkways, outdoor gathering places, landscaping, utilities, loading areas, dumpsters, automobile access, travel lanes, and signs shall reflect a thoughtful approach that focuses primarily on providing optimal access and mobility for pedestrians on and between sites. The following standards shall apply:

1. Parking areas shall be located to the rear and/or side of structures. Parking on the side of structures shall be located behind the minimum front yard setback shown in Section 203.5 – Table of Dimensional Requirements; or behind the maximum front yard setback for properties fronting on Route 28 as shown in Section 414.6.3 – Table of Dimensional Requirements. Driveways and travel lanes shall not be allowed within the front yard setback with the following exceptions:
 - a. Driveways connecting the property to the street and running perpendicular to the lot line, which are used to access parking areas to the side or rear of the building, are allowed in the front yard setback.
 - b. In VC2, where adequate buffers are provided pursuant to the landscaping requirements of this bylaw, a travel lane may be allowed in the front yard setback along any public way established prior to October 22, 2012.
2. Parking areas shall allow for easy access between lots for automobiles and pedestrians. Where feasible, parking lots shall be connected by a travel lane within the rear yard to provide an opportunity for pedestrians and motorists to pass from one site to another without using established rights of way.
3. Where an adjacent lot is not yet developed or the design of an adjacent lot precludes the ability to connect parking areas from one lot to another, the applicant shall identify on Site Plan Review materials the location where a future connection could take place.
4. Within the front yard setback, clear pedestrian pathways shall be provided between buildings and across automobile driveways in the form of raised or distinct surfaces such as stamped concrete or grid pavers, arcades, colonnades or other similar features. The developer shall provide a minimum six (6) foot wide sidewalk on the project property along the entire frontage abutting Route 28. Where the sidewalk surfacing may be interrupted with cut outs for street trees, the minimum sidewalk width shall be eight (8) feet. When proposing different sidewalk materials, the applicant shall demonstrate a consistent design with sidewalks on neighboring properties where those sidewalks are consistent with the objective of the VCOD. Applicants are encouraged to

explore opportunities to reconfigure existing sidewalks to better accommodate pedestrian and/or bicycle traffic.

5. Pursuant to Section 401.3, outdoor display of retail goods shall only occur along the façade of those commercial or mixed use structures where the goods are sold, shall not be within a public right of way, and shall not occur outside of normal business hours. No outdoor display of goods shall occur in a manner that precludes a minimum four (4) foot wide clear pedestrian passage along the sidewalk.
6. In complexes with multiple principal buildings, landscaped areas with walkways, courtyards or arcades shall be used in conjunction with compact site design to bring buildings closer together and enhance connectivity between them for residents and customers.
7. Building placement on lots adjacent to the Parkers River shall be set back in a manner that preserves viewsheds to the river from the public right of way to the maximum extent practicable. Buildings shall have their narrowest profile oriented to the street where such orientation will increase visibility to the river from the street. Any building located within 100 feet of the intersection of Parker's River and Route 28 shall be set back from Route 28 a minimum of 30 feet.

414.8.2 Circulation Standards.

1. Pedestrian connections between buildings shall be provided as safe, broad and easily identifiable ways of walking through areas that may also be occupied by automobiles. These walkways shall be designed to clearly show the space is primarily dedicated to pedestrian traffic through the use of raised or alternative surfaces, signage or raised landscaped islands that may serve as a safe resting area for pedestrians between automobile travel lanes.
2. Travel lanes and driveways developed interior to the site shall incorporate speed reduction techniques where travel lanes are adjacent to the edge of a building. Where a travel lane will be used solely for the purposes of loading or other maintenance activities, these features shall not be required. Speed bumps, raised cross walks, or other traffic calming measures shall be provided at a minimum frequency of one for every seventy (70) feet along the building edge.
3. If determined necessary through the VCOD SPR process, travel lanes within VCOD development shall make provision for bicycle travel. Lanes shall either be designed to show a dedicated bicycle lane(s) distinct from automobile travel lanes, at a minimum of four (4) feet in width, or coincident travel of bicycles and automobiles may be indicated with striping or shall incorporate bicycle sharrows (pavement markings).

414.8.3 Building Size and Modulation.

1. In order to modulate their scale, multi-story buildings shall clearly articulate the base, middle and top of the building through the use of cornices, stepbacks, borders of distinct material or other articulating features on every visible surface of the building.
2. Larger buildings with long façades shall articulate the façade with varied rooflines, distinct signage for multiple tenants, awnings, arcades, pilasters, columns, recessed spaces and/or entrances and any other features that serve to add texture to these longer façades. Unbroken façades in excess of fifty (50) feet shall not be allowed.
3. Large, flat, unadorned, blank walls shall not be allowed for any side or rear walls of buildings except where a rear wall is accessible only to service vehicles. Windows are

required in sidewalls for buildings that front on Route 28. Where windows are not feasible for other buildings, raised or recessed vertical surfaces may be used in conjunction with awnings, window-shaped depressions and decorative lighting to make these surfaces more attractive.

4. Awnings shall be made of canvas and/or weather-coated materials. Awnings along continuous building lines that are separated shall be distinct from one building to another. Continuous awnings may only be allowed over a maximum of three contiguous storefronts.

414.8.4 Entranceways.

1. All buildings shall have a principal façade and entry (with operable doors) facing a street or other area dedicated to pedestrian circulation. Buildings may have more than one principal façade and/or entry. Primary entrances not facing a street shall open onto sidewalks or other pedestrian features at least ten (10) feet in width.
2. Main entrances shall incorporate architectural features that draw attention to the entrance. These features may include covered porches, distinct sidewalk surfacing, porticos, recessed doorways and awnings.
3. Street level frontage shall be primarily devoted to entrances, shop windows or other displays. Street level frontage that incorporates setback areas beyond the minimum required in Section 414.6.3 (Table of Dimensional Requirements) shall incorporate seating and trash receptacles that are accessible to pedestrians to the extent practicable.

414.8.5 Fenestration.

1. The width-to-height ratio of bays in façades above street level shall be a minimum of 1:2 except where acceptable dormer variations may require a different ratio. Multiple bays may be placed immediately adjacent to one another in order to create larger window areas.
2. For commercial use, windows on the ground floor shall begin no lower than two (2) feet from street level and shall extend at a minimum height of seven (7) feet from street level. Windows may be closer to street level where they serve as a secondary entrance to outdoor seating or similar areas.
3. Mullion pattern and thickness shall reflect traditional New England design with broad decorative surfaces between windows. Highly reflective or industrial finish mullions are prohibited.
4. For commercial use, clear, non-reflective glass with minimal tinting shall be used at street level to allow maximum visual interaction between pedestrians and the interior of the building.
5. For commercial use, street level façades shall have a transparency of at least sixty (60) percent.
6. For commercial use, all windows (except storefront windows) shall be operable.

414.8.6 Dormers.

1. On pitched rooflines, dormers shall be used to break up roof surfaces.
2. Dormer styles may include doghouse, eyebrow or shed dormers.

3. Windows shall fill the face wall of the dormer to the maximum extent practicable and match the architecture of windows in the rest of the building.

414.8.7 Roofline Articulation. Roof design shall provide a variety of building heights and varied roofline articulation.

1. Acceptable roof models in VC 1 and 2 include gables, gambrels, and any jointed configuration of these styles.
2. Acceptable roof models in VC 3 and 4 include gables, gambrels, mansards, and flat roofs. Where flat roofs are proposed, these rooflines shall have decorative cornices or parapets that extend from the roof edge to provide a decorative and articulated edge.
3. Decorative spires or towers may also be used to articulate rooflines and to provide focal points within a complex of principal buildings.
4. Industrial style metal roofing visible from the street shall not be permitted. Metal roofing that uses decorative finishes and textures may be used to accent individual architectural features such as roof trim, window bays or other projecting features.
5. Downspouts shall match gutters in material and finish.
6. Utilities and protuberances through or on the front of roofs are highly discouraged and should generally be shielded from view.

414.8.8 Building Materials. Materials and building treatments shall be used that reduce the visibility of buildings from distant vantage points and shall be consistent and compatible with traditional New England design as follows:

1. Where more than one material is used, traditionally heavier materials (stone, brick, concrete, etc.) shall be located below lighter materials (wood, fiber cement board, siding, etc). The change in material shall occur along a horizontal line, preferably at the floor level.
2. Natural materials, such as brick, stone, wood/concrete clapboards and shingles, and slate are the preferred materials for building siding and trim. Vinyl, PVC, cementitious, or other synthetic materials may be used for siding and trim where these applications imitate traditional materials such as clapboard or shingling. The burden of proof shall be on the applicant to demonstrate that the quality of the imitation material complies with the purpose of the bylaw. Industrial materials such as unfinished concrete, sheet metal, asphalt shingles (except for roofing), and insulated steel doors shall not be used except where essential to the proper function of a building feature as related to safety, security or proper mechanical function.

414.8.9 Landscaping. All areas of a site that are not used for structures, parking, circulation, or other hardscape amenities shall be landscaped. Landscaping may occur as installed or retained vegetation in accordance with the following standards.

1. *Plant Selection*.
 - a. No tree, shrub or plant shall be proposed that has been identified as an Invasive Species by the Massachusetts Plant Advisory Group in the latest version of *The Evaluation of Non-Native Plant Species for Invasiveness in Massachusetts (with annotated list)*, has been identified as invasive or banned on the *Massachusetts Prohibited Plant List* as periodically updated by the Massachusetts Department of

- Agricultural Resources, or in any other reputable scientific publication that may be acceptable to the Board.
- b. Landscaping shall be designed to remain functional and attractive during all seasons through a thoughtful selection of deciduous, evergreen, berrying and flowering plant varieties. Applicants are encouraged to consult the latest version of *The Vascular Plants of Massachusetts: A County Checklist* as published by the Massachusetts Division of Fisheries and Wildlife and Natural Heritage & Endangered Species Program to determine which plants are native to Barnstable County.
 - c. Plant varieties shall be selected for resistance to drought, moisture, salt, urban conditions, or insects and other pests depending on the location of landscaping and the specific stressors anticipated for different areas of the site. Plants shall be selected so that landscaping can be maintained with minimal care and the need for watering, pesticides or fertilizers can be minimized or eliminated. Applicants are encouraged to consult The Massachusetts Nursery and Landscape Association's *Pocket Guide to Native and Low Maintenance Woody Plants*.
 - d. The use of turf shall be minimized and shall not be planted in strips less than six (6) feet wide. Lawn seed mixes shall be drought resistant. To achieve a high level of drought tolerance, lawn mixes may include, but shall not be limited to, a predominance of fine fescues.

