

TOWN OF FALMOUTH MASSACHUSETTS



ZONING BYLAW

TOWN CODE CHAPTER 240

ARTICLES 1 – 14

OCTOBER 2021

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TOWN OF FALMOUTH MA ZONING BYLAW

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ARTICLE 1 PURPOSE and AUTHORITY

240 – 1.1 Overview

240 – 1.1A Intent and Purpose

- (1) INTENT – This Zoning Bylaw is intended to give reasonable consideration to the character of Falmouth and the individual zoning districts and their suitability for particular uses with a view of providing direction to the land development policies and regulations of the Town.
- (2) PURPOSE – The purpose of this Bylaw is as follows:
- a. to protect the public health, safety, and welfare of the community;
 - b. to lessen congestion in the streets;
 - c. to secure safety from fire, flood, panic, and other dangers;
 - d. to prevent overcrowding of land;
 - e. to avoid undue concentration of population;
 - f. to encourage housing for persons of all income levels;
 - g. to facilitate the adequate provision of transportation, water supply, drainage, schools, parks, open space, and other public requirements;
 - h. to conserve the value of land and buildings, and to prevent blight;
 - i. to protect and enhance the conservation of natural resources and the environment;
 - j. to encourage appropriate use of land throughout Falmouth, including consideration of the recommendations of the Local Comprehensive Plan adopted by the Falmouth Planning Board and the Regional Policy Plan adopted by the Cape Cod Commission; and,
 - k. to preserve and increase amenities, pursuant to G.L. c. 40A, c. 40B and c. 41, as amended, and Article 89 of the Amendments to the Constitution.

240 – 1.1B Authority

This Bylaw is enacted under the authority of Article 89 of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts and in accordance with G.L. c. 40A, as amended.

240 – 1.1C Applicability

This Bylaw is supplementary to other laws and bylaws affecting the use, height, and area of buildings and structures and the use of premises. Where this Bylaw or any portion thereof imposes a greater restriction than is imposed by other regulations, permits, easements, covenants, or other laws or bylaws, the provisions of this Bylaw shall control.

240 – 1.1D Amendments

- (1) AMENDMENT PROCESS – No amendment to this Bylaw shall be made except by a two-thirds vote of Town Meeting and only after the zoning article is properly submitted to, and a public hearing is held by, the Planning Board in accordance with the procedures of G.L. c. 40A, § 5.

- (2) **FILING FEE** – Any person filing a petition for an amendment to the Zoning Bylaws or Zoning Map shall pay the filing fee. The filing fee shall be published in the Rules and Regulations of the Planning Board and shall be equal to the cost of publication of the required public notice.
- (3) **REPETITIVE PETITION** – No proposed amendment which has been unfavorably acted upon by Town Meeting shall be considered by Town Meeting within 2 years after the date of the unfavorable action unless the adoption of that amendment is recommended in the final report of the Planning Board.
- (4) **ZONING MAP AMENDMENT NOTICE** – Amendments to any zoning district shown on the Official Zoning Map shall require that notice of the Planning Board public hearing required by G.L. c. 40A, § 5, be sent by mail, postage prepaid, to all parties in interest in accordance with G.L. c. 40A, § 11, when those amendments involve the rezoning of 10 or fewer parcels of land. When greater than 10 parcels of land are proposed for rezoning, notice shall be accomplished by publishing a map in the local newspaper with the public hearing notice required by G.L. c. 40A, § 5.
- (5) **EFFECTIVE DATE** – The effective date of an amendment to this Bylaw, subject to its approval by the Attorney General as required by G.L. c. 40, § 32, is the date on which the amendment was voted by Town Meeting.

240 – 1.1E Severability

The provisions of this Bylaw are severable and the invalidity of any provision or section shall not invalidate any other provision or section thereof.

ARTICLE 2 ADMINISTRATION & ENFORCEMENT

240 – 2.1 Building Commissioner & Permits

240 – 2.1A Building Commissioner/Inspector

TITLES – In this Bylaw, the designations "Building Inspector" and "Building Commissioner" are used synonymously .

240 – 2.1B Building Permit

- (1) LOT FRONTAGE – No building permit shall be issued to build a new principal structure on any lot unless the lot has the minimum required frontage on one of the following:
 - a. a public way or a way which the Town Clerk certifies is maintained and used as a public way;
 - b. a way shown on a plan approved and/or endorsed in accordance with the subdivision control law; or
 - c. a way in existence prior to February 17, 1956, which has been improved to the satisfaction of the Planning Board, with respect to having adequate width, grades, and construction to provide for the needs of the vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve the land and buildings erected or to be erected thereon.

- (2) SUBMISSION OF PLANS – Applications for a building permit shall be accompanied by a plan of the lot in duplicate, drawn to scale, showing the actual dimensions of the lot and the exact location and size of the buildings already existing upon the lot, and of the building or structure to be erected, together with streets and alleys on and adjacent to the lot. A record of the applications and plans shall be kept on file in the office of the Building Commissioner.

240 – 2.1C Occupancy Permit

- (1) OCCUPANCY PERMIT REQUIRED – No building or structure shall be erected, altered (if an occupancy permit is required), or changed as to construction or use under a permit or otherwise, and no premises shall be occupied or used without an occupancy permit signed by the Building Commissioner. The permit shall not be issued until the building, structure, or premises and its uses and accessory uses comply in all respects with this Bylaw. A temporary permit may be issued in appropriate cases.

- (2) SITE PLAN REVIEW CONDITIONS – No occupancy permit for full or partial occupancy for projects requiring Planning Board approval shall be issued by the Building Commissioner until notification has been provided by the Planning Board in writing that the Board is satisfied that the conditions of approval of any site plan review under § 240-12.2 have been met, and that the Planning Board has received surety for the completion of specific elements to be completed within a specified time frame.

240 – 2.2 Planning Board

240 – 2.2A Planning Board Overview

- (1) MEMBERSHIP – The Planning Board shall consist of 7 elected members.
- (2) POWERS – The Planning Board shall act on any matter it is authorized to do so under this Bylaw. The Planning Board shall have the following powers:
- a. to be the site plan review granting authority and special permit granting authority where authorized by the Bylaw;
 - b. to initiate amendments to the Zoning Bylaw and Zoning Map. For all proposed zoning amendments, the Board shall hold a public hearing and make a recommendation to Town Meeting as provided for in G.L. c. 40A, § 5;
 - c. to review and consent to filing of any repetitive petition for a special permit by the Planning Board, Zoning Board of Appeals, or Board of Selectmen, before the petition may be reheard by the Board with permit jurisdiction, or for an administrative appeal or variance before the petition may be reheard by the Zoning Board of Appeals; and
 - d. to review any repetitive zoning bylaw or zoning map amendment that, having been acted on unfavorably by Town Meeting, is refiled within 2 years of that denial, and the Board must recommend approval in order for Town Meeting to act on the amendment

240 – 2.3 Zoning Board of Appeals

240 – 2.3A Zoning Board of Appeals Overview

- (1) ZONING BOARD OF APPEALS – There shall be a Zoning Board of Appeals of 5 members and 2 associate members appointed by the Board of Selectmen as provided in G.L. c. 40A, § 12. The term of office of each member shall be for 3 years with the terms so arranged that the term of one member expires each year. Vacancies shall be filled for unexpired terms in the same manner as in the original appointments. The Board shall adopt rules and regulations not inconsistent with the provisions of G.L. c. 40A, G.L. c. 40B and this Bylaw for the conduct of its business, shall file the rules with the Town Clerk and shall make the rules available to the public.
- (2) DESIGNATION – Within this Bylaw, the designations “Zoning Board of Appeals” and “Board of Appeals” are used synonymously.
- (3) ZONING BOARD OF APPEALS POWERS – The Zoning Board of Appeals shall have the following powers:
- a. to hear and decide appeals in accordance with § 240-12.4;
 - b. to hear and decide applications for a special permit, upon which the Board is empowered to act in accordance with § 240-12.1;
 - c. to hear and decide petitions for a variance in accordance with § 240-12.3; and
 - d. to delegate to the Zoning Administrator some of its powers and duties in accordance with G.L. c. 40A, § 13, and § 240-2.3B.
 - e. to hear and decide comprehensive permit applications in accordance with G.L. Chapter 40B and regulations thereto.

240 – 2.3B Zoning Administrator Appointment & Appeal

- (1) ZONING ADMINISTRATOR – The Board of Appeals is authorized to appoint a Zoning Administrator in accordance with the provisions of G.L. c. 40A, § 13. The Board of Appeals may delegate to the Zoning Administrator some of its powers and duties by a concurring vote of all except one member of the Board.
- (2) ZONING ADMINISTRATOR APPEAL – Any person aggrieved by a decision or order of the Zoning Administrator, whether or not a party to the proceeding, or any municipal office or board, may appeal to the Board of Appeals, as provided in G.L. c. 40A, § 14, within 30 days after the decision of the Zoning Administrator has been filed with the Town Clerk. Any appeal, application, or petition filed with the Zoning Administrator where no decision has been issued within 35 days from the date of filing shall be deemed denied and shall be subject to an appeal to the Board of Appeals as provided in G.L. c. 40A, § 8.

240 – 2.4 Enforcement

240 – 2.4A Enforcement

- (1) ENFORCEMENT RESPONSIBILITY – The Building Commissioner shall be responsible for the enforcement of this Bylaw. The Commissioner shall withhold a permit for the construction, alteration, or moving of any building or structure if the building or structure, as constructed, altered, or moved, would be in violation of this Bylaw. No permit shall be granted for a new use of a building, structure, or land, or the changes of use, where that use would be in violation of this Bylaw. Where a permit or variance may be granted with conditions, those conditions shall be imposed and made part of the record.
- (2) ENFORCEMENT REQUEST – If the Building Commissioner is requested in writing to enforce this Bylaw against any person allegedly in violation of the Bylaw and declines to act, the Commissioner shall notify, in writing, the party requesting the enforcement of any action or refusal to act and the reasons therefor within 14 days of receipt of the request.

240 – 2.4B Violation

- (1) MONETARY FINE – Any person violating any of the provisions of the Bylaw, including the failure to obtain any required permit, any of the conditions under which any permit was issued, or any decision rendered by the Zoning Board of Appeals, or any special permit granting authority, shall be fined not more than \$300 for each offense. Each day that the violation continues shall constitute a separate offense.
- (2) NONCRIMINAL DISPOSITION – In addition to the foregoing, the Building Commissioner or designee may penalize a violation by using the noncriminal disposition method of enforcement as provided for in the Falmouth Town Code, Chapter 1, General Provisions; Article 1, Penalties, § 1-2, and G.L. c. 40, § 21D.

ARTICLE 3 DEFINITIONS

240 – 3.1 Terms

240- 3.1A Overview

(1) MEANING OF TERMS – The terms found in § 240-3.3 shall have the meaning of their definition unless the context of the term’s use clearly indicates another meaning or another meaning is specifically prescribed in the Bylaw.

(2) DEFINITION GUIDELINES

- a. Words used in the present tense include the future.
- b. The singular includes the plural and the plural includes the singular.
- c. The word “includes” or “including” shall not limit a term to specified examples but are intended to extend the meaning to all other instances, circumstances, or items of like character or kind.
- d. The words “used” or “occupied” include the words “designed”, “arranged”, “intended”, or “offered”, to be used or occupied.
- e. The words “building”, “structure”, “lot,” “land”, or “premises” shall be construed as though followed by the words “or any portion thereof”.
- f. Unless the context otherwise requires, the word “shall” (having the general meaning of “must”) is always mandatory and not merely directory and the word “may” is permissive.
- g. The “Town” is the Town of Falmouth.

(3) TERMS NOT DEFINED – In the interpretation and enforcement of this Bylaw, words and terms not defined shall be interpreted by consulting one or more of the following resources, whichever is the most appropriate:

- a. the State Building Code, as amended.
- b. the Massachusetts General Laws, as amended.
- c. the most recent edition of Webster’s Unabridged Dictionary.
- d. Other provisions of the Code of Falmouth

240-3.2 Index of Defined Terms

240- 3.2A Summary

ARTICLE 3 DEFINITIONS is a list of certain terms used in the Zoning Bylaw. Definitions are not listed alphabetically by definition term from A to Z. Instead they are grouped by topic category. Thus, all terms related to a topic category, regardless of the first letter of the term itself, are listed within that category. For example, in the Agriculture topic category there are terms beginning with the letter “A” (Agriculture), “F” (Farm), and “N” (Nursery). Also note that some terms, such as Abandonment and Campground, are listed singularly.

In order to assist the reader in finding terms in Section 3, the DEFINITIONS INDEX below provides a list of all terms defined and the topic category of related terms where they are located.