2. *General Standards.*

- a. Where landscaped areas do not include planted materials, other decorative materials or features shall be used such as walkways, gathering places, or areas for public art. Unplanted areas shall not be filled with uniform gravel applications or riprap unless approved as part of stormwater management practices.
- b. Landscape features shall provide a clearly defined edge between the vegetated areas and areas reserved for pedestrian or automobile travel through the use of hardscape elements that may include, but shall not be limited to, fencing, curbing, or decorative stone.
- c. Any free-standing electrical structures, HVAC structures, or waste receptacles (e.g., dumpsters, grease traps, etc.) shall be fully screened from view through the use of evergreen vegetation, fencing, or a combinations thereof.

3. *Buffers.*

- a. Landscaping shall be required between VCOD developments and residentially zoned areas with no less than a twenty (20) foot wide buffer.
- b. Within the twenty (20) foot buffer to a residentially zoned area, a vegetated, virtually opaque screen shall be provided by a minimum six (6) foot wide planting strip maintained with densely planted shrubs not less than six (6) feet in height. Shrubs shall be at least seventy-five percent (75%) evergreens however the use of tall, monoculture, and uniformly planted rows of evergreens or other similar species shall not be used.
- c. The area of the buffer to a residentially zoned area that is not dedicated to the provision of a virtually opaque screen shall be landscaped in accordance with the other applicable standards of this bylaw.
- d. Fences or walls may be a part of the required screening where deemed necessary, and as approved by the Town.

- e. Earthen berms may be used in the buffer design, provided such side slopes are adequately stabilized by vegetation.
- f. Breaks in the buffer may also be incorporated into the design where designated pedestrian or bicycle crossings or other features specifically designed to provide attractive visibility or connections to surrounding neighborhoods are part of the approach to site-wide circulation.
- g. Trees shall be planted in buffer areas and along frontage lines at a minimum frequency of one every thirty (30) linear feet measured along the buffer or lot line.

4. *Parking Areas.*

- a. Developments with proposed parking areas of six (6) spaces or more shall provide a minimum of ten percent (10%) of landscaped open space within the area designated for parking inclusive of any landscaped borders surrounding the parking lot. Parking garages/structures shall not be subject to this requirement.
- b. The ends of parking aisles in surface lots that are more than fifteen (15) spaces in length shall incorporate landscape islands at either end of the row. Each island shall include at least one tree. Where the length of a parking aisle exceeds twenty-five (25) spaces, additional landscaped islands shall be installed at regular intervals. This interval shall not be more than every thirteen (13) spaces. Where arced semi-circle islands, triangles or similar shapes are proposed, the width of landscaped islands perpendicular to adjacent spaces shall be no less than eight (8) feet at their widest point. Where oval shaped islands are proposed, the width of the island shall be no less than six (6) feet.
- c. Trees shall be selected and placed in landscaped areas so that all parking areas can reasonably be expected to receive 30% canopy coverage. The expected canopy radius of each selected tree shall be noted in the required site plan materials.
- d. Parking areas for five (5) or more cars or any travel lane shall be separated from any other property line interior to the VCOD by a minimum ten (10) foot wide landscaped buffer. The width of this buffer may be reduced, or the buffer may be eliminated entirely, where the applicant can demonstrate that the reduction or elimination of such buffer will not cause nuisance or undue harm to abutting properties and is specifically designed to:
 - i. Improve pedestrian, bicycle and/or vehicular circulation and/or reduce curb cuts;
 - ii. Allow for the placement of driveways and/or buildings in a manner that better meets the design standards in Section 414.8 (VCOD Design Standards);
 - iii. Anticipate improvements to abutting properties that will be complementary to the alternative buffer design.
- e. Parking areas or travel lanes that extend to a property line and lie adjacent to any sidewalk on a public way shall be separated from the sidewalk by a minimum twelve (12) foot wide landscaped buffer. This buffer shall be designed to provide separation between the parking area and the sidewalk while maintaining visual awareness between the two areas. The parking area shall not be fully screened from the pedestrian way. Separation may be achieved through the use of low fencing, trees that maintain a canopy height of at least eight (8) feet, and/or low lying shrubs that will not exceed three (3) feet in height. The buffer may be

interrupted by breaks designed to provide pedestrian connections from the parking area to the sidewalk.

5. *Sight Lines.*

- a. With the exception of street trees, no hedge or other vegetation over three (3) feet in height above the adjacent ground shall be maintained within eight (8) feet of any street lot line unless the Town finds that such vegetation will not restrict visibility in such a way to hinder the safe entry of a vehicle from any driveway to the street.
- b. At no street intersection in any district shall an obstruction to vision exceeding two and one-half (2.5) feet in height above the street grade be placed or permitted to grow on any lot within the triangle formed by the street lot lines abutting the intersection and a line connecting points on these street lot lines at a distance of thirty-five (35) feet from the point of intersection of the street lot lines.

6. *Tree Specifications.*

- a. All proposed shade or canopy trees shall have a minimum 3" caliper.
- b. Shade or canopy trees shall not be less than twelve (12) feet in planted height above grade.
- c. Ornamental or flowering fruit trees shall not be less than seven (7) feet in planted height above grade unless specific dwarf varieties have been selected that require the planting of a smaller specimen.
- d. Evergreen trees used for screening shall not be less than six (6) feet in planted height above grade;
- e. At the time of planting, shrubs shall be well established and shall stand at least one (1) foot tall above grade.
- f. All plant materials shall be hardy to the appropriate temperature zone as defined by the American Standards for Nursery Stock.
- g. Any existing trees of four-inch (4") caliper or greater shall be retained where they are coincident with proposed landscaping areas. Such trees shall be removed if they are identified as an invasive species or if their health is clearly compromised at the time of application.
- h. Trees that are included in any landscaping plan, which die subsequent to development, shall be replaced.

7. *Decorative Walls and Fencing*

- a. Chain link fencing shall be prohibited in all districts unless it is necessary for compliance with security purposes unique to an individual use, is vinyl coated, and completely screened from view through the use of opaque evergreen trees or through a second layer of wooden fence material.
- b. In all districts, decorative fencing associated with commercial or mixed use properties may be wooden or vinyl where simulated picket or rail fence designs are used. Where wooden or vinyl fencing associated with commercial or mixed use is used, the fencing shall not be opaque, and shall not exceed four (4) feet in height except where screening utilities or waste receptacles in accordance with Section 414.8.9(2.) Fencing for structures that are exclusively residential (including hotel) may also be wooden, but may be opaque and up to six (6) feet tall. Such fences for residential areas shall only be allowed in the side or rear yard setbacks.
- c. In VC 1 and 2, decorative free-standing (not "retaining") walls shall not exceed three (3) feet in height and shall be constructed of natural stone material in a

manner that resembles traditional early New England stone walls. Masonry binder material may be used to secure stones, but shall not be visible on the sides of the wall. Bricks shall not be used in VC 2 for the construction of decorative walls.

- d. Only in VC 3 and 4, decorative fencing associated with commercial or mixed use properties may be steel, cast aluminum, or other similar finished metal material (customarily used to imitate traditional cast iron fencing). These fences shall not be opaque and shall not exceed five (5) feet in height except where screening utilities or waste receptacles in accordance with Section 414.8.9(2). Posts shall be constructed of brick or stone.
- e. In VC 3 and 4, decorative free-standing (not “retaining”) walls shall not exceed four (4) feet in height and may be constructed of bricks or cut stone material.

414.8.10 Lighting. In addition to any applicable standards for lighting associated with parking areas or signs, the following shall apply. Limitations on the height of lighting shall be measured to the highest point of the light structure.

1. In VC 1 and 2, light standards for lights along public roads shall not exceed twelve (12) feet in height and may only include one (1) fixture per light standard. Lights in rear or side parking areas shall not exceed fifteen (15) feet in height and may include multiple fixtures per light standard;
2. In VC 3 and 4, light standards shall not exceed sixteen (16) feet in height and may include multiple fixtures per light standard;
3. Traditional New England “period” light posts and fixtures shall be used. Such lighting shall be decorative in shape, scale, and finish, with detailed, articulated treatments for the base, post, fixture and crown. Lighting shall not use standard industrial-finish poles or shades. Applicants are encouraged to reference the discussion of lighting poles and fixtures within the Cape Cod Commission’s “*Designing the Future to Honor the Past, Design Guidelines for Cape Cod.*”
4. Lighting installed or directed at the ground level shall not exceed a lumen density of 50,000 lumens per acre of developed area.
5. In commercial or mixed use development, trespass of light at property boundaries shall not exceed 0.1 foot candles. Where commercial or mixed use development abuts a residential district, trespass of light at that boundary shall not exceed 0.05 foot candles.
6. In development areas that are exclusively residential, trespass of light at property boundaries shall not exceed 0.05 foot candles.
7. At driveways, lighting may be up to 0.5 foot candles at the property line adjacent to a roadway.
8. Non-decorative lighting shall be tinted amber or in some manner acceptable to the Town in order to reduce the glare that would otherwise emanate from standard white bulbs and clear lenses.

414.8.11 Signage. The following standards for signage are provided as a supplement to existing standards in the Zoning Bylaw (Section 303 - Signs). Where there may be a perceived conflict between these two sections, the following standards shall apply.

1. Signs shall not be located in a dedicated pedestrian or bicycle way or in any manner that interrupts intended patterns of pedestrian/bicycle circulation.
2. Wall mounted or projected signs shall be located above the ground floor storefront and just below the second floor windows. Signs shall be integrated by structural design and

finish with the design of the building and shall not obscure architectural features or windows.