ARTICLE 3 – DEFINITIONS INDEX			
Defined Term	Category of Related Terms	Defined Term	Category of Related Terms
Abandonment	Abandonment	Commercial Accommodations	Lodging
Accessory Building	Accessory	Common Driveway	Streets, Roads, & Driveways
Accessory Land Use	Wind Energy System	Common Ownership	Common Ownership
Accessory Use	Accessory	Commercial Accommodations	Lodging
Adult Bookstore	Adult	Drive-thru Establishment	Drive-thru
Adult Dance Club	Adult	Drive-thru Window	Drive-thru
Adult Day Care	Day Care & Child Care	Dwelling Unit	Residential/Dwelling/Housing
Adult Motion Picture Theater	Adult	Evergreen	Landscape
Adult Paraphernalia Store	Adult	Family	Residential/Dwelling/Housing
Adult Uses	Adult	Family Child Care Home	Day Care & Child Care
Adult Video Store	Adult	Farm	Agriculture
Affordable Dwelling Unit	Residential/Dwelling/Housing	Farming	Agriculture
Agriculture	Agriculture	Farm Related Business	Agriculture
Alteration of Land form	Environmental	Fast-food Restaurant	Restaurant
Ambient Sound Level	Wind Energy System	Flicker	Wind Energy Systems
Annual	Landscape	Flood Insurance Rate Maps of Falmouth	Environmental
Aquifer	Water Resource Protection	Flood Plain District	Environmental
Automobile Repair Shop	Automobile	Floodproofing	Environmental
Base Flood Elevation	Environmental	Floor Area Ratio	Building & Structure
Berm	Landscape	Front Yard	Lot & Yard
Boardinghouse	Lodging	Gross Floor Area	Building & Structure
Breakaway Walls	Building & Structure	Gross Leasable Floor Area	Building & Structure
Broadband Sound	Wind Energy System	Ground Cover	Landscape
Buffer	Landscape	Ground Mounted Solar Photovoltaic Array	Solar
Building Area	Building & Structure	Group Day Care Home	Day Care & Child Care
Building Height	Building & Structure	Guest House	Lodging
Campground	Campground	Half Story	Building & Structure
Child Care Facility	Day Care & Child Care	Hazardous Material	Water Resource Protection

ARTICLE 3 – DEFINITIONS INDEX			
Defined Term	Category of Related Terms	Defined Term	Category of Related Terms
Hedge	Landscape	Multiple Use	Use
Herbaceous Perennial	Landscape	Naturalized	Landscape
Home-based Service Business	Home Occupation	Net Metering	Wind Energy System
Home Occupation	Home Occupation	Nonconforming Building	Nonconforming
Impervious Surface	Water Resource Protection	Nonconforming Structure	Nonconforming
Kennel	Kennel	Nonconforming Use	Nonconforming
Kennel Keeper	Kennel	Noncriminal Disposition	Noncriminal Disposition
Kennel, Commercial	Kennel	Nuisance	Nuisance
Landscape	Landscape	Nursery	Agriculture
Landscape Object	Landscape	Perennial	Landscape
Large Family Child Care Home	Day Care & Child Care Home	Pond	Environmental
Large Wind Energy System (LWES)	Wind Energy System	Power Grid	Wind Energy System
Lot	Lot & yard	Principal Structure	Building & Structure
Lot area	Lot & Yard	Public Outreach Area	Wind Energy System
Lot Frontage	Lot & Yard	Pure Tone Sound	Wind Energy System
Lot Width	Lot & Yard	Qualifying Patient	Marijuana
Marijuana-infused Product (MIP)	Marijuana	Rated Capacity	Wind Energy System
Marina	Waterfront	Rear Yard	Lot & Yard
Marsh	Environmental	Recharge Area	Water Resource Protection
Master Plan	Master Plan	Recreational Trailer	Automobile
Mean Sea Level	Environmental	Recreational Vehicle	Automobile
Meteorological Tower	Wind Energy System	Registered Marijuana Dispensary	Marijuana
Mining	Water Resource Protection	Restaurant	Restaurant
Motor Home	Automobile	Restaurant Class I	Restaurant
Motor Vehicle Sales	Automobile	Restaurant Class II	Restaurant
Motor Vehicle Service Station	Automobile	Restaurant Class III	Restaurant
Mulch	Landscape	Restaurant Class IV	Restaurant
Multifamily Dwelling	Residential/Dwelling/Housing	Restaurant, Fast Food	Restaurant
Multifamily Use	Residential/Dwelling/Housing	Rooming House	Lodging

ARTICLE 3 – DEFINITIONS INDEX			
Defined Term	Category of Related Terms	Defined Term	Category of Related Terms
Salvage Yard	Industrial	Time-Interval Ownership Dwelling Unit	Residential/Dwelling/Housing
Screen	Landscape	Toxic Material	Water Resource Protection
Semi-detached Dwelling	Residential/Dwelling/Housing	Tree	Landscape
Service Area	Landscape	Two-family Dwelling	Residential/Dwelling/Housing
Setback	Lot & Yard	System Height	Wind Energy System
Shrub	Landscape	Tidal Marsh	Environmental
Side Yard	Lot & Yard	Undisturbed	Landscape
Sight (Clear) Triangle	Streets, Roads & Driveways	Use	Use
Single-family Dwelling	Residential/Dwelling/Housing	Vegetated Island	Landscape
Small Wind Energy Systems (SWES)	Wind Energy System	Vehicular Stacking Area	Automobile
Solar, Ground Mounted Solar Photovoltaic Array	Solar	Velocity Zones	
Story	Building & Structure	(V-Zones)	Lot
Stream	Environmental	Undisturbed	Landscape
Street	Streets, Roads & Driveways	Use	Use
Street Tree	Landscape	Water Resource Overlay Protection District (WROPD)	Water Resource Protection
Structure	Building & Structure	Wind Energy System (WES)	Wind Energy System
Substantial Damage (Structure)	Building & Structure	Wind Turbine	Wind Energy System
Substantial Improvement (Structure)	Building & Structure	Woodwork Mill	Woodwork Mill
Swamp	Environmental	Xeriscape	Landscape
System Height	Wind Energy System	Yard	Lot & Yard
Tidal Marsh	Environmental	Yard, Front	Lot & Yard
Tidal Pond	Environmental	Yard, Side	Lot & Yard
Tidal River	Environmental	Yard, Rear	Lot & Yard

240 – 3.3 Definitions

Abandonment – The cessation of a use or structure accompanied by: (a) an intent to abandon, and (b) conduct, or one or more voluntary acts, whether affirmative or negative, evidencing an intent to abandon. Time is not a controlling factor, although the lapse of time may be considered as evidence of an intent to abandon. Cessation alone of a use or structure for 2 years or more shall be deemed to be abandonment.

ACCESSORY RELATED TERMS

Accessory Building – A building such as a garage or shed, located on the same lot with, and accommodating a use accessory to, the principal permitted use of the premises.

Accessory Use – A use of land or building on the same lot with, and customarily incidental but secondary to, a principal permitted use, except that if more than 30% of the floor area or 50% of the lot area is occupied by such use it shall no longer be considered “accessory.”

ADULT RELATED TERMS

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 G.L. c. 272, § 31. For the purposes of this Bylaw, a “substantial or significant portion of its stock” refers to a minimum of 15% of the total stock as determined by the Building Commissioner.

Adult Dance Club – An entertainment establishment which permits a person or persons to perform in a state of nudity as defined by G.L. c. 272, § 31, or an establishment which displays live entertainment that which is distinguished or characterized by its emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. 272, § 31.

Adult Motion-Picture Theater – An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. 272, § 31.

Adult Paraphernalia Store – An establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined by G.L. c. 272, § 31. For purposes of this Bylaw, a “substantial or significant portion of its stock” refers to a minimum of 15% of the total stock as determined by the Building Commissioner.

Adult Uses – An adult bookstore, an adult motion-picture theater, an adult dance club, and adult paraphernalia store, an adult video store, and such other uses as provided by G.L. c. 40A, § 9A. as further defined in the Bylaw.

Adult Video Store – An establishment having as a substantial or significant portion of its stock-in-trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, § 31. For purposes of this Bylaw, a “substantial or significant portion of its stock” refers to a minimum of 15% of the total stock as determined by the Building Commissioner.

AGRICULTURE & FARM RELATED TERMS

Agriculture & Farming - "Agriculture" or "Farming" shall include farming in all of its branches and:

- a. the cultivation and tillage of soil;
- b. dairying;
- c. the production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, or horticultural commodities;
- d. the growing and harvesting of forest products open forest land;
- e. the raising of livestock including horses;
- f. the keeping of horses as a commercial enterprise;
- g. the keeping and raising of poultry, swine, cattle, or other domesticated animals used for food purposes;
- h. the keeping of bees;
- i. the keeping and raising of fur-bearing animals; and
- j. any forestry or lumbering operations.

These activities are performed by a farmer, who is hereby defined as one engaged in agriculture or farming as defined, or on a farm as defined, as incident to or in conjunction with such farming operations, including preparations for market, delivery to storage, to market, or to carriers for transportation to market.

Farm – A parcel of land containing at least 5 acres devoted exclusively to and currently maintaining one or more agricultural uses as defined under G.L. c. 128, § 1A, or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in areas not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel.

Farm Related Business – A business operated on a farm parcel, related to or supportive of agricultural activities such as agricultural tourism, farm vacations, active and passive recreational opportunities, blacksmithing, farm implement repairs, sale of small or light garden supplies, equipment and tools customary and incidental to the sale of garden plants and nursery stock.

Nursery – A commercial business where trees, shrubs, and plants are grown, whether from seed or otherwise, including plants maintained for sale on or off the premise. In conjunction with the sale of plants, only those quantities of peat moss, humus, mulches, fungicides, insecticides, chemicals, and fertilizers as intended to nourish and/or preserve those plants are allowed. This definition is subject to the provisions of state law governing agriculture as defined in G.L. c. 128, § 1A.

AUTOMOBILE, MOTOR VEHICLE & TRAILER RELATED TERMS

Automobile Repair Shop – A repair shop for automobiles and other motor vehicles utilizing power-driven machinery, welding equipment, paint sprayers, and other comparable equipment.

Motor Home – An automotive vehicle built on a truck or bus chassis and equipped as a self-contained traveling home.

Motor Vehicle Sales – Premises licensed for sale or rental of self-propelled wheeled conveyances including automobiles, motorcycles, mopeds, motorized recreational vehicles, trucks, buses, and

construction or farm equipment.

Motor Vehicle Service Station – Premises devoted primarily to retail sale and on-premises dispensing of fuels and lubricants or washing of automobiles and other motor vehicles, with any repair services or other sales or services of secondary importance, not to include body work, painting, or major repairs.

Recreational Trailer or Vehicle – A vehicular portable unit without a permanent foundation, designed for travel, camping, or recreational use. This includes travel trailers, truck campers, camping trailers, motorized camper, pickup truck camper, fifth-wheel camper, tent trailer, or boat trailer.

Vehicular Stacking Area – A queuing area made up of individual stacking spaces for motorists who remain in their vehicles awaiting service at a drive-thru window or other services.

BUILDING & STRUCTURE RELATED TERMS

Breakaway Wall – Any type of wall, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable materials, which are not part of the structural support of the building and which are so designed as to breakaway, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by floodwaters.

Building Area – The aggregate of the maximum horizontal cross-section of the building on a lot, including accessory structures, but excluding the following:

- a. cornices, eaves, gutters, or chimneys, projecting not more than 24 inches from the outside wall;
- b. steps;
- c. one-story open porches; and
- d. balconies and terraces.

Building Height – Building height shall be defined as follows:

- a. For community service and public buildings, “building height” is defined as the vertical distance from the mean level of natural grade across the actual building line, across all street sides of the proposed building to the highest point of the roof or parapet for flat or shed roofs, to the deckline for mansard roofs, and to the mean height between the eaves and to the ridge for gable, hip, and gambrel roofs. That measurement shall be based on the elevation of the lot in its natural state prior to construction, grading, or filling.
- b. For all other buildings, “building height” is defined as the vertical distance from the mean level of the natural grade across the actual building line across all street sides of the proposed building to the highest point of the roof or parapet for flat or shed roofs, to the deckline for mansard roofs, and to the ridge for gable, hip, and gambrel roofs. That measurement is to be based on the elevation of the lot in its natural state prior to construction, grading, or filling.
- c. Height limitations shall apply to any extensions of the structure that are integral to the habitable space, regardless of the square footage of the extension. Height limitations shall not apply to television antennas, chimneys, spires, or minor extensions of the structure strictly ornamental in nature.

Floor Area Ratio – The fixed relationship between the lot area and the floor area of any structure(s)

thereon, and expressed as a fraction of gross floor area/lot area.

Gross Floor Area – The sum of the horizontal areas of all stories of a building or buildings on a lot, measured from the exterior faces of exterior walls, or in the case of a common wall separating 2 buildings, from the centerline of that common wall.

Gross Leasable Floor Area – The sum of the gross horizontal areas of all floors of all buildings, designed for business occupancy, located on a parcel and measured from the exterior faces or walls. This shall include the area of basements used for custodial, commercial, industrial, or residential purposes but not that area for housing of mechanical or central heating equipment of the building, nor areas of basements not open to the public that are used solely for the owner's and tenant's storage of merchandise or supplies.

Half Story – That portion of a building under any type of sloping roof, which is potentially habitable as defined under Massachusetts Building Code and within which the number of square feet in area does not exceed $\frac{1}{2}$ of the area of the story below. If the square foot area of the subject portion is greater than $\frac{1}{2}$ the area of the story below, that portion shall be deemed a story.

Principal Structure – The structure in which the primary use of the lot is conducted, including porches, decks, and any other attached utility building or other projection of the structure. Setback requirements for "principal structures" shall not apply to permissible yard and court encroachments allowed under the State Building Code and to uncovered and unenclosed first-floor entry platforms if those platforms extend not more than 4 feet from the outside wall and are not more than 4 feet wide.

Story – A partially or wholly enclosed floor of a building. A story, the ceiling of which is 4 feet or more above the average natural grade level across the building wall fronting all streets, shall be considered a "story".

Structure – A combination of materials to form a construction for use, occupancy, or ornamentation, whether installed on, above, or below the surface of land or water. Anything constructed or erected, the use of which requires a fixed location on the ground or attachment to something located on the ground.