3. Projecting signs shall be located to provide a minimum of 8' of clearance, shall not exceed 4 square feet in size and shall not project more than 4' from the building. Projecting signs used to advertise businesses on the second floor space shall be in addition to allowed wall signs and free standing signs.
4. Window signs are allowed in accordance with Section 303.5.3 but may only be wooden, corkboard, or chalkboard signs hanging or posted inside the building or stenciled lettering.
5. Sign colors should be selected to enhance sign legibility for both day and nighttime viewing consistent with the requirements of Section 303.5.4.3. Sign colors and finishes shall be compatible with the color of the building or development.
6. Sign materials shall be of high quality and compatible with the design of the building and façade on which they are placed.
7. Externally illuminating signs shall have downward-directed, wall mounted lights with fully-shielded decorative lamps that do not obscure the graphics of the sign.
8. Internally illuminated plastic or fiberglass cabinet (can) signs are not allowed. Where back-lighting is proposed, solid letters (reverse channel or halo) shall be used.
9. Signage on awnings is permitted only on the apron portion of the awning for business identification or to advertise particular goods and/or services.
10. Free-standing, single pole (lollipop) signs are not allowed. Free-standing monument or structured signs are only allowed in VC 2, 3 and 4. Where these signs are located at the entrances to plazas or centers with multiple tenants, the size shall not exceed the area required to hold a sign for each tenant that measures up to three (3) square feet, and in no case shall the total area of the sign exceed forty-eight (48) square feet. Where a free-standing sign is used for a single tenant, the area of the sign shall not exceed twenty-four (24) square feet. Free-standing signs shall incorporate design details, materials and colors of the associated buildings. The base or support elements of freestanding signs shall be integrated with the surrounding environment, contribute to the functionality of pedestrian features and incorporate ornamental landscaping where possible.
11. Gateway signs as defined in Zoning Bylaw Section 303 (signs) shall be allowed within the VCOD.
12. Neon signs are not allowed.

415 REGISTERED MARIJUANA DISPENSARIES

415.1 **Purposes:**

1. To provide for the establishment of Registered Marijuana Dispensaries (herein referred to as “RMD”), in an appropriate location and under specific conditions, in acknowledgment of the passage of Chapter 369 of the Acts of 2012 - *An Act for the Humanitarian Medical use of Marijuana*, and the Massachusetts Department of Public Health (herein referred to as “DPH”) implementation regulations 105 CMR 725.000 - *Implementation of an Act for the Humanitarian Medical Use of Marijuana*.
2. To minimize and mitigate the adverse impacts of Registered Marijuana Dispensaries on adjacent properties, public ways, residential neighborhoods, schools and other places where children congregate, local historic districts, and other land uses potentially incompatible with said facilities; by regulating the siting, design, placement, safety, and monitoring of a RMD.
3. To limit the number of Registered Marijuana Dispensaries located in the Town of Yarmouth.

415.2 **Applicability:**

1. The acquisition, cultivation, possession, processing, transferring, transporting, selling, distributing, dispensing or administering marijuana or products that contain marijuana for Medical Use is prohibited unless permitted as a Registered Marijuana Dispensary under this Section 415.
2. No Registered Marijuana Dispensary shall be established unless permitted in compliance with the provisions of Section 415 and only with the proper registration through the DPH regulations 105 CMR 725.000.
3. Nothing in Section 415 is intended to regulate or prohibit uses or activities conducted in compliance with 105 CMR 725.035 under a Hardship Cultivation Registration issued by the DPH.
4. Registered Marijuana Dispensaries may only be allowed by Special Permit from the Special Permit Granting Authority in the Registered Marijuana Dispensary Overlay District (RMDOD), provided the facility meets the requirements of this Section 415.
5. If any provision of this Section or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Section, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Section are severable.

415.3 **Special Permit Granting Authority:**

For the purposes of this section, the Special Permit Granting Authority (SPGA) is designated to be the Zoning Board of Appeals.

415.4 **Design Review and Site Plan Review:**

1. Formal Design Review as outlined in Section 103.4 is required and adherence to the Yarmouth Architectural and Site Design Standards are mandatory.
2. Formal Site Plan Review as outlined in Section 103.3 is required. The Yarmouth Police Department shall participate in Site Plan Review.
3. In addition to the submittal requirements outlined for Design Review and Site Plan Review, the applicant shall also submit the following for a RMD:
 - a. Detailed floor plan(s) of the premises that identifies the square footage available and describes the functional areas of the RMD.
 - b. Plan showing security measures for the Registered Marijuana Dispensary, including, but not limited to fencing, gates, lighting and alarms, to ensure personal safety and to protect the premises from theft.

415.5 **General Requirements and Conditions for all Registered Marijuana Dispensaries.**

1. The Town of Yarmouth shall have no more than two RMDs located within its borders.
2. All aspects of cultivation, processing, sales and dispensing of marijuana shall take place in a fixed location or locations within fully enclosed buildings that are monitored by surveillance cameras, alarm systems, and all other security measures in accordance with 105 CMR 725.000. If requested by the Yarmouth Police Department, all surveillance video shall be directly fed to the Yarmouth Police Station at the expense of the applicant.
3. No RMD shall be located inside a building containing any other uses or tenants.
4. If green houses are used for cultivation, curtains shall be utilized to prevent light pollution and illumination outside the greenhouse from dusk to dawn.
5. Industry Best Management Practices shall be utilized to control odors inside and outside the RMD facilities. No odors from marijuana or its processing shall be detectable by a person with an unimpaired and otherwise normal sense of smell at the exterior of the medical marijuana business or at any adjoining property or use.
6. No Registered Marijuana Dispensary located within the Town of Yarmouth shall have a gross floor area in excess of 10,000 square feet, which may include cultivation, processing and dispensing at up to two locations as allowed by 105 CMR 725.000.
7. Waste Handling: Waste disposal shall adhere to 105 CMR 725.000. No composting of waste materials may happen at the RMD. Outside storage of general solid waste

not containing any usable marijuana shall be screened with a locking fence. Solid waste containing any usable marijuana will be stored inside a designated, locked, limited access area located inside a building or structure. Liquid waste from processing or disposal of marijuana shall not be discharged to surface waters or groundwater or septic systems.

8. Landscaping and Lighting: Landscaping and lighting plans shall endeavor to balance the need for security with aesthetic concerns and impacts to abutting properties and public ways. Trespass of light at abutting property boundaries shall not exceed 0.1 foot candles. Height of light fixtures shall not exceed 15 feet as measured from the highest point of the light structure to finished grade. Landscaping shall adhere to Section 301 (Parking and Loading Requirements), taking into consideration that trees, bushes, and other foliage outside of the RMD shall not allow for a person or persons to conceal themselves from sight. Fencing with lockable gates shall be provided around the perimeter of the RMD. Fencing and gates shall be a maximum of 8' high, and shall be decorative style wherever viewed from a public way or abutting property. Style of fencing and gates shall be approved by the Design Review Committee and Special Permit Granting Authority. Chain link fencing shall be prohibited wherever visible from the public way or abutting property.
9. Parking and Loading Requirements: Parking and Loading requirements for RMD shall adhere to Section 301.5 – Table of Parking Demand, and shall be applicable to mercantile use for that portion of the floor area designated for sales, plus Industrial use for the floor area designated for processing, storage and cultivation of medical marijuana.
10. Signs:
 - a. RMD external signage shall not be illuminated except for a period of 30 minutes before sundown until closing. Neon signage is prohibited at all times.
 - b. Marijuana, Marijuana Infused Products (MIPs), and associated products shall not be displayed or clearly visible to a person from the exterior of a RMD.
 - c. The main entrance to the RMD may have one attached wall sign, no larger than four (4) square feet mounted to the building adjacent to the patient entrance. A free standing sign for a RMD shall be no larger than 6 square feet and shall identify the building by the DPH Registered Name only and shall include the street number.
 - d. A RMD shall not display on the exterior of the facility advertisements for marijuana or any brand name and shall not utilize graphics related to marijuana or paraphernalia on the exterior of the RMD, or the building in which the RMD is located.
11. The hours of operation of a RMD shall be set by the Special Permit Granting Authority, but in no event shall said facilities be open to the public, and no sale or other distribution of marijuana shall occur upon the premises or via delivery from the premises, between the hours of 8:00 PM and 8:00 AM.
12. A RMD shall not have a drive through. Off-site delivery of marijuana or MIPs by a RMD shall be conducted in accordance with 105 CMR 725.000.

13. Consumption of marijuana on the premises or grounds of any RMD is prohibited, provided however that a RMD may administer marijuana for educational or demonstrative purposes to the extent allowed by 105 CMR 725.000.
14. No RMD shall be located within 100 feet of a residential zoning district. This distance shall be measured in a straight line from the zoning district boundary to the nearest point of any component of the proposed RMD.
15. No RMD shall be located within 500 feet of any of the following structures or uses in existence on the date of a complete application submission to the SPGA for an RMD Special Permit:
 - a. Any school of any type attended by children under the age of 18;
 - b. Any licensed child care facility, day care center or family day care home;
 - c. Any correctional facility, half-way house, or similar facility;
 - d. Libraries;
 - e. Family entertainment facilities;
 - f. Public parks, athletic fields and recreation facilities;
 - g. Religious facilities; and
 - h. Any facility in which children commonly congregate on an organized ongoing formal basis.

This distance shall be measured in a straight line from the nearest property line of the lot containing any of the above facilities to the nearest point of any principle building housing the RMD.

16. The applicant shall provide the Yarmouth Police Department, the Building Department and the Special Permit Granting Authority with the name, phone number and email address of a main contact person and two back-up contact people to whom notice can be given if there are operating problems associated with the RMD.
17. The applicant shall allow for periodic inspections by the Yarmouth Police Department, the Building Commissioner, and/or the Board of Health during the hours when the premises are open for business. The purpose of the periodic inspections is to determine if the licensed premises are operated in accordance with the requirements of the special permit and the conditions outlined therein.
18. Information regarding the security measures to be implemented to deter and prevent unauthorized entrances and protect the premises, dispensary agents, and registered qualifying patients or their caregivers, shall be provided to the Yarmouth Police Department, including amendments.
19. Emergency procedures, including a disaster plan with procedures to be followed in case of fire or other emergencies, which was developed by a RMD as part of their DPH registration, shall be provided to the Yarmouth Police Department and Yarmouth Fire Department, including amendments.

20. All activities conducted by a RMD shall be conducted by employees of the registered facility non-profit corporation and cannot be conducted by or subcontracted to other entities.

415.6 **Special Permit Requirements:**

1. The Special Permit Granting Authority (SPGA) may grant a Special Permit for a RMD, in accordance with G.L. c. 40A, §9, subject to the provisions and requirements outlined in Section 415, and in allowed zoning districts as shown in Section 202.5 – Use Regulation Table.
2. If an applicant is proposing two locations within Yarmouth for their RMD in accordance with 105 CMR 725.000, information on both locations are required and shall be submitted as two separate Special Permit applications.
3. **Application Submittal Information:** In addition to the application requirements set forth in Sections 415.5, 414.6 and the SPGA application forms and regulations, a special permit application for a Registered Marijuana Dispensary shall include the following supplemental information:
 - a. Narrative on how the proposed project is in compliance with these regulations, and how it has been designed to meet the Special Permit granting criteria contained in Section 415.6.4.
 - b. Overall scaled context map depicting all properties, residential zoning districts, and land uses around the subject parcel to verify compliance with the siting restrictions outlined in Sections 415.5.14 and 415.5.15.
 - c. Names, addresses, phone numbers and e-mail of officers of the non-profit.
 - d. Evidence that the RMD is eligible for and has applied for registration with the Massachusetts Department of Public Health and shall not commence operations until the registration is approved.
 - e. Evidence of the Applicant's right to use the proposed site for the RMD, such as a deed, lease, purchase and sale agreement or other legally-binding document.
 - f. If not grown and/or processed at the RMD, the applicant shall identify, and provide contact information for the source of all marijuana that will be sold or distributed at the RMD.
 - g. Supplemental information required for Design Review and Site Plan Review as outlined in Section 415.4.3.
4. **Special Permit Criteria:** The Special Permit Granting Authority shall not issue a special permit for a Registered Marijuana Dispensary unless it finds that:
 - a. The Facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in G.L. c. 40A, §11;
 - b. The Facility is designed to ensure personal safety of those working at or utilizing the facility and to protect the premises from theft, while taking into consideration aesthetics and impacts to abutting properties and public ways.
 - c. Adequate measures have been taken to mitigate any noise, odors or light pollution at the property line, or to adjacent users if on the same parcel.
 - d. Demonstrate adequate waste disposal of products containing usable marijuana that does not adversely impact the environment or aquifer.

- e. The Facility shall provide documentation for all permits from applicable agencies within the Commonwealth of Massachusetts and be in compliance with all applicable state laws and regulations; or demonstrate that it will be able to meet all said requirements. If the facility is not fully permitted at the time of the Special Permit determination, a condition may be placed on the Special Permit indicating that the Special Permit shall be null and void if these permits are not obtained.
 - f. The applicant has not provided materially false documents or testimony; and
 - g. The applicant has satisfied all of the conditions and requirements of Sections 415.5 and 415.6 herein.
5. Annual Review: The SPGA shall condition any Special Permit issued under this Section to require the applicant to schedule a review by the SPGA to demonstrate compliance with the conditions of the Special Permit and Zoning Bylaw, to provide documentation of any inspections conducted by the Department of Public Health and to provide documentation of continued registration of the RMD with the DPH. This review shall be conducted within 30 days of the anniversary date of the issuance of the Special Permit and shall be conducted on an annual basis for as long as the RMD is in operation under the Special Permit.
6. Special Permit Duration: The Special Permit shall be valid for no more than a period of two (2) years from the date of the decision, as long as the Special Permit has not been revoked by the SPGA, and as long as the RMD retains a valid registration with the Department of Public Health. A Special Permit shall be issued to the owner of the RMD and shall not transfer with a change in ownership of the business and/or property. A Special Permit shall lapse if not exercised within one year of issuance.
7. Discontinuance of Use: The RMD shall notify the Yarmouth Police Department and the Special Permit Granting Authority in writing within 48 hours of the permit holder ceasing to operate the RMD or if the permit holder's registration with DPH expires or is terminated. An RMD shall be required to remove all materials, plants, equipment and other paraphernalia prior to surrendering its state Registration or ceasing its operation.
8. Special Permit Revocation: Any violation of this Section or conditions of the Special Permit shall be grounds for revocation. The Special Permit shall be revoked by the SPGA if the RMD registration is revoked by the Massachusetts Department of Public Health. The DPH shall be notified of any known criminal or zoning violations, and shall be notified of a revocation of the Special Permit.

416 HOME OCCUPATIONS

- 416.1 **Goals & Objectives:** To establish and regulate Home Occupations to allow residents to conduct small business activities from their homes, while protecting and maintaining the residential character of established neighborhoods, buildings and adjacent properties. The objective is to provide an incubator from which small businesses might grow and expand into Yarmouth's designated business districts.
- 416.2 **General Provisions – Home Occupations:** Home Occupations shall adhere to the following parameters:
1. Home Occupations shall be clearly incidental and secondary to the primary residential use and carried on by a permanent resident of the dwelling unit.
 2. Home Occupations shall be conducted wholly within the dwelling or wholly within a building accessory thereto. Outdoor activities or storage associated with, or related to, Home Occupations shall be prohibited.
 3. A combined maximum of 250 square feet of a dwelling unit or accessory structure shall be dedicated to a Home Occupation use.
 4. Home Occupations shall have no exterior displays, signage or attractions that advertise, market or otherwise identify the business.
 5. Home Occupations shall have no non-resident employees.
 6. Home Occupations shall not permit clients or customers on the premises, not have on-site retail, not result in increases to traffic or parking, and not permit deliveries or shipping other than through the US Postal Service, FedEx, UPS or similar services.
 7. Home Occupations shall have no equipment, process or activity that creates noise, dust, smoke, vibration, glare, fumes, odors, electrical or magnetic interference, or fire hazards. Home Occupations shall not involve the storage of hazardous, flammable or explosive substances except those commonly found or reasonably expected to be found in a residential dwelling unit. The provisions of Section 406 of this Bylaw apply to all Home Occupations in the Aquifer Protection Overlay District (APD).
 8. Home Occupations shall result in no exterior modifications of buildings, structures or premises, or otherwise provide visible evidence that a home occupation is being conducted on the property; and shall be identifiable only as a residential dwelling.
 9. Type of Home Occupations:
 - a. Examples of Home Occupations include the following:
 - i. Office-type work such as writing, editing, drafting, tax preparation, computer programming and computer data entry;
 - ii. Internet or phone sales;
 - iii. Custom sewing, quilting, knitting, and general crafts;

- iv. Creation of art such as paintings, ceramics, jewelry, and wood carving with hand tools;
- v. Home cooking, baking and preserving for products for sale only at regional farmer's markets, or to local businesses, excluding Marijuana Infused Products (MIPs).
- b. Home Occupations shall not include occupations requiring machinery such as mechanical repairs; woodworking; or metalwork.
- c. Home Occupations shall not include occupations requiring the use or storage of toxic, dangerous or hazardous substances.
- d. Any determination as to applicability of a use to the definition of Home Occupation shall be made by the Building Commissioner.

10. Residents must obtain a Business Certificate from the Town of Yarmouth and all other local permits, licenses or waivers prior to commencing a Home Occupation. Business Certificates shall be renewed every four (4) years.

416.3 **Violations**: Any deviation from the General Provisions for Home Occupation constitutes a violation of this bylaw. Violators shall be given written notification by the Building Commissioner of any violations prior to the issuance of any fines or citations.

417 Deleted (ATM 05/04/19)

V. DEFINITIONS

500. DEFINITIONS.

In this bylaw the following terms shall have the following meanings unless other meaning is required by the context or is specifically prescribed:

105 CMR 725.000 – Refers to the Department of Public Health (DPH) regulations entitled, “Implementation of an Act for the Humanitarian Medical Use of Marijuana”.

ABOVE GROUND LEVEL (AGL) – A measurement of height from the natural grade of a site to the highest point of a structure.

ACCESSORY STRUCTURE – A structure customarily incidental to and located on the same lot with the principle structure, or on contiguous lots held under the same ownership.

ACCESSORY USE – A use customarily incidental to and secondary to the allowed use and not detrimental to the neighborhood.

ADULT ENTERTAINMENT ENTERPRISES – To include all Adult Bookstores, Adult Dance Clubs, Adult Motion Picture Theaters, Adult Paraphernalia Stores, and Adult Video stores, as defined in this Zoning Bylaw and in M.G.L., Chapter 40A, Section 9A, as amended.

ADULT BOOKSTORE – An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L., Chapter 272, Section 31, as amended.

ADULT DANCE CLUB – any commercial establishment which, as a form of entertainment, features:

1. a person or persons who appear in a state of nudity, or;
2. live performances which are characterized by an emphasis on the exposure or opaque covering of human genitals, pubic region, buttock(s), female breast(s) below a point immediately above the top of the areola, and human genitals in a state of sexual arousal, or relating to sexual conduct or sexual excitement, as defined in M.G.L., Chapter 272, Section 31, as amended, or;
3. Films, motion pictures, video cassettes, Compact disks, slides, photographic reproductions, or other visual and/or audio media, regardless of form or method of presentation, which are characterized by the depiction or description of anatomical areas specified as above, or relating to any sexual activity, including sexual conduct or sexual excitement, as defined in M.G.L. Chapter 272, Section 31, as amended.

ADULT MOTION PICTURE THEATER – An enclosed building used for presenting material (motion picture films, video cassettes, cable television, slides, or any other visual and/or audio media) distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L., Chapter 272, Section 31, as amended.