A structure includes tennis or similar sports courts; a structure designed to contain water for swimming or recreational bathing as defined in the Massachusetts State Building Code 780 CMR that is more than 24 inches deep; and gas or liquid storage tanks if principally above ground. Retaining walls or fences are not included except as provided for in the paragraph below.

Stonewalls, retaining walls, fences, gates, memorials, and paved driveways, or other paved driveways or other paved areas located in an Historic District created pursuant to c. 654 of the Acts of 1975 as amended and, in the opinion of the Building Commissioner visible from a public way, shall be considered structures.

Structure - Substantial Damage – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred, regardless of the value or actual cost of repair work performed.

Structure - Substantial Improvement – Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a structure, performed within any 12-month period, the

cumulative cost of which equals or exceeds 50% of the market value of the structure before the initial improvement or repair is started. For the purposes of this definition, "substantial improvement" starts when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

For the purposes of this definition, in Velocity V Zones "substantial improvement" also includes any addition(s), improvement(s), alteration(s) or combinations thereof to a structure that would add more than 200 square feet of gross floor area. The term does not include either any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the Building Commissioner and which are the minimum necessary to assure safe living conditions or any alteration of a historic structure, provided that the alteration will not preclude the structure's continued federal or state designation as a historic structure.

Campground – Premises used for recreational camping, subject to regulations under Article VIII of the State Sanitary Code, in which mobile homes (as distinct from travel trailers) are not accommodated.

Common Ownership – Ownership by one or more individuals or entities in any form of common ownership of 2 or more lots.

Comprehensive Plan – See **Master Plan**.

DAY-CARE & CHILD-CARE RELATED TERMS

Adult Day Care – A facility where care for the elderly or functionally impaired adults is provided in a protective setting for a portion of a 24-hour day.

Child Care Center - A facility operated by an entity licensed by the Massachusetts Department of Early Education and Child Care under G.L. c. 15D, § 1A, which may be known as a child nursery, nursery school, kindergarten, child play school, child development center, pre-school, or other similar name and which receives children not of common parentage under 7 years of age, or under 16 years of age if they are children with special needs, for nonresidential custody and care during part of the day. Child 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, nurse, 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 child care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation.

Family Child Care Home – A private residence operated in accordance with G.L. c. 15D, §§ 1A & 6, which, on a regular basis, receives for temporary custody and care during part of or all day, children under 7 years of age, or children under 16 years of age if those children have special needs. The child care home receives for temporary custody and care for a limited number of hours children of school age. The total number of children under 16 in a Family Child Care Home shall not exceed 6, including participating children living in the residence. Family Child Care Homes shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children without compensation.

A "family child care home" shall be defined as a home occupation.

Group Day Care Home – A place licensed by the state which offers or provides a program of supplementary care to more than 6 related or unrelated persons on a regular basis for a part of the 24 hours in one or more days per week.

Large Family Child Care Home - A private residence operated in accordance with G.L. c. 15D, § 1A, which, on a regular basis, receives for temporary custody and care during part of or all day, children under 7 years of age, or children under 16 years of age if those children have special needs. The child care home receives for temporary custody and care for a limited number of hours children of school age. The total number of children under 16 in a large family child care home shall not exceed 10, including participating children living in the residence. A large family child care home shall have at least 1 approved assistant when the total number of children participating in child care exceeds 6. Large family child care homes shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children without compensation.

Density – The number of dwelling units, households, families, or housing structures per acre of land.

Dwelling – For all terms related to dwellings, see the **Residential Related Terms** section.

DRIVE-THRU RELATED TERMS

Drive-Thru Establishment – A place of business where food, goods, or services are delivered through a pickup window, generally to a vehicle; a place of business which through design, physical facilities, service or packaging procedures, permits customers to receive services or food, or to obtain goods while remaining in their motor vehicles; or a place of business so developed that its principal retail or service character is dependent on providing a driveway approach of parking spaces for motor vehicles so as to serve patrons while in the motor vehicle.

Drive-Thru Window – A customer service facility located in the principal structure or anywhere on the lot designed to enable the customer to transact business with a person or machine located within the structure without exiting the motor vehicle. This definition shall include without limitation: food take-out windows, ATMs, kiosks, pneumatic tubes, and drop boxes.

ENVIRONMENTAL RELATED TERMS

Alteration of the Land Form – Any man-made change in the existing character of the land including filling, grading, paving, dredging, mining, excavation, or drilling operations other than routine excavation, well-drilling, backfilling, grading, and paving incidental to the construction of a residence or other structure for which a building permit has been issued.

Base Flood Elevation Level – The level to which coastal waters may rise under the effect of wind, tide, and hurricane surge. “Base flood” means the flood having a one-percent chance of being equaled or exceeded in any year. “Base flood elevation levels” are measured in feet above mean sea level.

Dune – A naturally occurring accumulation of sand in ridges or mounds landward of the beach.

Dune, Man-made – A man-made formation of sand, such as a mound or ridge, that lies generally parallel to, and landward of, the beach.

Flood Insurance Rate Maps of Falmouth – Flood Insurance Rate Maps, dated July 16, 2014, as published by the Federal Emergency Management Agency and adopted by Town Meeting.

Floodplain District – Those areas subject to coastal flooding at the base flood elevation levels

established in § 240-7.3 of this Bylaw. The Floodplain Districts are shown on the Town Zoning Map on file in the Town Hall with the Town Clerk.

Floodproofing – Watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces, and other factors associated with the base flood.

Marsh – Any essentially flat, frequently wet, and occasionally flooded area adjoining open water along the shores of a pond or its banks, or a stream, and lying between such open water and the adjacent natural or artificial upland.

Mean Sea Level – Whenever "mean sea level" appears in this Bylaw, it shall be the mean sea level datum of 1993, known as the "National Geodetic Vertical Datum."

Pond – A body of open water, other than a stream, a bay, or the ocean.

Stream – Any natural watercourse, generally containing water, through and along which water may flow from a pond, swamp, or similar body of water to another, to another "stream", or to the ocean.

Swamp – Any depressed area of poor drainage, subject to flooding by freshwater, where the water table is generally at or above the ground level and not caused or affected by saltwater or action of the oceanic tide.

Tidal Marsh – Tidal marshes shall include the marshes listed "a." and "b". below. Marsh indicators include the presence of the salt marsh grasses, *Spartina alterniflora*, *Spartina patens* or *Distichlis spicata*, commonly known respectively as "thatch" or "saltwater cord grass", "salt meadow" or "high water cord grass", or "spike grass". These areas shall include all of the original contiguous area of "tidal marsh" from which saltwater is excluded at present by artificial dikes, causeways, or the like.

- a. a marsh in which action of the oceanic tide causes the surface to be flooded regularly by the spring tides in the course of the annual tidal cycle, but exclusive of storm tides, hurricane tides or tidal waves; and
- b. a marsh area developed and maintained by incursion of the oceanic saltwater or by action of the oceanic tide.

Tidal Pond – Any pond in which action of the oceanic tide causes the water to ebb and flow or the water level therein to rise and fall with some regularity, exclusive of storm tides, hurricane tides, or tidal waves, irrespective of any actual incursion or admixing of oceanic saltwater.

Tidal River – Any stream in which action of the oceanic tide causes the water to ebb and flow or the water level therein to rise and fall with some regularity, exclusive of storm tides, hurricane tides or tidal waves, irrespective of any actual incursion or admixing of oceanic saltwater.

Velocity Zones (V-Zones) – Those direct coastal areas within a Floodplain District which may be subject to extreme damage from the velocity of wave action or storm surge. The V-Zones are shown on the Town Zoning Map on file in Town Hall with the Town Clerk.

Farm – For definitions related to "Farm", refer to the **Agriculture Related Terms** section.

HOME OCCUPATION RELATED TERMS

Home Occupation – Use of a dwelling unit, or an accessory building, that is clearly incidental and subordinate to its use for residential purposes by its family residents for employment involving the manufacture, provision, or sale of goods or services. For the purposes of this definition the home occupation must be owned and operated by the resident of the premises.

Home-based Service Business – A home occupation that operates from a single-family residence, or structure on an adjoining lot, provided that both lots are in common ownership with the respect to fee and not-fee interests and do not satisfy the definition of a "contractor yard", and meets the following criteria:

- a. the single-family residence shall be the domicile of the resident owner/operator of the business;
- b. the business employs not more than 2 individuals who are nonfamily members on the premises;
- c. the business is one of the following types:
 - i. landscaping
 - ii. electrical wiring
 - iii. plumbing, including gas fitting
 - iv. construction, including home building and remodeling, framing, masonry and foundations, siding, carpentry, drywall, air conditioning, energy services, roofing, painting, and sign making
 - v. mobile marine services, excluding boat storage
 - vi. other general services not more specifically listed; and
- d. the business meets all the criteria contained in § 240-9.5.B, the special permit criteria for home-based service businesses.

Industrial Related Terms

Contractor's Yard – Premises used by a building or construction contractor or subcontractor principally for the storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled vehicles.

Salvage Yards – A place where junk, waste, discarded materials, or salvage materials are bought, sold, exchanged, stored, bailed, packed, disassembled, or handled, including automobile wrecking yards, house wrecking yards, and structural steel and equipment storage, but not including the purchase or storage of used furniture and household equipment, used cars in operable condition, or used or salvaged materials as part of manufacturing operations.

Kennel Related Terms

Kennel – A shelter for 4 or more dogs, 6 months of age or over, on a single premise, including a commercial boarding or training kennel, commercial breeder kennel, domestic charitable corporation kennel, personal kennel, or veterinary kennel.

Kennel, Commercial – A kennel, subject to G.L. c. 140, §§ 136A and 137A-D, that is maintained as a business for the breeding, rearing, training, boarding, or grooming of dogs, or which sells dogs born and raised on the premises from more than one litter per year. Commercial boarding or training kennels shall not include an animal shelter or animal control facility, a pet shop licensed under G.L.

c. 129, § 39A, a grooming facility operated solely for the purpose of grooming and not for overnight boarding, or an individual who temporarily boards or cares for animals owned by others.

Kennel, Keeper – The person, business, corporation, entity, or society having possession of a dog.

Kennel Owner – The person in whose name the kennel license is issued.

Landscape Related Terms

Annual – A plant with soft and fleshy stems which lives for only 1 or 2 years.

Berm – A mound of earth covered with plants and used as a screen.

Buffer or Screen – Any landscape object or structure (such as a fence, berm or hedge) used to hide something from view or as a barrier for privacy, security, or protection from noise, wind or dust.

Deciduous – Any woody perennial which drops its leaves in autumn or winter.

Evergreen – Any woody perennial which retains its leaves throughout the year.

Formal – A landscape designed primarily on classical geometric lines, typically requiring high maintenance.

Ground Cover – Low shrubs, herbaceous perennials, or reseeding annuals that are planted to cover the ground completely at maturity to stabilize slopes or substitute for a lawn.

Hedge – Shrubs planted close together in a solid line to delineate a space, form a border, or create a screen for privacy.

Herbaceous Perennial – A perennial plant with soft and fleshy stems which dies back to the ground in winter.

Landscape – (noun) - the spatial relationship of the topography, structures, and vegetation.
(verb) - to modify or ornament nature by altering topography, structures or vegetation.

Landscape Object – Any fixed feature in the landscape which does not require a building permit.

Mulch – Organic material used to temporarily cover the ground until plants can reach maturity and cover it.

Naturalized – A landscape designed primarily on curved lines to mimic nature and that typically requires little maintenance.

Perennial – A plant which lives for more than 2 years.

Service Area – Any area which contains a loading dock, dumpster, or outdoor storage of merchandise, vehicles, or equipment.

Shrub – A woody perennial plant growing to a height of 15 feet or less at maturity.

Street Tree – A tree with characteristics (such as sturdy limbs, deep root system or lack of low

branches) which makes it desirable for planting near pavement or underground utilities.

Tree – A woody perennial plant growing to a height of 15 feet or more at maturity.

Undisturbed – A landscape design which primarily utilizes existing plants in a natural state and requires no maintenance.

Vegetated Island – An area inside a paved parking area with vegetation instead of pavement.

Xeriscape – A landscape designed with native, drought-tolerant species.

Lodging Related Terms

Commercial Accommodations – Premises for rental to transient guests, including a boarding, lodging, or tourist home; motel; hotel; or inn.

Boardinghouse – A lodging house in which meals are served, for compensation, to the guests, or others.

Guest Unit – A room or suite of rooms in commercial accommodations suitable for separate rental.

Lodging House – A house where lodgings are let by the day, week, or month, for compensation, to 4 or more persons not within second degree of kindred to the person operating the lodging house in accordance with G.L. c. 140, §§ 22-23. A Lodging House does not include group residences licensed or regulated by agencies of the Commonwealth,

Rooming House – In accordance with G.L. c. 111, § 199B, every dwelling unit or part thereof that contains 1 or more rooming units in which space is let or sublet for compensation by the owner or operator to 4 or more persons not within second degree of kindred to the person compensated. Rooming units shall mean the room or group of rooms let to an individual or household for use as living and sleeping quarters.

Lot & Yard Related Terms

Lot – A designated tract, parcel, or area of land established by subdivision, approval not required plan, or as otherwise established by law, having specific boundaries, and delineated by a solid closed line. A continuous parcel of land under one ownership delineated by a solid closed line and shown on a plan endorsed by the Planning Board and filed at the Land Court or the Registry of Deeds.