ADULT PARAPHERNALIA STORE – an establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement, as defined in M.G.L., Chapter 272, Section 31, as amended.

ADULT VIDEO STORE – an establishment having as a substantial or significant portion of its stock, whether for sale or rent, motion picture film, video cassettes, compact disks, Digital Video Disk (DVD), or other visual and/or audio media, regardless of form or method of presentation, which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L., c. 272, § 31, as amended.

AFFORDABLE ACCESSORY APARTMENT – A secondary, separate housekeeping unit of limited size, with its own sleeping, cooking and sanitary facilities, located within, attached to, or adjacent to a primary single-family dwelling unit. An affordable accessory apartment shall have deed restrictions that hold rent to affordable housing guidelines set by the Town.

AFFORDABLE HOUSING RESTRICTION – A contract, mortgage agreement, deed, restriction or other legal instrument, acceptable in form and substance to the Town of Yarmouth, that effectively restricts occupancy of an affordable housing unit to qualified purchaser or qualified renter and which provides for administration, monitoring and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period of time allowed by law, and be enforceable under the provision of M.G.L. c. 184, § 26 or 31-32.

AFFORDABLE HOUSING UNIT – A dwelling unit reserved in perpetuity for ownership or rental 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) in order that such affordable units shall be included in the DHCD Subsidized Housing Inventory.

AREA MEDIAN INCOME – The Area Medium Income (AMI) of the Barnstable-Yarmouth, MA Metropolitan Statistical Areas (MSA) as defined in the annual schedule of low- and moderate-income limits published by the U.S. Department of Housing and Urban Development (HUD), and adjusted for household size.

ASSISTED LIVING RETIREMENT COMMUNITIES – As allowed for in the VCOD, a town operated, state or federally aided housing development, or self-contained retirement community, which consists of multi-family dwellings designed and reserved specifically to accommodate the semi-independent elderly population. Such multi-family housing shall include group facilities for dining, food preparation, and social interaction. Elderly shall mean those persons aged fifty-nine (59) or older. Assisted Living Retirement Communities shall be made up of (1) or two (2) bedroom units. Such units shall be designed to accommodate one (1) or two (2) elderly persons. Aside from the bedroom(s) and bath(s), the unit may have, but is not required to have, a small kitchen and/or small living room. Assisted Living Retirement Communities shall have no more than twenty percent (20%) two (2) bedroom units. Units developed under Assisted Living Retirement Communities shall not be subject to Section 412.2, Inclusionary Zoning.

BOARDING OR LODGING HOUSE – An owner occupied dwelling offering accommodations, with or without meals, for rental to more than three (3) and fewer than twelve (12) persons.

BOYS OR GIRLS CAMP – Facilities operated on a seasonal basis for a continuing supervised recreational, health, educational, religious and/or athletic program, with persons enrolled for periods of not less than one (1) week, shall include but not be limited to such facilities as Boy Scouts camps, YMCA camps, tennis camps, or other similar facilities, with or without overnight accommodations.

BUILDING HEIGHT IN FEET – The vertical dimension to the top of the highest portion of the roof of a structure. Building height shall be measured as outlined in Section 203.4.2 Table of Maximum Building Height.

BUILDING HEIGHT IN STORIES – The number of habitable stories exposed above the average grade on the street side of a building. When facing on more than one street, the side yielding the most number of stories shall determine the building height in stories. A basement shall be considered a story if it is exposed more than three and one-half (3.5) feet above grade on the street side. Building height shall be measured as outlined in Section 203.4.2 Table of Maximum Building Height.

BUILDING COMMISSIONER - Chief Officer of the Yarmouth Building Department.

CALIPER – the measurement of the diameter of a shrub or tree, in inches, in accordance with the American Standard for Nursery Stock, ANSI Z60.1, as amended.

CAMOUFLAGED – A facility that is painted, buried, disguised, hidden, part of an existing or proposed structure or placed within an existing or proposed structure so as to reduce to a minimum the visual impact of the facility is considered "camouflaged."

CAMPING AND RECREATIONAL EQUIPMENT – Includes but is not limited to:

BOAT – any inboard, outboard or sail watercraft, open or cabin type.

CAMPING TRAILER – a canvas, folding structure mounted on wheels and designed for travel, recreation and vacation use.

MOTOR HOME – a portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self propelled vehicle, having a body width not exceeding eight (8) feet and a body length not exceeding thirty-two (32) feet.

PICKUP COACH – a structure designed primarily to be mounted on a pickup truck chassis and with sufficient equipment to render it suitable for uses as a temporary dwelling for travel, recreational and vacation use.

TRAVEL TRAILER – a vehicular, portable structure built on a chassis designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently identified "travel trailer" by the manufacturer of the trailer and having a body width not exceeding eight (8) feet and a body length not exceeding thirty-two (32) feet.

CAMPGROUND – Premises with sited used for travel trailers, campers, tenting or for temporary overnight facilities of any kind, where a fee is charged.

CAMPS, BOYS OR GIRLS – Facilities operated on a seasonal basis for a continuing supervised recreational, health, educational, religious and/or athletic program, with persons enrolled for periods of not less than one (1) week, and shall include, but not be limited to, such facilities as Boy Scouts' camps, YMCA camps, tennis camps or other similar facilities, with or without overnight accommodations.

CARRIER – A company authorized by the FCC to provide a telecommunications service.

CLUB OR LODGE – The premises or buildings of a nonprofit organization exclusively servicing members and their guests for recreational, athletic or civic purposes, but not including any vending stands, merchandising or commercial activities except as required generally for the membership and purposes of such club. This shall not include clubs or organizations whose chief activity is a service customarily carried on as a business.

CO-LOCATION – The use of a single mount on the ground by more than one carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one carrier.

COMMERCIAL TENANT: For the purposes of the VCOD bylaw, meaning an individual business, corporation, owner or tenant.

COMMUNICATION ANTENNA – Any antenna, microwave dish, satellite dish, panel, device, wiring, repeater, or equipment utilized in connection with the generation, transmission, reception, or detection of electromagnetic radiation.

COMMUNICATION BUILDING – Any building utilized primarily for the installation and/or operation of equipment for generating, transmitting, receiving, or detecting of electromagnetic radiation and which is accessory to a communication tower or antenna.

COMMUNICATIONS FACILITY – A land use facility supporting antennas and/or microwave dishes used for the reception or transmission of electromagnetic radiation. The term Communications Facility includes any appurtenant structures, buildings, antennas, or towers.

COMMUNICATION TOWER – Any building, structure, pole, mast, tripod, monopole, or tower, free-standing or supported, or in association with a building or other permanent structure or equipment, utilized for the generating, transmitting, receiving, or detecting of electromagnetic radiation

CONTIGUOUS LOTS – Those lots having a common boundary equal in length to at least one-half ($\frac{1}{2}$) the total length of the longer boundary adjoining.

CONTRACTOR'S YARD – Premises used by a building contractor or subcontractor principally for storage of equipment and supplies, fabrication of subassemblies or parking of wheeled equipment.

CORNER LOT – A lot with frontage on two streets, and located at their intersection. Frontage for a corner lot shall be measured to the middle of the curve of the intersecting streets.

DAY CARE CENTER – A facility operated on a regular basis whether known as a child nursery, nursery school, kindergarten, child play school, progressive school, child development center, or preschool, or known under any other name, which receives children not of common parentage under 7 years of age, or under 16 years of age if those children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Day care center shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of that system are primarily limited to kindergarten, nursery or related preschool services; a Sunday school conducted by a religious institution; a facility operated by a religious organization in which children are cared for during short periods of time while persons responsible for the children are attending religious services; a family day care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation.

DRIVE-THROUGH-FACILITY – A commercial facility which provides a service directly to a motor vehicle or where the customer drives a motor vehicle onto the premise and to a window or mechanical device through or by which the customer is serviced without exiting the vehicle. This shall not include the selling of fuel at a filling station or the accessory function of a carwash facility, such as vacuum cleaning stations.

DWELLING – A building or part of a building used exclusively as the living quarters for one (1) or more families.

DWELLING, MULTI-FAMILY – See Multi-family dwelling.

DWELLING, SINGLE-FAMILY – See Single-family dwelling.

DWELLING, TWO-FAMILY – See Two-family dwelling.

DWELLING UNIT – A single unit providing complete, independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

EDUCATIONAL USE – Premises used for systematic instruction or for the imparting of knowledge, and either operated by a public agency or licensed or accredited by the Commissioner of Education.

EIA – Shall mean the Electronics Industries Association.

ELEVATION – The measurement of height above sea level.

EMPLOYEE HOUSING at non Motels/Hotels – Property owned by an employer which is utilized to provide housing for employees or staff. All housing units shall be a minimum of 300 gross square feet (sf) and meet the definition of Housing and Dwelling Unit. Unacceptable forms of employee housing include camp sites, tents, RVs, mobile homes or campers. This definition does not apply to employee housing at motels/hotels. The employer shall designate an on-site manager/proctor for each property so utilized.

ENVIRONMENTAL ASSESSMENT (EA) – An EA is the document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.

EQUIPMENT SHELTER – An enclosed structure, cabinet, shed or box at the base of the mount within which are housed batteries and electrical equipment.

EXTENDED STAY HOTEL - Any building or group of buildings that contain six (6) or more guest rooms intended to be occupied on a transient basis having one or more rooms including separate bathroom, kitchen, living and sleeping areas in each unit. All guest rooms in an Extended Stay Hotel shall meet the operational standards established in section 404.3.8 (Operational Standards for Extended Stay Hotels). The definition of extended stay hotel shall not include dwelling units and are not meant for permanent occupancy, with the exception of On-Site Property Managers at Extended Stay Hotels.

FAA – Shall mean the Federal Aviation Administration.

FALL ZONE – The area on the ground within a prescribed radius from the base of a tower. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

FAMILY – An individual or two (2) or more persons related by blood or marriage, or a group of not more than five (5) persons not so related, living together as a single housekeeping unit.

FAMILY DAY CARE HOME – A private residence which, on a regular basis, receives for temporary custody and care during part or all of the day, children under 7 years of age, or children under 16 years of age if those children have special needs, and receives for temporary custody and care for a limited number of hours children of school age under regulations adopted by the Massachusetts Board of Early Education and Care. The total number of children under 16 in a family day care home shall not exceed 6, including participating children living in the residence. Family day care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation.

FAMILY-RELATED ACCESSORY APARTMENT – a secondary, separate housekeeping unit of limited size, with its own sleeping, cooking and sanitary facilities, which is located within, attached to, or adjacent to a primary single-family dwelling unit.

FARMERS' MARKET – a predominantly local fresh food and produce market that operates regularly at a public location which provides a suitable environment for local farmers and food producers to sell their locally grown farm origin product and their associated value added locally made primary products directly to customers.

FCC – Shall mean the Federal Communications Commission.

FLICKER EFFECT – The apparent reflection or shadow visual impact of the moving turbine blade when a wind turbine is operating.

GROSS FLOOR AREA – Shall be measured to the outside of the building with no deductions for accessory unoccupied areas such as hallways, stairs, closets, thickness of walls, columns or other such features.

GUESTHOUSE, INN, OR BED & BREAKFAST INN – A structure similar in character, both interior and exterior, to a single-family dwelling, owner-occupied, in which overnight lodging is offered in five (5) or fewer guest rooms.

GUEST UNIT – A room or suite of rooms in a hotel, motel, motor inn or guesthouse, suitable for separate rental.

GUYED TOWER – A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

HABITABLE ATTIC – A floor level situated wholly or partly under a sloping roof, suitable for a dwelling unit or portion thereof, in which the ceiling area (in plan projection) at a height of at least 7'-0" above the finish floor is not more than ½ the area (50%) of the floor level immediately below. Floor space located where the ceiling height is less than 7'-0" shall not be considered as part of the 50% calculation. A habitable attic shall meet all other applicable requirements of the Massachusetts State Building Code.

HABITABLE 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. Such a floor must be capable of supporting the prescribed floor load for the use as designated in the Massachusetts State Building Code.

HARDSHIP CULTIVATION REGISTRATION FOR MEDICAL MARIJUANA - means a registration issued by the Massachusetts Department of Public Health to a registered qualifying patient under the requirements of 105 CMR 725.035, allowing for a registered qualifying patient or his/her registered personal caregiver to cultivate a limited number of plants sufficient to maintain a 60-day supply of medical marijuana solely for that patient's use, at either the registered qualifying patient's primary residence or one personal caregiver's primary residence.

HOME OCCUPATION – A business use conducted for gain or support within a dwelling unit, or structure accessory thereto, which is incidental and secondary to the primary residential use, and which does not change the essential residential character of such building or neighborhood. Home Occupations are subject to the conditions outlined in Bylaw Section 416.

HOME OFFICES - A non-residential use conducted within a dwelling unit that is accessory to the primary residential use and carried on by a permanent resident of the dwelling unit. Allowed home office occupations include office-type activities, conducted by telephone, computer, fax and mail, with no signs, no storage, no employees, no clients/customers visiting the premises, no on-site retail, no outdoor activities and no deliveries or shipping other than through the US Postal Service, FedEx, UPS or similar services.

HOSPITAL – A facility for the care and treatment of patients as licensed by the Massachusetts Department of Public Health under M.G.L., c. 111, § 51 or 71, as amended.

HOTEL – See Motel or Hotel.

HOUSING – dwelling units for rent or sale by any person or entity, to be used for purposes of residential, rental, employee, or affordable housing, and consisting of either one or more dwelling units on a single lot, and comprised by any one or more of the following: single units, duplexes, townhouses, apartments, condominium units, top-of-the-shop housing, multi-family, mixed uses, or non-year-round vacation dwelling units, or any combination thereof.

INDOOR WATER PARK - A commercial recreational facility, enclosed by walls and a roof, engaged in activities including but not limited to facilities for aquatic recreation, such as water slides, swimming pools, splash pads, water playgrounds, and other recreational water activities.

INN – See Guesthouse.

LATTICE TOWER – A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.

LICENSED CARRIER – A company authorized by the FCC to construct and operate a personal wireless service facility.

LOCAL INITIATIVE PROGRAM – A program administered by the Massachusetts Department of Housing and Community Development (DHCD) pursuant to 706 CMR 45.00 to develop and implement local housing initiatives that produce low- and moderate-income housing.

LOT FRONTAGE – That portion of a lot fronting upon and having rights of access to a way providing legally sufficient frontage for a division of land under the requirements of M.G.L., c. 41, § 81L., to be measured continuously along a single street line.

LOT LINES:

FRONT – the boundary line separating street from lot.

SIDE – the boundary line connecting front and rear lot lines. In the case of corner lots, generally all lot lines other than the front lot line are to be considered side lot lines.

REAR – the boundary line connecting side lot lines farther from and approximately parallel to, the front lot line.

LOW- OR MODERATE-INCOME HOUSEHOLDS – A household with income at or below 80% of Area Medium Income (AMI), adjusted for household size, for the Barnstable-Yarmouth, MA Metropolitan Statistical Areas (MSA), as determined annually by the U.S. Department of Housing and Urban Development (HUD).

MARIJUANA - has the meaning given “marihuana” in Chapter 94C of the Massachusetts General Laws. The term also includes marijuana infused products (MIPs).

MARIJUANA ESTABLISHMENT – a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related

business, which shall each have those meanings set forth in MGL c. 94G.

MARIJUANA-INFUSED PRODUCT (MIP) - means a product infused with medical marijuana that is intended for use or consumption, including but not limited to edible products, ointments, aerosols, oils, and tinctures. These products, when created or sold by a RMD, shall not be considered a food or a drug as defined in M.G.L. c. 94, s. 1. These products may only be created or sold by a Registered Marijuana Dispensary.

MARKET-RATE DWELLING UNIT – All dwelling units that are not affordable housing units as defined herein.

MAXIMUM AFFORDABLE PURCHASE PRICE OR RENT – For homeownership units, a purchase price that is affordable to a low- or moderate-income household paying no more than 30% of gross monthly income for a mortgage payment, property taxes, insurance and condominium fees, where applicable; and for rental units, a monthly rent that is affordable to a low- or moderate-income household paying no more than 30% of its gross monthly income for rent and utilities. The household income used to compute the maximum affordable purchase price or rent shall be adjusted for household size, considering the household size for which a proposed affordable unit would be suitable under the guidelines of the DHCD Local Initiative Program or, where no such guidelines exist, under regulations adopted by the Board of Selectmen.

MEDICAL MARIJUANA TREATMENT CENTER (MMTC) - See Definition for Registered Marijuana Dispensary (RMD).

MEDICAL SERVICES APPURTENANT PARKING – Provision of parking for any of the uses allowed within the MOD.

MIXED USE – a combining of commercial (retail, office and/or service) use(s) with a residential use on the same or contiguous lot.

MOBILE HOME – Any vehicle or object designed for movement on wheels and having no motive power of its own, but which is drawn by or used in connection with a motor vehicle, and which is so designed and constructed, or reconstructed or added to by means of such accessories, as to permit the use and occupancy thereof for human habitation, whether resting on wheels, jacks or other foundation, and shall include the type of construction commonly known as "mobile home," having a body width exceeding eight (8) feet and a body length exceeding thirty-two (32) feet.

MOBILE HOME PARK – Premises planned and improved for the rental of spaces for two (2) or more mobile homes.

MOBILE STRUCTURE – A movable structure designed for year-round occupancy, used for office or other nonresidential activity.

MONOPOLE – The type of tower that is self-supporting with a single shaft and provision for mounting antennas.

MOTEL OR HOTEL – Any building, other than a guesthouse, containing six (6) or more guest rooms intended to be occupied on a transient basis, may contain, in the guest rooms, microwave ovens of 800 watts or less, coffee-makers, refrigerators and sinks. For those guest rooms of 375 square feet of area or more, a two-burner electric cook-top may be allowed. For those guest units of 375 square feet of area or more with in-room fire suppression systems (sprinklers), a traditional toaster may be allowed. In no case shall an oven, other than a microwave oven described herein, be permitted in motels or hotels, except as outlined in Section 404, the Motel Bylaw.

MOTEL CONVERSION – the creation of Housing within or upon an Applicable Property under Section 404 which was not created by virtue of a Raze and Replacement or new construction, but through the conversion and redevelopment of existing motel structures.

MOUNT – The structure or surface upon which antennas are mounted, including the following four types of mounts:

1. Roof-mounted. Mounted on the roof of a building.
2. Side-mounted. Mounted on the side of a building.
3. Ground-mounted. Mounted on the ground.
4. Structure-mounted. Mounted on a structure other than a building.

MULTI-FAMILY DWELLING – A building or portion thereof containing more than two (2) dwelling units and not classified as a one or two-family dwelling.

MULTI-FAMILY HOUSING – Multi-Family Dwellings defined in Section 500 of this Bylaw, and which meet the criteria set forth herein.

MUNICIPAL WIND ENERGY FACILITY – A wind energy facility located on land owned or controlled by the Town of Yarmouth. Such a wind energy facility may be owned, constructed and/or operated by the Town or other entity. (see also WIND ENERGY FACILITY).

NURSERY, COMMERCIAL – See Greenhouse.

NURSING HOME – Any dwelling or building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire, as licensed by the Massachusetts Department of Public Health under G.L., ch. 111, sec. 71 through 73, as amended.

ON-SITE PROPERTY MANAGER AT EXTENDED STAY HOTELS - An employee residing year-round at a licensed extended stay hotel for the purpose of management, maintenance and security of the property.

ON-SITE PROPERTY MANAGER AT MOTELS/HOTELS - An employee residing year-round at a licensed hotel or motel for the purpose of management, maintenance and security of the property.

PANEL ANTENNA – A flat surface communication antenna.