Lot Area – The horizontal area of the lot exclusive of any area in a street or recorded way open to public use. Land under any water body, freshwater or coastal wetland, beach, dune, flat, marsh, or swamp as defined in § 235-9B of the Town of Falmouth Wetlands Protection Bylaw, shall not be included in the "lot area" required for zoning compliance. This definition shall not apply to a lot shown on a plan or described in a deed duly recorded at the Registry of Deeds as of April 1, 1996, which, at the time of the Zoning Bylaw change, conformed to the then existing requirements for the zoning district in which it is located.

Lot Frontage – That portion of a lot fronting upon and having legal rights of access to a street to be measured continuously along one street line between the side lot lines and their intersection with the street line, or in the case of a corner lot, the combined frontage to the point of intersection with the street lines extended. Frontage requirements for up to 3 lots on the arc of the curve at the end of

a cul-de-sac may be reduced to no less than 60% of the required minimum for the district.

Lot Width – The diameter of the largest circle that can be inscribed in the lot boundaries. Land under any water body, freshwater or coastal wetland, beach, dune flat, marsh, or swamp, as defined in § 235-9B of the Town of Falmouth Wetlands Protection Bylaw, shall not be included in the lot width required for zoning compliance. This definition shall only apply to a new lot created after April 13, 1998.

Setback – The distance between a lot line and the line beyond which a structure may be built or an allowed use may occur.

Yard – An area open to the sky, located between a street or other property line and any structure or element thereof other than a fence, wall, other customary yard accessory or projection allowed to encroach on building lines by the Commonwealth of Massachusetts State Building Code. Depth is to be measured perpendicular to the street or property line.

Yard, Front – A front yard includes both of the following:

- a. that area of a lot between the front walls (including offsets) of the principal building and the lot frontage adjacent to the street the lot adjoins; and
- b. the area between the lot frontage adjacent to the street and lines drawn from the two front corners of the building parallel to the lot frontage until they intersect a side lot line.

Note: A lot may have more than one front yard. Primary front yards may be designated by the Building Commissioner for the purpose of maintaining a front yard setback. A front yard not designated as a primary front yard may maintain a side or rear yard setback.

Yard, Rear – That portion of a lot extending across the full width of the lot between the rear wall(s) of the principal structure and the rear lot line. The depth of the required "rear yard" shall be measured horizontally from the nearest part of the rear lot line toward the nearest part of the principal structure.

Yard, Side – That portion of a lot between the principal structure and the side lot line extending from the front yard or front lot line where no front yard is required, to the rear yard. The width of the required "yard" shall be measured horizontally from the nearest point of the side lot line toward the nearest part of the main building.

Marijuana Treatment Centers Related Terms

Marijuana-infused Product (MIP) – A product infused with marijuana that is intended for use or consumption, including, but not limited to, edible products, ointments, aerosols, oils, and tinctures.

Marijuana Treatment Center/Registered Marijuana Dispensary – A not-for-profit entity registered under 105 CMR 725.000 that acquires, cultivates, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, including development of related marijuana-infused product (MIP), related supplies, or educational materials to registered qualifying patients or their registered personal caregivers.

Qualifying Patient – A Massachusetts resident 18 years of age or older who has been diagnosed by a Massachusetts licensed certifying physician as having a debilitating medical condition, or a Massachusetts resident under 18 years of age who has been diagnosed by two Massachusetts

licensed certifying physicians, at least one of whom is a board-certified pediatrician or board-certified pediatric subspecialist, as having a debilitating medical condition that is also a life-limiting illness, subject to 105 CMR 725.010(J). "Registered qualifying patient" means a qualifying patient who has applied for and received a registration card from the Department of Public Health.

Master Plan – A Master Plan, also known as a Local Comprehensive Plan, is a statement, through text, maps, illustrations, or other forms of communication, designed to provide a basis for decision-making regarding the long-term planning and development of the municipality. The Master Plan shall be internally consistent in its policies, goals, and strategies, and implementation actions.

Nonconforming (Use, Building, Structure, and Lot) – Uses, buildings, structures, and lots lawfully in existence or that lawfully had begun before the first publication of a notice of a public hearing to amend this Bylaw in accordance with G.L. c. 40A, § 5, which do not comply with the regulations for the district in which they now exist.

Noncriminal Disposition – A process used for a violation of a town bylaw or of the rules and regulations of a municipal officer, board, or department subject to a specific penalty as authorized pursuant to G.L. c. 40, § 21D.

Nuisance – An interference with the enjoyment and use of property greater than normally expected in the general area. Interference in the health and comfort of people to an unreasonable extent.

Residential/Dwelling/Housing/Family Related Terms

Affordable Dwelling Unit – A dwelling unit that complies with 760 CMR 56, or successor regulations, regarding unit inclusion on the state subsidized housing inventory.

Dwelling – A building or portion thereof used exclusively for residential occupancy (living, sleeping, cooking, and eating) including one-family, two-family, and multifamily dwellings. This does not include commercial accommodations used, or intended for use, by single or multiple families, as the case may be,

Dwelling Unit – A room or enclosed floor space within a dwelling used or intended for use by one-family or a household, for living, sleeping, cooking, and eating.

Family – A “family” may include any of the following:

- a. an individual residing in one dwelling unit;
- b. a group of persons related by marriage, blood, or adoption, including domestic employees, residing in one dwelling unit;
- c. a group of unrelated individuals, not to exceed 5, residing cooperatively in one dwelling unit, where the taking of boarders is expressly prohibited; or
- d. a group of unrelated individuals, determined to be handicapped by the Building Commissioner under the Federal Fair Housing Act, State law, or this Bylaw, residing cooperatively in one dwelling unit with up to 5 individuals or at a density of not more than 2 individuals per bedroom, whichever is greater.

Multifamily Dwelling – A building designed and constructed so as to contain 3 or more suites of one or more rooms, each suite provided with individual cooking and other facilities for independent housekeeping, used or intended to be used for the nontransient housing of 3 or more family units.

Multifamily Use – Any combination of dwellings, as defined, on a single lot resulting in 3 or more dwelling units.

Single-family Dwelling – A detached dwelling designed for and occupied by a single family, but not including a mobile home.

Semi-detached Dwelling – Two one-family dwellings built together at the same time and separated by a fireproof division with no openings.

Time-share or Time-interval Ownership Dwelling Unit – A dwelling unit in which the exclusive right of use, possession, or ownership circulates among various owners or lessees in accordance with a fixed or floating time schedule on a periodically recurring basis, whether such use, possession, or occupancy is subject to either:

- a. a time-share estate, in which ownership or leasehold estate in property is devoted to a time-share fee (tenants-in-common, time-span ownership, interval ownership) and a time-share lease; or
- b. a time-share use, including any contractual right of exclusive occupancy which does not fall within the definition of time-share estate including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership, or vacation bond.

Two-family Dwelling – A detached dwelling designed for two families.

Restaurant Related Terms

Restaurant – An establishment in which food is prepared and served and customers' orders are taken and served at dining tables. A single inside takeout station may be considered accessory to a conventional "restaurant".

Restaurant Class I – Any establishment which has a rating of 199 or less as measured by the Table of Performance Indicators for Restaurant Classifications found in § 240-13.2B of the Zoning Bylaw.

Restaurant Class II – Any establishment which has a rating of 200 to 265 as measured by the Table of Performance Indicators for Restaurant Classifications found in § 240-13.2B of the Zoning Bylaw.

Restaurant Class III – Any establishment which has a rating of 266 to 299 as measured by the Table of Performance Indicators for Restaurant Classifications found in § 240-13.2B of the Zoning Bylaw.

Restaurant Class IV – Any establishment which has a rating of 300 or more as measured by the Table of Performance Indicators for Restaurant Classifications found in § 240-13.2B of the Zoning Bylaw.

Restaurant, Fast-Food – An establishment for the immediate sale of food or drink prepared on or off premises and served in disposable containers or wrappers for consumption on or off premises unless such sales are wholly incidental to a conventional restaurant or other use such as a grocery or convenience store or food market or other use defined in ARTICLE 3. Service is usually cafeteria style or from a serving counter. The establishment may include inside seating, but table service is usually not provided or only incidental. All restaurant establishments providing in-car, drive-through service are included in this definition.

Solar – Ground Mounted Solar Photovoltaic Array – A system of solar panels structurally mounted

on the ground generating electricity to be used on-site or sold to the wholesale electricity market.

Streets, Roads, & Driveways Related Terms

Clear Sight Triangle

- a. Street Intersections - An area free of obstructions which might interfere with a driver's ability to see other vehicles approaching an intersection.
- b. Driveways – In accordance with Chapter 199 – Streets and Sidewalks, Article III of the Town Code, driveways shall be located and constructed in accordance with a clear sight triangle corresponding to the posted speed limit; no permanent obstructions or plant materials over 3 feet high shall be placed within the clear sight triangle.

Common Driveway – A vehicular way, which is not a street, providing access to 3 or more residential, industrial, or commercial lots.

Cul-de-sac – A dead-end street with a turnaround at the closed end having an outside street radius of not more than 60 feet.

Street – An accepted Town way, or a way established by or maintained under county, state or federal authority, or a way established by a subdivision plan approved in accordance with the Subdivision Control Law (G.L. c. 41, §§ 81K - 81GG), or a way in existence when the Subdivision Control Law became effective in the Town of Falmouth, determined by the Planning Board to have sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

Use Related Terms

Multiple Use – Any combination of uses allowed as a matter-of-right or by special permit on a single lot which may require separate permits for construction, occupancy, business certification, license to sell food or alcohol, or other municipal approval.

Use – A purpose for which land or a building is arranged, designed, or intended or for which land or a building is or may be occupied.

Waterfront Related Terms

Community Dock – A single pier, dock, or float located on a recreation or open space lot in a Planned Residential Neighborhood subdivision approved by the Planning Board pursuant to § 240-9.7, with a common right- of-use by the homeowners association, and having common rights-of-interest in the recreation or open space lot. It can be used by the property owners for loading and unloading of passengers and cargo and the tying of dinghies.

Marina – A municipally or commercially operated landing and mooring place for yachts and other noncommercial boats and vessels, consisting of bulkheading or finger piers, and including facilities for the retail sale of fuel, lubricants, water and ice, shore telephone and power service, and the disposal of refuse in a manner approved by the Board of Health.

Water Resource Protection Related Terms

Aquifer – Geologic formation composed of rock, sand, or gravel containing sufficient saturated material in order to yield potable groundwater to public or private wells.

Impervious Surface – Material or structure on, above, or below the ground that prevents precipitation or surface water from penetrating directly into the soil.

Mining – The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores, or bedrock.

Recharge Areas – Areas that collect precipitation or surface water and carry it to aquifers, designated as Zones I, II or III, as defined in 310 CMR 22.00.

Toxic or Hazardous Material – Any substance or combination of substances, not including any liquid petroleum product, posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or combination were discharged to land or water of the Town of Falmouth. "Toxic or hazardous materials" include all substances defined as "toxic or hazardous" under Massachusetts General Laws, hereinafter referred to as G.L. c. 21C and 21E and 310 CMR 30.00.

Water Resource Protection Overlay District (WRPOD) – The zoning district defined to overlay other zoning districts in the Town of Falmouth. The WRPOD may include specifically designated recharge areas.

Wind Energy System Related Terms

Accessory Land Use – The wind energy system (WES) shall be incidental to and supplement the power needs of the principal use(s) located on the same lot, or on land held in common ownership as part of a planned residential development. (See § 240-9.7)

Ambient Sound Level – The background A-weighted decibel average that is exceeded 90% of the time (L90) measured during operational hours.

Broadband Sound – Noise that does not contain a distinguishable note or tone, and is comprised of multiple (low, mid and high) frequency components.

Flicker – The moving shadow created by the sun shining on the rotation of the blades of the wind turbine.

Large Wind Energy System (LWES) – A wind energy system with a rated capacity greater than 60 kilowatts but not more than 250 kilowatts.

Meteorological (MET) Tower – A temporary tower equipped with devices to measure wind speed and direction, used to determine how much wind power a site can be expected to generate.

Net Metering – The difference between the electricity supplied over the electric distribution system and the electricity generated by the wind energy system which is fed back into the electric distribution system over a given billing period.

Power Grid – The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

Pure Tone Sound – A condition produced when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by three decibels or more.

Public Outreach Area – Those properties located in the area between 300 to 1,500 feet of the property line.

Rated Capacity – The maximum rated output of electric power production equipment, as certified by the manufacturer. The rated capacity is the maximum power produced at optimum wind speed.

Small Wind Energy System (SWES) – A wind energy system with a rated capacity equal to or less than 60 kilowatts.

System Height – The vertical distance from ground level (natural grade) to the tip of the wind generator blade at its highest point.

Wind Energy System (WES) – All equipment, machinery, and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage equipment, substations, transformers, service and access roads, and one or more wind turbines.

Wind Turbine – A single device that converts wind energy to rotational energy that drives an electrical generator, typically consisting of a rotor and blade assembly, nacelle body and tower.

Woodwork Mill, Portable – Equipment for producing lumber from logs, without permanent installation.

Yards – For definitions related to “Yards”, refer to the Lot & Yard Related Terms section.

ARTICLE 4 ZONING DISTRICTS & ZONING MAP

240 – 4.1 Types of Zoning Districts

240 – 4.1A Introduction

The Town of Falmouth is divided into the following types of zoning districts.

240 – 4.1B Underlying Zoning Districts

- | | |
|--|--|
| <ul style="list-style-type: none"> (1) AGRICULTURAL DISTRICTS <ul style="list-style-type: none"> a) Agricultural AA b) Agricultural A c) Agricultural B (2) BUSINESS DISTRICTS <ul style="list-style-type: none"> a) Business 1 (Central) b) Business 2 (Outlying) c) Business 3 (Limited) d) Business Redevelopment - BR (3) INDUSTRIAL DISTRICTS <ul style="list-style-type: none"> a) Light Industrial A b) Light Industrial B c) Light Industrial C | <ul style="list-style-type: none"> (4) MARINE DISTRICT (5) PUBLIC USE DISTRICT (6) RESIDENCE DISTRICTS <ul style="list-style-type: none"> a) Single Residence AA b) Single Residence A c) Single Residence B d) Single Residence C e) General Residence - GR f) Senior Care Retirement - SCR |
|--|--|

240 – 4.1C Overlay Zoning Districts

- (1) Accident Prevention Overlay District
- (2) Coastal Pond Overlay District
- (3) Floodplain Overlay District
- (4) Large Scale Ground Mounted Solar Overlay District
- (5) Search and Rescue Corridor Overlay District
- (6) Water Resource Protection Overlay District
- (7) Wildlife Corridor Overlay District

240 – 4.1D Special Use Zoning District

Area of Critical Environmental Concern (ACEC)

240 – 4.1E Historic District

In addition to the districts listed in § 240-4.1B through § 240-4.1D, there is an Historic District established by Chapter 654 of the Acts of 1975, regulated by Chapter 36 of the Town Code.

240 – 4.2 Zoning Map

240 – 4.2A Official Zoning Map

- (1) ZONING MAP – Districts are shown, defined, and bounded on the maps accompanying this Bylaw collectively entitled "Town of Falmouth - Zoning Map", filed with the Town Clerk. The Zoning Map shall use the January 1, 2006, Town of Falmouth Assessors Sheets as a base map. The Zoning Map, as may be amended from time to time by Town Meeting, and all explanatory matter therein, are hereby made part of this Bylaw.
- (2) ADDITIONAL MAPS – The following maps are incorporated by reference into the official Zoning Bylaw and Zoning Map:
 - a) Accident Prevention Overlay District – The Accident Prevention Overlay District (Zones I and II) as shown on the plan entitled "Dept. of the Air Force, Director of Engineering and Services-DCS P & R, Washington, D.C.; ANGSC Master Plan Air Installation Compatible Use Zone (AICUZ), Otis Air Force Base, Falmouth, Massachusetts, scale one inch equals 2,000 feet; dated October 26, 1979".
 - b) Coastal Pond Overlay District – The Coastal Pond Overlay District as shown on a map entitled "Recharge Areas of Coastal Ponds in Falmouth" dated August 1, 2001, scale 1" = 2000' on file with the Town Clerk.
 - c) Floodplain Overlay District – The Floodplain Overlay District as shown on the Flood Insurance Rate Map, dated July 16, 2014, published by the Federal Emergency Management Agency, and adopted by Town Meeting.
 - d) Search and Rescue Corridor Overlay District Map – The Search and Rescue Overlay District as shown on a map entitled: "Search & Rescue Corridor USCG Air Station Cape Cod Emergency Visual Routes", dated June 5, 2007, scale one inch equals 2,000 feet, and on file with the Town Clerk.
 - e) Water Resource Protection Overlay District - The Water Resource Protection Overlay District, as shown on the Town of Falmouth map, dated March 29, 2011, at a scale of one inch to 1,500 feet.

240 – 4.2B District Boundaries

Whenever a road, way, right-of-way, railroad, or comparable man-made or man-designed area or feature, or a pond, stream, river, swamp, bog, marsh, or other body of water or comparable natural or quasi-natural geographic feature is shown on the Zoning Map as a boundary between districts of different zoning, the geographic district boundary shall be on the center line of that feature. A feature lying totally within a designated zone shall be zoned as the other land around it. No part of the land or water area within the Town shall be unzoned.

ARTICLE 5 USE REGULATIONS

240 – 5.1 Requirements

240 – 5.1A Exemptions

- (1) **RELIGIOUS AND EDUCATIONAL USES** – This Bylaw shall not prohibit, regulate, or restrict the use of the land or structures for religious purposes or for educational purposes on land owned or leased by the Commonwealth or any of its agencies, subdivisions, or bodies politic, or by a religious sect or denomination, or by a nonprofit educational corporation. However, such land or structures shall be subject to the regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking, and building coverage requirements of the this Bylaw.
- (2) **SPECIAL PERMIT DIMENSIONAL RELIEF** – The Planning Board may, by special permit, grant relief from dimensional regulations as applied to exempt uses, subject to the criteria set forth in § 240-12.1.
- (3) **OTHER USE EXEMPTIONS/RESTRICTIONS** – G.L. c. 40A, § 3, provides that certain uses, in addition to religious and educational uses, may be exempt from local zoning requirements, and that certain uses may not be restricted by local zoning. These uses include:
- a. agriculture
 - b. child care facility
 - c. family day care
 - d. federally licensed amateur radio operator
 - e. handicapped access ramp
 - f. interior area of a single family residential building
 - g. Public Service Corporations
 - h. temporary manufactured home
 - i. solar
- (4) **EXEMPTIONS FROM ZONING AMENDMENTS (ZONING FREEZE)** – Zoning Bylaws adopted and amended shall not apply to any structure for which a building permit or special permit has been issued prior to the first notice of a public hearing on the zoning amendment. For a building permit, construction shall commence within 12 months after the issuance of the building permit and is thereafter continued through to completion as continuously and expeditiously as is reasonable. However, if the building permit is renewed, the 12-month period shall be extended for the renewal period, but not more than 12 additional months. No design changes occurring after the initial issuance of the building permit shall increase the intensity of the development of the building to which the building permit relates. Special permits shall lapse if not exercised within 3 years of issuance. See ARTICLE 10 for more information on zoning freeze and nonconforming use regulations.

240 – 5.1B Classification of Uses

Where an activity might be classified in this Bylaw under more than one use, the more specific classification shall govern; if equally specific, the more restrictive shall govern.

240 – 5.1C Prohibited Uses and Special Permit Allowance

- (1) PROHIBITED USES – Uses not listed in § 240-6.1 through § 240-6.7 under any use category itemized for the applicable zoning district are prohibited.
- (2) SPECIAL PERMIT ALLOWANCE – However, a prohibited use under § 240-5.1C(1) above may be allowed by special permit if the Board of Appeals determines that it closely resembles, in its neighborhood impacts, a use allowed by right or by special permit in that zoning district.

240 – 5.1D Multiple Uses

- (1) SPECIAL PERMIT REQUIRED – For property in any Business 1, 2, or 3 District or Industrial A District, on which a special permit use is located, any additional use proposed for that property, including a use allowed in the zoning district as a matter of right, will require the issuance of another special permit by the Board of Appeals. The Board of Appeals shall take into consideration the combined effects of each use on the property and determine whether such combination is in harmony with the general intent of this bylaw utilizing the criteria of §§ 240 -12.1, 240 -13.1, 240 -14.1, and § 240 -14.3.
- (2) BY-RIGHT USE – This section shall not be construed to prohibit any property owner from conducting a use allowed by-right in the zoning district. Any additional use for which a special permit is required shall be subject to the standards in this Bylaw with respect to review of the combined effects of each use on the property.

240 – 5.1E Accessory Uses

- (1) ACCESSORY SCIENTIFIC USES – The Board of Appeals may grant a special permit for a use accessory to scientific research, scientific development, or related production activity, based on the following requirements:
 - a. products produced are not for sale, whether or not on the same parcel as that where the activity is allowed by right;
 - b. the accessory use shall not involve genetic engineering;
 - c. the applicant for a building or occupancy permit demonstrates to the Building Commissioner and the Board of Health, on an annual basis, that all federal, state, and town of Falmouth licenses, permits, and standards for the handling, use, storage, and disposal of any regulated materials have been obtained or met;
 - d. the research shall not produce toxic or hazardous wastes as a by-product;
 - e. the production shall not utilize in excess of 25% of the interior floor space, or 2,500 square feet, whichever is less;
 - f. the production shall not produce any noxious odors or excessive noise detectable on abutting properties; and
 - g. the production shall not in any other way substantially derogate from the public good.
- (2) BATH HOUSES ON BEACH OR SHORE LOTS – A special permit may be granted for bath houses on beach or shore lots that do not conform to ARTICLE 11 DIMENSIONAL REGULATIONS; but no bath house erected on any such lot shall be permitted for use for a habitation. There shall be a side yard not less than 5 feet in clear width between the side of any bath house erected thereon and the side line of the lot. All side yards shall be at all points clear from the front lot line to the rear lot line of the bath house.

- (3) **ACCESSORY USE LIMITATION** – Accessory uses, except uses for scientific research, allowed under § 240 – 5.1E(1), shall be on the same lot as the principle use and building of the owner or lessee and shall not alter the character of the premises on which they are located nor impair the neighborhood.

240 – 5.1F Temporary Structures and Uses

- (1) **TEMPORARY STRUCTURES AND USES** – Temporary structures and uses that do not conform to the provisions of this Bylaw may be allowed by special permit. No special permit shall be issued for more than a 1-year period. If the special permit expires without being exercised within the 1-year period a new special permit request under this section, for a 1-year time period, may be filed with the Town Clerk and all requirements of G.L. c. 40A, §§ 9 & 11 shall be met.
- (2) **CONSTRUCTION SITE – TEMPORARY PERMIT** – A temporary permit may be issued by the Building Commissioner for the use of a container for storage or for a trailer as a field office at a construction site during the period when construction is actually underway, subject to approval by the Board of Health. The trailer shall not be used for real estate sales purposes.
- (3) **TEMPORARY MOBILE HOME** – Subject to the rules and regulations of the Board of Health, the owner or occupier of a residence which has been destroyed by fire or other natural cause may place a mobile home on the site of the residence and reside in the mobile home for a period not to exceed 1 year while the residence is being rebuilt.
- (4) **SPECIAL EVENT STRUCTURES – TEMPORARY PERMIT** – The Building Commissioner may issue a permit to erect and maintain a tent or similar temporary structure for a special event and may attach reasonable conditions applicable thereto.

ARTICLE 6 USE TABLES

240 – 6.1 Agricultural Districts (AGAA, AGA, AGB)

240 – 6.1A Districts

- (1) AGAA Agricultural AA
 (2) AGA Agricultural A
 (3) AGB Agricultural B

240 – 6.1B Use Table

N = Not allowed

Y = Allowed by-right

SP-Z = Zoning Board of Appeals Special Permit

SP-P = Planning Board Special Permit

Uses	Standards	AGAA	AGA	AGB
Residential Uses				
One-family detached house		Y	Y	Y
Community Service Uses				
Agricultural research institution		Y	Y	Y
Cemetery		Y	Y	Y
Child day-care center		Y	Y	Y
Group day-care home		Y	Y	Y
Library		Y	Y	Y
Museum		Y	Y	Y
Passenger station		Y	Y	Y
Religious institution	including a parish house or similar dwelling for the institution	Y	Y	Y
School		Y	Y	Y
Municipal Uses				
Beach		Y	Y	Y
Fire station		Y	Y	Y
Municipal recreation building		Y	Y	Y
Park and playground		Y	Y	Y
Town wharf and Town landing		Y	Y	Y
Water tower and reservoir		Y	Y	Y
Other Principal Uses				
Agriculture, horticulture, and floriculture, including farms, cranberry bogs, dairies, truck gardens, greenhouses, natural ice harvesting activities, and nurseries	Nurseries that are not “agricultural uses” as defined in G.L. c. 128, § 1A, shall be located on lots 2 acres or larger.	Y	Y	Y
Pier, float, and dock	shall be subject to approval by the Conservation Commission and Board of Selectmen as a common pier, float, or dock	Y	Y	Y

Uses	Standards	AGAA	AGA	AGB
Accessory Uses				
Accessory uses that are customarily incidental to any of the above listed use categories		Y	Y	Y
Boarders	<ol style="list-style-type: none"> 1. maximum of 4 boarders allowed 2. dwelling unit shall be a single-family dwelling with a family resident on the premise 	Y	Y	Y
Home occupation	(See § 240-9.5)	Y	Y	Y
Portable woodworking mill		Y	Y	Y
Roadside stand	principally for the sale of products of the land of the owner of the premises unless otherwise preempted by G.L. c. 40A, § 3	Y	Y	Y
Television or radio antenna	not exceeding 50 feet above ground level	Y	Y	Y
Wireless communication facility		Y	Y	Y
Special Permit Uses				
Accessory apartment	<ol style="list-style-type: none"> 1. Purposes: The intent of the accessory apartment section is to: broaden the range of housing choice in Falmouth by increasing the number of small dwelling units available for rent; encourage greater diversity of population with particular attention to young adult citizens and to allow for “Aging in Place” for senior citizens; and promote more economic and energy efficient use of the town’s housing supply; this is meant all to maintain the appearance and character of the town’s single-family neighborhoods. 2. Definition: Accessory Apartment: Notwithstanding Sections 240-10.1C(4), 240-11.2B(2), and 240-11.5A(2)f. this is an additional dwelling unit, subordinate in size and accessory to the principal dwelling unit on the lot, located in either the principal dwelling or an accessory structure on the lot. An accessory apartment shall be constructed so as to maintain the appearance and essential character of a single-family dwelling or accessory structure thereto located on the lot. 3. Requirements <ol style="list-style-type: none"> a) Only one accessory apartment shall be allowed per lot. b) The lot size shall be no less than 7500 square feet. c) Either the principal dwelling or accessory apartment must be owner-occupied for a period of 7 months in every calendar year, or owned by a nonprofit organization or government authority whose purpose is to provide affordable housing. d) Either the principal dwelling or accessory apartment may be rented, but not both, during the 5 months the owner occupant may be absent. Rental periods shall be not less than 6 months and weekly/monthly rentals (“summer rentals” so called) are expressly prohibited. Neither the principal building nor accessory apartment shall be used as commercial accommodations at any time. e) The accessory apartment shall have not more than 2 bedrooms and a maximum of 800 square feet of floor area, or 40 percent of the floor area of the principal dwelling, whichever is less. This shall be measured using the exterior side of the first floor outside wall, plus he following: finished attic space. f) The total number of bedrooms on the lot shall not exceed 4 where the lot contains less than 20.000 square feet. 	SP-P	SP-P	SP-P