PAVING – A uniform, hard, smooth covering which will bear travel by vehicles or by pedestrians in all seasons, or which is used in conjunction with certain sports or recreational

activities. It includes concrete, bituminous concrete, oil-penetrated gravel, brick and paving stone, but shall not include such materials as gravel, crushed clamshells or any other similar material.

PERSONAL COMMUNICATIONS SERVICES (PCS) – Digital wireless telephone technology such as portable phones, pagers, faxes, and computers. Such mobile technology promises to allow each consumer to use the same telephone number wherever he or she goes. Also known as Personal Communications Network (PCN).

PERSONAL WIRELESS SERVICE FACILITY – A communications facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996.

PERSONAL WIRELESS SERVICES – A type of service regulated by this Bylaw, and as defined by the Telecommunications Act of 1996.

PLACE OF ASSEMBLY – Premises accommodating a gathering of fifty (50) or more individuals for purposes not more specifically categorized in this bylaw.

PUBLIC SERVICE SIGN – A sign erected to acknowledge the providers of a public service, to promote a public service activity, or to acknowledge a donation for public use.

QUALIFIED HOUSEHOLD – A low- or moderate-income household that purchases an affordable housing unit as its principal residence, and has not owned housing property for three years, or is a displaced homeowner, or is an age qualified household, both as defined in Dept. of Housing & Community Development (DHCD) Local Initiative Program (LIP) guidelines, or a low- or moderate-income household that rents an affordable housing unit as its principal residence.

RADIOFREQUENCY (RF) ENGINEER – An engineer specializing in microwave engineering, especially the study of radio frequencies.

RADIOFREQUENCY RADIATION (RFR) – The emissions from Personal Wireless Service Facilities.

RAZE AND REPLACE or RAZE AND REPLACEMENT – the voluntary removal of one hundred percent (100%) of all pre-existing structural materials and mechanical systems of a structure or structures, exclusive of foundations, and the replacement of those materials and systems with new materials and systems pursuant to the creation of Housing.

REGISTERED PERSONAL CAREGIVER FOR MEDICAL MARIJUANA - means a person, registered by the Massachusetts Department of Public Health (DPH) under 105 CMR 725.000, who has agreed to assist with a registered qualifying patient's medical use of marijuana.

REGISTERED MARIJUANA DISPENSARY OR RMD – means a not-for-profit entity registered under 105 CMR 725.100, also known as a Medical Marijuana Treatment Center, that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. RMD refers to the

site(s) of dispensing, cultivation, and preparation of marijuana.

REGISTERED QUALIFYING PATIENT FOR MEDICAL MARIJUANA - means a qualifying patient who has applied for and received a registration card from the Massachusetts Department of Public Health under 105 CMR 725.000.

RELIGIOUS USE – Premises principally used for public worship, religious instruction or other expression of an integrated system of theological teachings or beliefs.

RENEWABLE AND ALTERNATIVE ENERGY – Energy generated by: solar – photovoltaic (PV) and thermal; wind; biomass power conversion or thermal technologies, including R & D related to or manufacture of wood pellets; ultra low emissions high efficiency wood pellet boilers and furnaces; low impact hydro-electric and kinetic; ocean thermal, wave or tidal; geothermal; landfill gas; fuel cells that use renewable energy; advanced biofuels; combined heat and power; electric and hydrogen powered vehicles and associated technologies, including advanced batteries and recharging stations.

RESEARCH & DEVELOPMENT FACILITIES FOR RENEWABLE AND ALTERNATIVE ENERGY – Those facilities used primarily for research, development and/or testing of innovative information, concepts, methods, processes, materials, or products. This can include the design, development and testing of biological, chemical, electrical, magnetic, mechanical, and/or optical components in advance of product manufacturing. The accessory development, fabrication and light manufacturing of prototypes or specialized machinery and devices integral to research or testing may be associated with these uses.

RESIDENTIAL WIND ENERGY SYSTEM (RWES) – A wind energy conversion system consisting of a wind turbine, a tower and associated controls or conversion electronics which is primarily intended to reduce the on-site consumption of utility power for a single or two-family dwelling.

RWES TOTAL EXTENDED HEIGHT – The height of a RWES is measured from the average natural grade at the base of the RWES to a blade tip at its highest point of travel. For a RWES mounted on a residential dwelling, the total extended height shall be the height as measured from the lowest point of attachment to the structure to a blade tip at its highest point of travel.

RWES FALL ZONE: – The area forming a circle, the center of which shall be located at the center point of the base of the tower, and the radius of which shall be no less than the total extended height of the RWES plus ten feet.

SEASONAL EMPLOYEE HOUSING at Motels/Hotels– A currently licensed motel or hotel property owned by an employer which is utilized to provide seasonal housing for his or her employees or staff, or employees or staff of tenants of the property owner. The employer shall designate an on-site proctor for each property so utilized. Seasonal employee housing shall be for no more than seven months between April 1st and October 31st annually.

SEASONAL USE – Use of a lot or structure for one hundred and eighty (180) days or less per year on the average. An applicant may show otherwise by providing evidence such as utility bills, U.S. Post Office records, sworn affidavits from three (3) abutting year-round residents, or other evidence satisfactory to the Building Commissioner.

SECURITY BARRIER – A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

SELF STORAGE – A business establishment engaged in providing, or making available for use, lease, rent, or hire to customers, storage spaces, bins, units, compartments, or similarly defined storage areas, including outdoor areas, which are under the control of, or individually accessible to, the customer.

SIGN – any physical symbol which is intended or designed to identify, advertise, or promote a product, service, business, or the name, ownership identity or control of a premises. This shall include all physical symbols which in any way relate to the business or activity conducted or sought on the premises, and which are visible to or are intended or likely to attract the attention of persons who are not on the premises where the business or activity is conducted or sought.

SIGN AREA – Shall be determined by the multiplication of the extreme width and the extreme height, including boarders and without deductions for open space or other irregularities.

SINGLE-FAMILY DWELLING – A structure containing one (1) dwelling unit with not more than three (3) lodgers or boarders.

STACKING LANE – An area of stacking spaces and driving lane provided for vehicles waiting for drive-through service that is physically separated from other traffic and pedestrian circulation on the site.

STACKING SPACE – An area within a stacking lane for vehicles waiting to order and/or finish a drive-through transaction. Stacking spaces must be no less than 10 feet wide by 23 feet long.

SUBSIDIZED HOUSING INVENTORY – The Massachusetts Department of Housing and Community Development Chapter 40B Subsidized Housing Inventory as provided in 760 CMR 31.04.

SUBSTANTIAL OR SIGNIFICANT PORTION OF STOCK – shall include, but not be limited to, fifteen percent (15%) of the subject establishment's inventory stock or more than fifteen percent (15%) of the subject premises's retail (public) floor area.

STABLE – Any premises used for the shelter and feeding of horses for remuneration, hire or sale.

STRUCTURE – A combination of materials assembled at a fixed location to give support or shelter, or anything constructed or erected, the use of which requires a fixed location on the ground, including but not limited to buildings, mobile homes, swimming pools having a capacity of four thousand (4,000) gallons or more, piers, jetties, signs, fences, radio antennas, and retaining walls. The word "structure" shall be construed, where the context requires, as though followed by the words "or part or parts thereof." For the purposes of the Sign Code (section 303), a sign is not to be considered a structure.

TELEPHONE EXCHANGE – A building containing a central system of switches and other equipment and personnel that establishes connections between individual telephones. It shall

not include facilities for servicing individual telephones, truck or equipment storage, business offices or any other facility or office not directly related to the switching system.

TEMPORARY OUTDOOR RECREATION – An outdoor municipal, cultural, educational, religious, social, charitable, or other program, occasion or activity including, but not limited to carnivals, festivals, special events, arts and craft fairs, car or boat shows, recreational activities, theatrical productions, or concerts, conducted on an intermittent basis. Temporary Outdoor Recreation does not apply to events that are considered accessory to an allowed use or business.

TIME SHARING – The sale or multi-year lease of a dwelling unit or a guest unit for specific recurring periods of less than ninety (90) days during the course of a year.

TOP OF THE SHOP HOUSING – the creation or redevelopment of Housing on the second and/or third floor of a structure, whose first floor is used for commercial, industrial or office uses.

TRANSIENT, at Motels or Hotels– For purposes of the limitations of motel or hotel use, Transient occupancy shall be limited to the temporary and short term occupancy, ordinarily and customarily associated with motel and hotel use. Transient occupants must have, and be able to demonstrate that they maintain, a principal place of residence elsewhere. Transient occupancy shall generally refer to continuous occupancy of not more than thirty (30) days, and an aggregate of not more than ninety (90) days within any six (6) month period. Use of a guest unit as a residence, or dwelling unit, shall not be considered transient. This definition does not apply to On-Site Property Managers at Motels/Hotels.

TRANSIENT, at EXTENDED STAY HOTELS – For purposes of the limitations of an Extended Stay Hotel, occupancy shall be limited to temporary and short term occupancy, ordinarily and customarily associated with hotel use. Extended Stay Hotels shall be permitted to have continuous occupancy of up to ninety (90) calendar days. No entity, corporation or person may occupy or book a unit or units for more than ninety (90) continuous calendar days, without prior approval of the Building Commissioner. Such approval shall only be granted when an occupant has a verifiable employment contract or agreement coincident with the length of stay requested. Transient occupants must have, and be able to demonstrate that they maintain, a principal place of residence elsewhere. Use of an extended stay hotel guest unit as a residence, or dwelling unit, shall not be considered transient. This definition does not apply to On-Site Property Managers at Extended Stay Hotels and does not apply to motels or hotels not meeting the definition of Extended Stay Hotel.

TWO-FAMILY DWELLING – A building containing two (2) dwelling units with not more than three (3) lodgers or boarders per family.

UNITS-PER-ACRE – A measure of residential dwelling density; the number of residential dwelling units located on or proposed for an acre of land, or a portion thereof. Units-per-acre is determined by dividing the number of dwelling units by the acreage. In computing units-per-acre, fractions are rounded to the nearest whole number (for example, 5 dwelling units on 0.37 acres = 13.51 units per acre would be understood to be a density of 14 units per acre, whereas 7 dwelling units on 1.7 acres = 4.11 units per acre would be understood to be a density of 4 units per acre).