Uses	Standards	AGAA	AGA	AGB
	<p>g) Whether allowed as of right or by special permit, for accessory apartments located on lots subject to the provisions of the Water Resource Protection Overlay District or Coastal Pond Overlay District, the total number of bedrooms shall not exceed one per 10,000 square feet of lot area, unless both the principal dwelling and accessory apartment are connected to the municipal sewer system, or to an on-site septic system with enhanced nitrogen removal, approved by the Board of Health.</p> <p>4. Design Standards Accessory apartments, whether a part of new construction, reconstruction, alteration, or change to a single-family residence or accessory structure (attached) thereto, shall maintain the following standards:</p> <p>a) The architectural effect, as the result of the accessory apartment being constructed within the principal dwelling, shall be that of a single-family residence compatible with the surrounding neighborhood.</p> <p>b) The architectural effect, as the result of the accessory apartment being constructed within an accessory structure, shall be that of a garage or barn customarily incidental to a single-family residence compatible with the surrounding neighborhood.</p> <p>c) Parking for the accessory apartment shall be provided in a manner compatible with the surrounding neighborhood.</p> <p>5. Procedures</p> <p>a) Accessory Apartment constructed within a single-family dwelling: Prior to the issuance of a building permit for an accessory apartment constructed within a single-family dwelling or accessory structure attached thereto, a site plan review (Design Review), pursuant to § 240-12.2, shall be conducted by the Planning Board, taking into account the design standards, requirements, and purposes of this accessory apartment section of the Use Table. The application for site plan review shall include the information contained in § 240-12.2D(3) unless waived by the Planning Board.</p> <p>b) Accessory Apartment constructed within, or as, a detached accessory structure (not attached to a single-family dwelling): In addition to the site plan review requirements above, an accessory apartment built within, or as, an accessory structure, not attached to a single-family dwelling, shall require a special permit from the Zoning Board of Appeals. In addition to the design standards, requirements, and purposes of this accessory apartment section of the Use Tables, the Board shall take into account the standards found in § 240-12.1E.</p> <p>6. Enforcement</p> <p>a) Upon a written determination and notice by the Building Commissioner that the property owner has failed to comply with these provisions, the owner shall bring the accessory apartment into compliance within 90 days of the notice. Failing compliance, the property shall be restored to single-family dwelling status within 90 days of the failure determination, and shall comply with all State Building Code requirements and other local regulations or bylaws.</p> <p>7. Monitoring</p> <p>a) An affidavit shall be submitted annually to the Building Commissioner, signed by the property owner, attesting that the principal dwelling or accessory apartment has been owner occupied for a period of 7 months and not otherwise rented as set forth in section 3.c) above. The Building Commissioner may allow a property owner to be absent during this 7-month period for cause, such as military assignment, work related issues, health issues, academic sabbatical, or a similar circumstance.</p>			

Uses	Standards	AGAA	AGA	AGB
Accessory use	<p>Only the following uses are included in this category.</p> <ol style="list-style-type: none"> 1. outside parking of commercially registered vehicle exceeding a gross vehicle weight of more than 13,000 pounds; 2. garage space for more than two cars if: <ol style="list-style-type: none"> a) the lot is 30,000 square feet or less; or b) the footprint of the garage is more than 900 square feet, or 50% of the footprint of the principal structure, whichever is less; 3. home occupation (See § 240-9.5 for special permit requirements for home occupations); 4. motor home, travel trailer, or fifth-wheel trailer, not located within the minimum front, side, or rear yard setback requirements; 5. outside parking of more than one commercial light panel, delivery, or pickup truck, school bus, or tow truck; 6. temporary parking of school buses for 2 hours or less per day shall not require the issuance of special permit; 7. scientific research (See § 240-5.1E) 	SP-Z	SP-Z	SP-Z
2. garage space for more than two cars if:	<ol style="list-style-type: none"> a) the lot is 30,000 square feet or less; or b) the footprint of the garage is more than 900 square feet, or 50% of the footprint of the principal structure, whichever is less; 	SP-Z	SP-Z	SP-Z
3. home occupation	(See § 240-9.5 for special permit requirements for home occupations);	SP-Z	SP-Z	SP-Z
4. motor home, travel trailer, or fifth-wheel trailer, not located within the minimum front, side, or rear yard setback requirements;		SP-Z	SP-Z	SP-Z
5. outside parking of more than one commercial light panel, delivery, or pickup truck, school bus, or tow truck;		SP-Z	SP-Z	SP-Z
6. temporary parking of school buses for 2 hours or less per day shall not require the issuance of special permit;		SP-Z	SP-Z	SP-Z
7. scientific research (See § 240-5.1E)		SP-Z	SP-Z	SP-Z
Airport or landing strip or pad		SP-Z	SP-Z	SP-Z
Boat Storage	<p>As a commercial operation under the following standards, in addition to the requirements of § 240-12.1:</p> <ol style="list-style-type: none"> 1. The lot shall be a minimum of 2 acres. 2. The side and rear yard setbacks shall be a minimum of 50 feet. Lesser setbacks with a minimum of 30 feet may be allowed when a combination of landscaping and natural features provide visual screening as necessary and in proportion to the need to buffer from adjacent land uses. All allowed structures, fencing, and walls shall meet these setback standards. The dimensional requirements of ARTICLE 11, shall otherwise apply. 3. Sailboats shall be demasted and no boat on its cradle or other support system shall be higher than 18 feet at any point. 4. No structure or signs other than security fencing, one security dwelling which meets all other requirements of these districts, and boat supports shall be allowed. Stacking of boats higher than 18 feet shall be prohibited. 5. No activity such as cleaning, waxing, repairs, or painting shall be allowed. All activities shall be approved by the Board of Appeals. 6. The proposed site shall not be located within developed or established neighborhoods. The proposed site shall have a common boundary of not less than 20 feet with an industrial or commercial use (a home occupation does not apply) nor be located directly across the street from the same so that if property lines were extended across the street, at least 20 feet of street center line would be common boundary. 7. This special permit shall not apply to property within the Watershed Resource Protection Overlay District. 	SP-Z	SP-Z	SP-Z
Commercial accommodation	(See § 240-9.4)	SP-Z	SP-Z	SP-Z

Uses	Standards	AGAA	AGA	AGB
Commercial nursery	<p>For a property where any portion of that property is currently in agricultural use for commercial nursery operations, a special permit may be granted to the owner to devote all or a portion of the lot(s) for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment subject to the following findings and conditions.</p> <ol style="list-style-type: none"> 1. The property shall not be located in the Water Resource Protection Overlay District. 2. These uses had previously been accessory to the commercial nursery operations. 3. The existing structures, parking, and storage areas, and other physical characteristics of the lot(s), are suitable for the proposed uses. 4. The lot(s) shall contain a minimum of 5 acres. 5. The front yard setback shall be a minimum of 75 feet and side yard and rear yard setbacks shall be a minimum of 50 feet, unless the Planning Board finds that a lesser existing setback is adequate to provide sufficient screening and buffer from the street or adjacent properties taking into account existing and potential land uses in the neighborhood. 6. The Planning Board shall determine that the activities, including traffic between the subject premises and an arterial roadway such as Route 28, Route 151, Thomas B. Landers Road, Sandwich Road, Old Barnstable Road, or Blacksmith Shop Road, will have no adverse impacts on a neighborhood predominantly residential in character, and that the construction, width, and grades of the adjacent street and any other street providing access between the subject premises and an arterial roadway shall be sufficient for safe travel to and from the site by the vehicles to be stored. 7. The Planning Board shall specify hours of operation, the type and number of vehicles, and the equipment or supplies to be stored. 8. Any extension, alteration, or change to the activities approved under this section shall only be allowed by the Planning Board, applying the requirements and standards of § 24-12.1 (special permit). Any such change, alteration, or extension shall not be substantially more detrimental to the neighborhood than the existing activities. 9. All reference to "lot(s)" in this section shall mean contiguous lots when more than one lot is considered. 	SP-P	SP-P	SP-P
Common driveway		SP-P	SP-P	SP-P
Contractor yard	<p>In addition to the requirements of § 240-12.1, the following requirements shall be met.</p> <ol style="list-style-type: none"> 1. The lot shall be a minimum of 5 acres in AGAA districts and 3 acres in AGA Districts. 2. The front yard setback shall be a minimum of 75 feet in the AGAA District and 50 feet in the AGA District. The side and rear yard setbacks shall be a minimum of 30 feet. The Planning Board may require greater setbacks where needed to provide sufficient screening and buffer from the street or adjacent properties. 3. No contractor yard shall be permitted in a Water Resource Protection Overlay District. 4. For AGAA Districts the lot shall not be located within 500 feet of a Single Residence District, within 500 feet of either an existing dwelling or a dwelling where construction had commenced as of April 1, 2000. For AGA Districts, the lot shall not be located within 300 feet of a Single Residence District or within 300 feet of either an existing dwelling or a dwelling where construction had commenced as of April 1, 2000, except a dwelling occupied by the owner or operator of the contractor yard or a designee. 5. No contractor yard shall be permitted unless the Planning Board shall determine that operation of the contractor's yard, including traffic between the 	SP-P	SP-P	N

Uses	Standards	AGAA	AGA	AGB
	contractor's yard and arterial roadways such as Route 28, Route 151, Thomas B. Landers Road, Sandwich Road, Old Barnstable Road, and Blacksmith Shop Road, will have no adverse impact on a neighborhood predominantly residential in character, and that the construction, width, and grades of the adjacent street and any other street providing access between the contractor's yard and any arterial roadway shall be sufficient for safe travel to and from the site by the vehicles to be stored.			
	6. The Planning Board shall specify hours of operation, the type and number of vehicles, equipment or supplies to be stored, what fabrication of subassemblies shall be allowed, if any, and what accessory activities, such as ordinary maintenance and minor repairs, shall be allowed. No activity such as major repair work, painting, or engine cleaning shall be allowed.			
Golf course		SP-Z	SP-Z	SP-Z
Private club not conducted for profit		SP-Z	SP-Z	SP-Z
Television or radio antenna subject to G.L. c. 409A, § 3	exceeding 50 feet above ground level	SP-Z	SP-Z	SP-Z
Wind Energy System	subject to the requirements of § 240-9.8	SP-Z	SP-Z	SP-Z

240 – 6.2 Business Districts (B-1, B-2, B-3, BR)

240 – 6.2A Districts

- (1) B-1 Business 1
- (2) B-2 Business 2
- (3) B-3 Business 3
- (4) BR Business Redevelopment

240 – 6.2B Use Table

N = Not allowed
 SP-Z = Zoning Board of Appeals Special Permit
 Y = Allowed by-right
 SP-P = Planning Board Special Permit

Uses	Standards	B-1	B-2	B-3	BR
Residential Uses					
Single-family detached house		Y	Y	Y	Y
Semi-detached and two-family dwelling		Y	Y	Y	Y
Three-family dwelling		N	N	N	Y
Public or nonprofit housing for the elderly		Y	Y	Y	N
Community Service Uses					
Cemetery		Y	Y	Y	Y
Educational institution		Y	Y	Y	Y
Hospital		Y	Y	Y	N
Library		Y	Y	Y	Y
Museum		Y	Y	Y	Y
Philanthropic institution		Y	Y	Y	Y
Religious institution	including a parish house or similar dwelling for the institution	Y	Y	Y	Y

Uses	Standards	B-1	B-2	B-3	BR
Research institution		Y	Y	Y	Y
Sanitorium		Y	Y	Y	N
School		Y	Y	Y	Y
Mixed-Use					
Residential and Commercial mixed-use	1. Any combination of permitted community service, business, and commercial uses together with residential uses at less than 6 units per acre.	N	N	N	Y
	2. Any new mixed-use development under 1. Above with a proposed gross floor area of 10,000 square feet or more requires a special permit from the Planning Board For mixed-use development under 1. and 2. above, all business, commercial, or community service uses must be located within the first story space in any mixed-use structure sited within 100 feet of the street frontage.	N	N	N	SP-P
Municipal Uses					
Municipal Uses	All municipal uses including an armory, fire and police station, government administrative office, park, playground, recreation building, town beach, town forest, town wharf and landing, water tower and reservoir.	Y	Y	Y	Y
Business and Commercial Uses					
Arts and crafts	Continuous production is prohibited in all Business Districts where this use is allowed by right.	Y	Y	Y	N
Bank		Y	Y	Y	Y
Business or professional office		Y	Y	Y	Y
Computer center		Y	Y	Y	Y
Medical clinic		Y	Y	Y	Y
Passenger station		Y	Y	Y	N
Personal and household services	Allowed in the B-3 and BR Districts only if each establishment occupies not more than 4,000 square feet of gross floor area.	Y	Y	Y	Y
Restaurant, or other place for food service.	(See the Special Permit section of this Business Use Table below for more information on restaurants allowed by special permit)				
a. Class I		Y	Y	Y	Y
b. Class II		N	Y	Y	Y
c. Class III		N	Y	N	SP-Z
d. Class IV		N	Y	N	N
Retail sales not more specifically listed	Allowed in the B-3 District if each establishment occupies not more than 4,000 square feet of gross floor area.	Y	Y	Y	Y

Uses	Standards	B-1	B-2	B-3	BR
Other Permitted Uses					
Agriculture, Horticulture, and Floriculture	including farms, cranberry bogs, dairies, truck gardens, greenhouses, and natural ice harvesting activities	Y	Y	Y	Y
Marina	<ol style="list-style-type: none"> including landings and wharves for party boats; renting of rowboats, sailboats, motor boats, and fishing tackle; retail sale of fish bait; marine railways; boatbuilding, repairs, and storage party boats not to exceed 33 feet in length at the water line 	Y	Y	Y	Y
Accessory Uses					
Accessory uses that are customarily incidental to any of the uses listed in §. 240-5.1E.	<ol style="list-style-type: none"> Outdoor display or storage of goods and merchandise for sale shall be permitted in the BR District to the rear of the front yard setback line only where the display or storage is wholly incidental and secondary to a primary use conducted within the permanent structure on the lot. No display or storage may occur in delineated parking spaces, traffic lanes, crosswalks, sidewalks, and front yards, except in the B-1 District, where the reference to sidewalks means town sidewalks. 	Y	Y	Y	Y
Home Occupation	(See § 240-9.5)	Y	Y	Y	N
Portable Woodworking Mill		Y	Y	Y	N
Taking of Boarders	<ol style="list-style-type: none"> shall be a maximum of 4 borders; shall be in a single-family dwelling with a family resident on the premise. 	Y	Y	Y	N
Television or radio antenna	not exceeding 50 feet above ground level	Y	Y	Y	N
Special Permit Uses					
Airport, landing strip or pad		SP-Z	SP-Z	SP-Z	N
Blacksmith, builder, carpenter, mason, plumber, roofer, tinsmith, and similar trades person's office, workshop, yard, or building	The Board of Appeals may approve uses in specific instances where it finds them to be compatible with the uses mentioned in the column to the left.	SP-Z	SP-Z	N	N
Commercial accommodations	(See § 240-9.4)	SP-Z	SP-Z	SP-Z	SP-Z
Commercial or business shopping center - existing	any change, alteration, modification, or addition to an existing commercial or business shopping center that would result in a building with a gross floor area of 10,000 square feet or more.	SP-Z	SP-Z	SP-Z	SP-Z

Uses	Standards	B-1	B-2	B-3	BR
Commercial or business shopping center – new	if the proposed shopping center has a gross floor area of 7,000 square feet or more, and does not include residential uses.	SP-P	SP-P	SP-P	SP-P
Commercial and Residential mixed-use development	any new mixed-use development with a proposed gross floor area of 10,000 square feet or more	N	N	N	SP-P
Common driveway		SP-P	SP-P	SP-P	N
Conversion of a dwelling unit	May be converted to not more than 4 dwelling units if: <ol style="list-style-type: none"> 1. the dwelling was in existence as of January 1, 1980; 2. there is no material change to the exterior of the existing building; and 3. the Board of Appeals determines that the size of the dwelling and the lot are suitable for remodeling 	SP-Z	SP-Z	SP-Z	N
Docking of commercial passenger or freight vessels; Party boats exceeding 33 feet at the waterline		SP-Z	SP-Z	SP-Z	N
Funeral home		SP-Z	SP-Z	SP-Z	N
Marijuana treatment center	(See § 240-9.6)	N	SP-P	N	N
Motor vehicle repair when not ancillary to motor vehicle sales		N	SP-Z	N	N
Motor vehicle service station		SP-Z	SP-Z	N	N
Motor vehicle sales or rental with or without ancillary service facilities		SP-Z	SP-Z	N	N
Multifamily use	The Board of Appeals shall find that: <ol style="list-style-type: none"> 1. The public good will be served. 2. The business zoned area will not be adversely affected. 3. The uses permitted in the zoning district will not be noxious to a multifamily use. 4. The density of any approved proposal will not exceed 6 units per acre. and 5. In the BR District the density of any approved proposal will not exceed 8 units per acre. (See § 240-11.7C) 	SP-Z	SP-Z	SP-Z	SP-Z
Nursing home		SP-Z	SP-Z	SP-Z	SP-Z
Outdoor display or storage of goods and merchandise for sale	Excludes similar uses as permitted in the Accessory Uses category in § 240-6.2 above. (Standards listed in that category shall be considered by the Board of Appeals as well as the standards in § 240 – 5.1E.)	SP-Z	SP-Z	SP-Z	SP-Z

Uses	Standards	B-1	B-2	B-3	BR
Parking facility	In the B-3 District, the Board of Appeals may approve a special permit for parking facilities where a fee is to be charged (See § 240-9.3A) and where the facility serves uses within the Marine District. Parking facilities serving the Marine District shall be located within 500 feet of a Marine District.	SP-Z	SP-Z	SP-Z	N
Private club not conducted for profit		SP-Z	SP-Z	SP-Z	N
Recreation centers including theaters, motion-picture shows, bowling alleys, and skating rinks	not including billiard rooms and similar commercial amusement places with automated amusement devices	SP-Z	SP-Z	N	N
RDNA technology (genetic engineering) to be employed in production and research	The Board of Appeals shall find that: 1. the site is suitable; and 2. it has received a receipt of acceptable referral from the Board of Health and the Hazardous Materials Coordinator. This amendment to the Zoning Bylaw shall not take effect until a Board of Health regulation outlining control and procedures for using RDNA materials has been promulgated.	N	SP-Z	N	N
Restaurant, or other place for the serving of food. a. Class II b. Class III c. Class IV	Class IV restaurants, regardless of gross floor area, are subject to § 240-12.1H., Multiple Review. (See the Business and Commercial Uses section of this Business Use Table above for more information on restaurants allowed by right)	SP-Z N N	N N SP-Z	N SP-Z N	N SP-Z N
Restaurant, Fast Food		N	SP-Z	N	N
Scientific research	The following provisions shall apply: 1. The applicant for a building permit or occupancy permit shall demonstrate to the Building Commissioner and the Board of Health on an annual basis that all federal, state, and town licenses, permits, and standards for the handling, use, storage, and disposal of any regulated materials have been obtained or met. 2. The production of related materials for the furtherance of the research may be accessory to the scientific research. 3. The production shall be clearly accessory to the primary scientific research activity. 4. Production shall not exceed 25% of the interior floor space or 6,000 square feet, whichever is less. 5. Production shall not involve more than 25% of the employees. 6. Production shall not produce any noxious odors or excessive noise, that is detectable on abutting properties.	SP-Z	SP-Z	SP-Z	N

Uses	Standards	B-1	B-2	B-3	BR
Recreation centers including automated billiard rooms and similar commercial amusement places	The following provisions shall apply. 1. The activities proposed must be contained within the principal structure on the site. 2. No portion of the structure to be utilized may be within 200 feet of a single-family residential dwelling. 3. No alcohol may be sold or consumed within the recreational activity area defined by the Zoning Board of Appeals on the approved plans. 4. The special permit shall include a condition that no one under the age of 16 may utilize the facilities during school hours unless accompanied by a parent.	SP-Z	SP-Z	SP-Z	N
Stable		SP-Z	SP-Z	N	N
Television or radio antenna.	exceeding 50 feet above ground level	SP-Z	SP-Z	SP-Z	N
Wind Energy Systems	subject to the requirements of § 240-9.8	N	SP-Z	N	N

240 – 6.3 Industrial Districts (LI-A, LI-B, LI-C)

240 – 6.3A Districts

- (1) LI-A Light Industrial A
- (2) LI-B Light Industrial B
- (3) LI-C Light Industrial C

240 – 6.3B Use Table

N = Not allowed
 SP-Z = Zoning Board of Appeals Special Permit
 Y = Allowed by-right
 SP-P = Planning Board Special Permit

Uses	Standards	LI-A	LI-B	LI-C
Residential Uses (Also see Special Permit Uses Section below.)				
Residential Uses		N	N	N
Community Service Uses				
Cemetery		Y	Y	N
Education, Research, & Philanthropic Institution		Y	Y	N
Hospital		Y	Y	N
Library		Y	Y	N
Museum		Y	Y	N
Religious institution	including a parish house or similar dwelling for the institution	Y	Y	Y
Sanitorium		Y	Y	N
School		Y	Y	N

Uses	Standards	LI-A	LI-B	LI-C
Municipal Uses				
Municipal uses	all municipal uses including: armory, fire and police station, town beach, government administrative office, park and playground, recreation building, town forest, town wharf and landing, water tower, reservoir	Y	Y	Y
Business, Commercial, and Industrial Uses				
Arts & Crafts		Y	Y	N
Bank		Y	Y	N
Business or Professional Office		Y	Y	N
Computer Center		Y	Y	N
Contractor Yard		N	N	Y
Converting, Fabricating, Manufacturing, Altering, Finishing, or Assembling	<ol style="list-style-type: none"> 1. In the LI-A and LI-B District, not more than one person shall be employed for each 35 square feet of floor area. 2. In the LI-A District, not more than 10,000 square feet of floor area shall be devoted to the use. 3. In the LI-B District, the building coverage shall not exceed 35% and as otherwise restricted by § 240 -11.6. 4. Boatyards and buildings thereon and electronic plants and buildings located in the LI-A District shall be exempt from the provisions in this section. 	Y	Y	N
Medical Clinic		Y	Y	N
Passenger station		Y	Y	Y
Personal & Household Service		Y	Y	N
Research and Development		Y	Y	N
Restaurant, or other place for the serving of food, except fast-food restaurant.	For a Class I or II restaurant in the LI-C District, the Board of Appeals shall allow operation of the restaurant only during breakfast and lunch hours.			
a. Class I		Y	Y	SP-Z
b. Class II		Y	Y	SP-Z
c. Class III		Y	SP-Z	N
d. Class IV		N	N	N
Retail Sales, unless more specifically regulated herein		Y	Y	N
Roadside stand		N	Y	N
Solar Voltaic Array, Ground-mounted		N	N	Y
Warehousing and storage building		N	N	Y
Wholesale (to the trades) supply		N	N	Y
Other Permitted Uses				
Agriculture, Horticulture, and Floriculture,	including farms, cranberry bogs, dairies, truck gardens, greenhouses, and natural ice harvesting activities	Y	Y	N

Uses	Standards	LI-A	LI-B	LI-C
Marina, including landing and wharf for party boat; renting of rowboats, sailboats, motor boats and fishing tackle; retail sale of fish bait; marine railway; and boatbuilding, repair and storage.	Party boats shall not exceed 33 feet in length at the water line.	Y	N	N
Scientific research	<ol style="list-style-type: none"> It shall not involve genetic engineering. The applicant for a building or occupancy permit shall demonstrate to the Building Commissioner and Board of Health on an annual basis that all federal, state, and town licenses, permits, and standards for the handling, use, storage, and disposal of any regulated materials have been obtained or met. Research shall not produce toxic or hazardous wastes as a byproduct. There may be, accessory to the scientific research, the production of related materials for the furtherance of the research. Production shall be clearly accessory to the primary scientific research activity; shall not involve the outside storage of materials; and shall not produce any noxious odors or excessive noise, such as to be detectable on abutting properties. 	Y	Y	N
Accessory Uses (Also see Special Permit Uses Section below)				
Accessory uses that are customarily incidental to permitted uses, including outside storage		Y	Y	N
Fabrication of subassemblies associated with a contractor trade		N	N	Y
Home occupation	(See § 240 – 9.5)	Y	N	N
Portable woodworking mill		Y	N	N
Support office facility		N	N	Y
Taking of boarders	<ol style="list-style-type: none"> There shall be a maximum of 4 borders. The dwelling unit shall be a single-family dwelling with a family resident on the premise. 	Y	Y	Y
Television or radio antennae	not exceeding 50 feet above ground level	Y	N	Y
Special Permit Uses				
Accessory use	<ol style="list-style-type: none"> a home occupation one dwelling unit if accessory to a permitted use and if for security purposes; garage space for more than 2 cars. 	SP-Z SP-Z N	N N SP-Z	N N N
Airport or landing strip or pad		SP-Z	SP-Z	N
Blacksmith, builder, carpenter, mason, plumber, roofer, tinsmith, or a similar tradesperson's office, workshop, yard, or building	The Board of Appeals may, in specific instances, approve other uses where it finds them to be compatible with the uses mentioned.	SP-Z	SP-Z	N
Commercial accommodation	(See § 240-9.4)	SP-Z	N	N
Common driveway		SP-P	SP-P	N