UNIT SIZES – MULTI-FAMILY: The dwelling unit sizes for multi-family housing shall be the usable square footage measured from interior wall to interior wall, excluding internal walls.

VIEWSHED - An area that is aesthetically and/or culturally valuable due to its visual significance and is visible from public roads.

WETLAND – Any beach, dune, land under the ocean, land under a water body, coastal bank, inland bank, tidal flat, salt marsh, fresh water marsh, brackish marsh, pond, lake, stream, creek, river, ocean, embayment, estuary, vegetated wetland (including bogs), swamp, or vernal pool.

WIND ENERGY FACILITY – All equipment, machinery, and structures utilized in connection with wind-generated energy production and usage, including related generation, distribution, transmission, and storage or supply systems whether underground, on the surface of the ground, or overhead, and other equipment or byproducts in connection therewith, including but not limited to wind turbine (rotor, electrical generator, and tower), anemometers (wind measuring equipment), transformers, substation, power lines, control and maintenance facilities, and access and service roads.

WIND TURBINE – Equipment used in wind-generated energy production. Wind turbines capture the kinetic energy of the wind and convert it into electricity. Primary components are the rotor (blade assembly), electrical generator, and supporting tower.

YARD – An open space, unoccupied and unobstructed by any structure except: fences, walls, poles, posts, paving, and other customary yard accessories, ornaments and furniture, and ramps, landings and similar structures needed for handicapped access.

Cornices, window sills, belt courses and other ornamental features may project not more than eighteen (18) inches; bay/bow windows, greenhouse windows may not project more than twenty-four (24) inches and chimneys may project not more than thirty-two (32) inches into any required yard.

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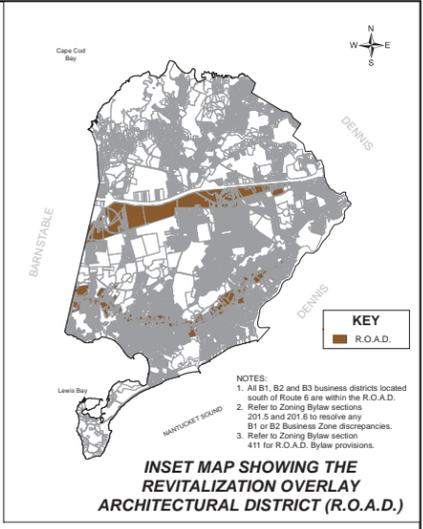
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CAPE COD BAY

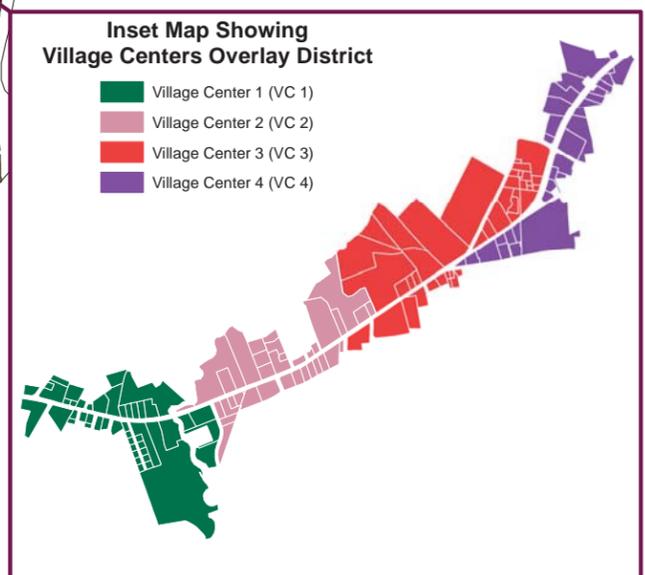
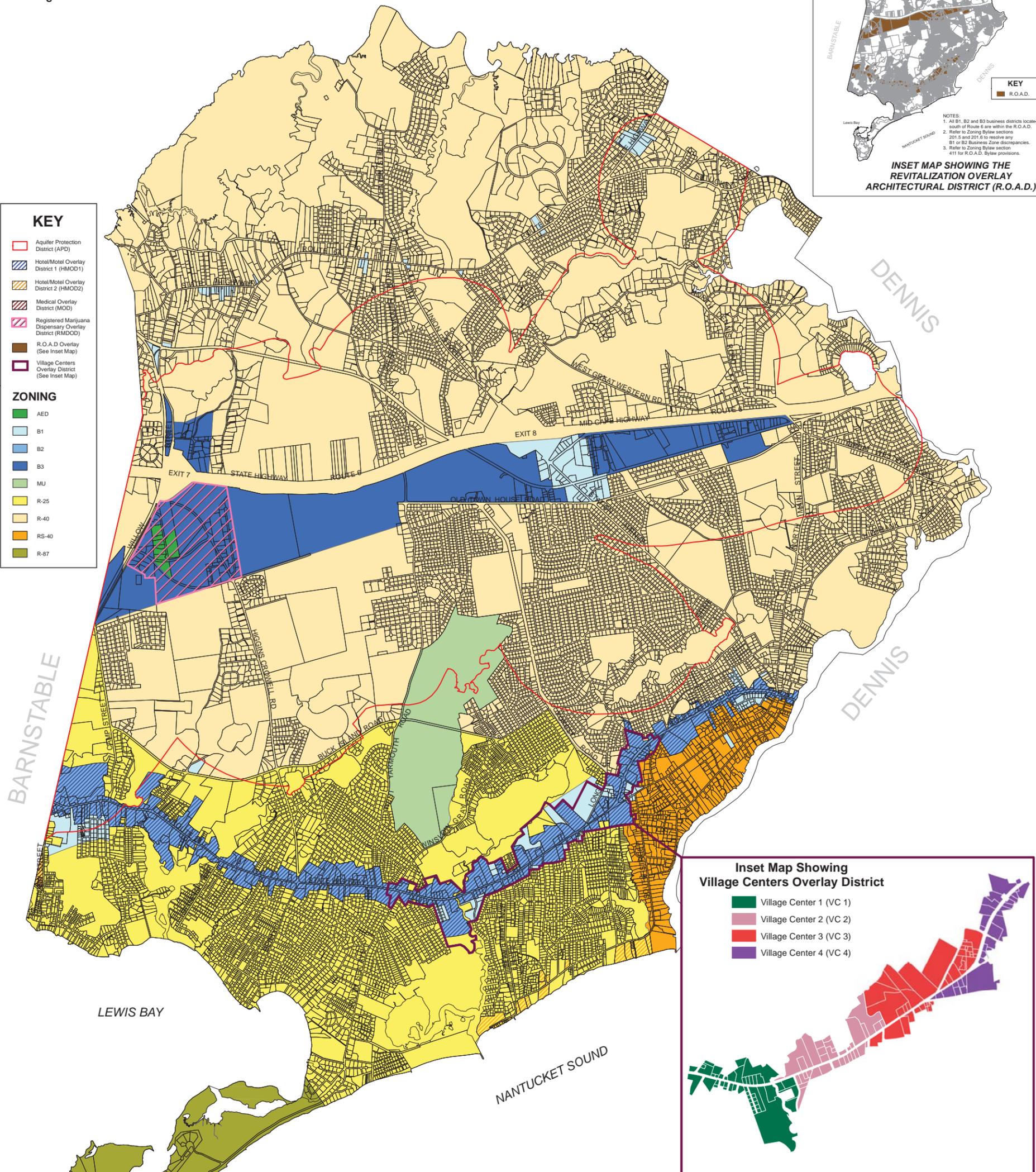


KEY

- Aquifer Protection District (APD)
- Hotel/Motel Overlay District 1 (HM0D1)
- Hotel/Motel Overlay District 2 (HM0D2)
- Medical Overlay District (MOD)
- Registered Marijuana Dispensary Overlay District (RMDOD)
- R.O.A.D. Overlay (See Inset Map)
- Village Centers Overlay District (See Inset Map)

ZONING

- AED
- B1
- B2
- B3
- MU
- R-25
- R-40
- RS-40
- R-87



203.5 Table of Dimensional Requirements (A)

Zoning or Overlay District	Minimum Lot Size in Sq. Ft. (B,C,N,R,S)	Minimum Frontage in feet (F,G,R)	Minimum Yard in feet (D,E,R,U)			Maximum Building Coverage (%) (R)	Maximum Shape Factor (V)
			Front (I)	Side	Rear		
R-87	87210	200	30	50	75	25	22
R-40	40000	150	30	20	20	25	22
R-25	25000	150	30	15	20	25	22
RS-40	40000	150	30	20	20	25	22
B1	25000	150	30 (J, X)	25	20	25 (L)	22
B2	20000	125 (H)	30 (X)	25	20	25 (L)	22
B3	40000	100	30 (K, X)	10 (K)	30	(P)	22
RMDOD	40000	100	30 (W)	10 (W)	30 (W)	(P)	22
MU	217800 (5 acres)	200	30	25	20	25	22
AED	40000	100	30	10	30	(P)	22
HM0D1	20000	125 (H)	30 (X)	25	20	25 (L)	22
HM0D2	20000	125 (H)	30 (X)	25	20	25 (L)	22
MOD	20000	75	20	15	15	35	22
APD	The Aquifer Protection Overlay District (APD) overlays the town's zoning districts; see the information above for dimensional requirements.						(P)
ROAD	The Revitalization Overlay Architectural District (ROAD) overlays other commercial zoning districts, as described in section 411.3						
VCOD (ALL DISTRICTS)	The Village Centers Overlay District (VCOD) overlays other districts and the dimensional requirements of Section 414 shall govern.						



ZONING MAP OF THE TOWN OF YARMOUTH

Updated through Special Town Meeting, October 29, 2019

Refer to Zoning Bylaw sections 201.5 and 201.6 to resolve any B1 or B2 Business Zone discrepancies.
Format approved at Special Town Meeting, February 6, 2001, Article 16.