Uses	Standards	LI-A	LI-B	LI-C
Docking of commercial passenger, freight vessel, or party boat exceeding 33 feet at the waterline		SP-Z	N	N
Funeral home		SP-Z	SP-Z	N
Lumber, fuel, feed, or ice establishment		SP-Z	SP-Z	N
Private club not conducted for profit		SP-Z	SP-Z	N
Television or radio antenna exceeding 50 feet above ground level		SP-Z	SP-Z	SP-Z
Motor vehicle repair shop		SP-Z	SP-Z	N
Motor vehicle service station, motor vehicle sales including ancillary repair		SP-Z	N	N
Multifamily use	The Board of Appeals shall find that: <ol style="list-style-type: none"> the public good will be served; the industrial zoned area would not be adversely affected; the uses permitted in the zone would not be noxious to a multifamily use; and the density of any approved proposal shall not exceed 6 units per acre. 	SP-Z	N	N
Parking facility	where fees are to be charged (See §240-9.3A.)	SP-Z	N	N
RDNA Technology (genetic engineering) to be employed in production and research	The Board of Appeals shall find that: <ol style="list-style-type: none"> the site is suitable; and it has received a receipt of acceptable referral from the Board of Health and the Hazardous Materials Coordinator. <p>This amendment to the Zoning Bylaw shall not take effect until a Board of Health regulation outlining control and procedures for using RDNA materials has been promulgated.</p>	N	SP-Z	N
Restaurant	(See the listing for restaurants in the “Business, Commercial, and Industrial Uses” heading above.)			
Shopping center	with a proposed gross floor area of 10,000 square feet or more	SP-Z	SP-Z	N
Stable		SP-Z	SP-Z	N
Theater, cinema, bowling alley, and skating rink	not to include billiard rooms and similar commercial amusement places with automated amusement devices	SP-Z	SP-Z	N
Waste Disposal	Waste Disposal include the following: <ol style="list-style-type: none"> A handling facility where solid waste, noncompostable bulky wastes, commercial solid waste, recyclable material, asphalt pavement, brick and concrete, and construction and demolition waste is brought, sorted, temporarily stored or transferred from one vehicle or container to another vehicle or container for transport off site to a recycling or solid waste treatment, processing, or disposal facility. 	N	N	SP-P

Uses	Standards	LI-A	LI-B	LI-C
	2. Compostable materials, commercial organic material, and compostable bulky wastes, being brought to, and site and composted on, the site. And 3. Materials, equipment, or vehicles used in connection with waste disposal being stored, parked, serviced, or d maintained at the site. The following requirements shall apply in addition to the requirements of § 12.1E,(9) of the Bylaw pertaining to the issuance of special permits. 1. The lot shall have a minimum lot area of 5 acres. 2. The waste disposal contractor use shall not be permitted in a Water Resource Protection District. 3. A site granted a special permit shall be subject to the requirements of the Massachusetts Department of Environmental Protection. 4. All terms used in in this Waste Disposal section shall have the meanings defined in all applicable Massachusetts Department of Environmental Protection regulations or any regulations successor thereto. and No special permit may be approved unless the applicant incorporates procedures and practices in accordance with all applicable Massachusetts Department of Environmental Protection regulations.			
Wind Energy System	Subject to the requirements of § 240- 9.8.	SP-Z	SP-Z	SP-Z

240 – 6.4 Marine District

240 – 6.4A PURPOSE

The purpose of the Marine District is to preserve and protect uses which are dependent on access to marine and tidal waters in accordance with the goals and policies of the Federal Coastal Zone Management Act, the Massachusetts Coastal Zone Management Program, and the Local Comprehensive Plan of Falmouth. Other uses which are not directly dependent on access to marine and tidal waters will only be allowed if they are supportive to the principal use and are granted by special permit.

240 – 6.4B Use Table

N = Not allowed

Y = Allowed by-right

SP-Z = Zoning Board of Appeals Special Permit

SP-P = Planning Board Special Permit

Uses	Standards	Marine District
Residential Uses (Also see Accessory Uses Section below.)		
Residential use		N
Community Service Uses		
Museum, public		Y
Religious institution	including a parish house or similar dwelling for the institution	Y
Municipal Uses		
Beach		Y
Park and playground		Y
Recreation building or structure		Y
Town forest		Y

Uses	Standards	Marine District
Town wharf and Town landing		Y
Business, Commercial, and Industrial Uses		
Marina and boatyard	Including: 1. moorings, landings, and wharves for recreational and commercial boats; 2. boat sales, brokerage, and rentals; 3. boatbuilding, repair, and storage; and 4. retail sales and service when principally marine related.	Y
Oceanographic, or marine related, scientific research, and equipment manufacture and testing		Y
Passenger station		Y
Accessory Uses		
The determination of principal and accessory uses shall include consideration for seasonal changes in marine businesses and the wide range of marine related items serviced and sold.		
Accessory uses	uses that are permitted by definition	Y
Boatbuilding	construction or manufacture of items related to or incidental to the operation associated with boatbuilding including glass fiber laminates, woodworking, and metal fabrication	Y
Dwelling unit	one dwelling unit on each parcel of land for the purpose of housing the owner or employee of a use allowed in the Business, Commercial, and Industrial category above	Y
Navigation aid		Y
Television or radio antennae	not to exceed 50 feet above ground level	Y
Special Permit Uses		
Business or professional office	Offices shall not utilize more than 50% of the floor area of structures on the property, or as otherwise limited by § 240-6.5C, "Special Permit Additional Standards" listed below.	SP-Z
Private Club	not conducted for profit	SP-Z
Restaurants or other places serving food Class I Class II Class III Class IV	Restaurants shall not utilize more than 25% of the floor area of the structures on the property or as otherwise limited by § 240-6.5C, "Special Permit Additional Standards" listed below.	SP-Z SP-Z N N
Retail sales and service	non-marine related sales and service as an activity separate from any permitted uses, provided that the use shall utilize not more than 50% of the floor area of structures on the property, or as otherwise limited by § 240-6.5C, "Special Permit Additional Standards" listed below	SP-Z
Television or radio antennae	exceeding 50 feet above ground level	SP-Z

240 - 6.5C SPECIAL PERMIT ADDITIONAL STANDARDS

- (1) The total floor area of non-marine related uses or structures shall not exceed 25% of the lot area and the resulting floor area of all uses or structures shall not exceed 50% of the total

- square footage of the lot.
- (2) The provision of public amenities (e.g. launching ramps, access to the waterfront, public fishing areas, and visual access to the water) shall be considered by the Zoning Board of Appeals as a condition of any special permit whenever there is no threat to the public health and safety or unreasonable liability to the property owner.
- (3) In no case shall non-marine related uses occupy more than 50% of the total floor area of the structures on the site.

240 – 6.5 Public Use District

240 – 6.5A USE TABLE

N = Not allowed

Y = Allowed by-right

SP-Z = Zoning Board of Appeals Special Permit

SP-P = Planning Board Special Permit

Uses	Standards	Public Use District
Residential Uses		
Single-family detached house		Y
Semi-detached and two-family dwelling		Y
Public or nonprofit housing for the elderly	(See § 240-11.7D)	Y
Community Service Uses		
Cemetery		Y
Child day-care center		Y
Education, research, & philanthropic institution		Y
Group day-care home		Y
Hospital		Y
Library		Y
Museum		Y
Religious Institution	including a parish house or similar dwelling for the institution	Y
Passenger station		Y
Sanitorium		Y
School		Y
Municipal Uses		
Municipal Uses	All municipal uses including an armory, fire or police station, government administrative office, park and playground, recreation building, town beach, town forest, town wharf or landing, water tower, or reservoir.	Y
Other Permitted Uses		
Agriculture, horticulture, and floriculture	if involving the raising and keeping of livestock other than for the private use of residents of the premises, only on parcels of 5 acres or larger	Y
Piers, floats, and docks	when approved by the Conservation Commission and Board of Selectmen as a common pier, float, or dock	Y
Accessory Uses		
Accessory use	uses that are incidental to uses listed above	Y

Uses	Standards	Public Use District
Access Drive	access drives to Business and Industrial Districts	Y
Boarder	the taking of 4 or fewer boarders within a single-family dwelling by a family residing on the premises	Y
Home occupation	(See § 240-9.5, for home occupations allowed by right)	Y
Science and technology research and development, including production	<p>Subject to the following provisions:</p> <ol style="list-style-type: none"> 1. by public or private institutions or firms, whether for profit or otherwise, but only if accessory to operations of a nonprofit educational institution or government agency; 2. the use to be on a lot or contiguous lots in common ownership containing a total of not less than 40 acres in the Public Use District; 3. production not to be located within 100 feet of any zoning district where residential uses are permitted; 4. the total floor area used for production not to exceed one-half percent (.50%) of the total lot area; 5. any production to be in compliance with § 240-13.1A; 6. any production to involve or to have been derived from research and development activities of the nonprofit educational institution or government agency; 7. prior to commencement of each new production activity, written notice describing the production to have been filed with the Falmouth Hazardous Waste Coordinator, the Falmouth Fire Chief and the Falmouth Board of Health. 	Y
Television or radio antennae	not to exceed 50 feet above ground level	Y
Special Permit Uses		
Accessory use – Garage Space	garage space for more than 2 spaces if: the lot is 30,000 square feet or less; or the footprint of the garage is more than 900 square feet or 50% of the footprint of the principal structure, whichever is less	SP-Z
Accessory use – Home Occupation	(See § 240-9.5, for home occupations that require a special permit)	SP-Z
Accessory use – Scientific research	(See § 240-5.1E)	SP-Z
Boat storage as a commercial operation	<p>The lot shall be a minimum of 2 acres.</p> <ol style="list-style-type: none"> 1. The side and rear yard setbacks shall be minimum of 50 feet; lesser setbacks to a minimum of 30 feet may be allowed when a combination of landscaping and natural features provide visual screening as necessary and in proportion to the need to buffer from adjacent land uses All allowed structures, fencing, and walls must meet these setback requirements. The dimensional requirements of ARTICLE 11 DIMENSIONAL REQUIREMENTS shall otherwise apply. 2. Sailboats shall be demasted and no boat on its cradle or other support system shall be higher than 18 feet at any point. 3. No structure or signs other than security fencing, one security dwelling which meets all other requirements of the District, and boat supports shall be allowed. 4. No activity such as cleaning, waxing, repairs, or painting shall be allowed and all activities must be specifically approved by the Board of Appeals. 	SP-Z

Uses	Standards	Public Use District
	5. To assure that the proposed use shall not be located within developed or established residential neighborhoods, the proposed use shall have a common boundary of not less than 20 feet with an industrial or commercial use (a home occupation does not apply), or shall be located directly across the street from the same so that if property lines were extended across the street at least 20 feet of the street center line would be a common boundary. 6. This special permit shall not apply within the Watershed Protection Overlay District.	
Campground	including all incidental and accessory activities associated with campgrounds	SP-Z
Commercial Accommodation	(See § 240-9.4)	SP-Z
Commercial vehicle parking	1. outside parking of more than one commercial light panel, delivery, pickup truck, school bus, or tow truck; 2. temporary parking of school buses for 2 hours or less per day shall not require a special permit; 3. any commercially registered vehicle with a gross vehicle weight of more than 13,000 pounds.	SP-Z
Common driveway		SP-P
Conversion of a dwelling	an existing dwelling on a lot as of January 1, 1980, into not more than 4 units if the conversion involves no material change to the exterior of the dwelling, and if the Board of Appeals determines that the size of the dwelling and the lot are suitable for the conversion	SP-Z
Private Club	not conducted for profit	SP-Z
Recreational vehicle, motor home, travel trailer or fifth-wheel trailer	not be located within the minimum front, side, or rear yard setback requirements	SP-Z
Roadside stand	only for the sale of products of the land of the owner of the premises	SP-Z
Television or radio antennae subject to G.L. c. 409A, § 3	exceeding 50 feet above ground level	SP-Z
Wind Energy System	subject to the requirements of § 240-9.8.	SP-Z

240 – 6.6 Residence Districts (SR-AA, SR-A, SR-B, SR-C, GR)

240 – 6.6A Districts

- | | | | |
|-----------|---------------------|----------|--------------------|
| (1) SR-AA | Single Residence AA | (4) SR-C | Single Residence C |
| (2) SR-A | Single Residence A | (5) GR | General Residence |
| (3) SR-B | Single Residence B | | |

240 – 6.6B Use Table

- N = Not allowed
 SP-Z = Zoning Board of Appeals Special Permit
 Y = Allowed by-right
 SP-P = Planning Board Special Permit

Uses	Standards	SR-AA	SR-A	SR-B	SR-C	GR
Residential Uses						
Single-family detached house		Y	Y	Y	Y	Y
Semi-detached and two-family dwellings		N	N	N	N	Y
Community Service Uses						
Child day-care centers		Y	Y	Y	Y	Y
Group day-care facility		Y	Y	Y	Y	Y
Library, public		Y	Y	Y	Y	Y
Museum, public		Y	Y	Y	Y	Y
Passenger station		Y	Y	Y	Y	Y
Religious institution	including a parish house or similar dwelling for the institution	Y	Y	Y	Y	Y
School		Y	Y	Y	Y	Y
Municipal Uses						
Beach		Y	Y	Y	Y	Y
Fire station		Y	Y	Y	Y	Y
Municipal recreation building		Y	Y	Y	Y	Y
Park and playground		Y	Y	Y	Y	Y
Reservoir		Y	Y	Y	Y	Y
Town forest		Y	Y	Y	Y	Y
Town wharfs and landings		Y	Y	Y	Y	Y
Water tower		Y	Y	Y	Y	Y
Other Principal Uses						
Agriculture, Horticulture, and Floriculture	if involving the raising and keeping of livestock for other than private use of the residents of the premises, then only on parcels of 5 acres or larger	Y	Y	Y	Y	Y
Multi-family use	for 3 or more units, at least one of the units being affordable	N	N	N	N	Y
Piers, Floats, and Docks	with the approval by the Conservation Commission and the Board of Selectmen as a common pier, float, or dock	Y	Y	Y	Y	Y
Accessory Uses						
Accessory uses	accessory uses customarily incidental to any of the uses listed in § 240-6.6B.	Y	Y	Y	Y	Y
Home Occupation	(See § 240-9.5)	Y	Y	Y	Y	Y
Taking of Boarders	subject to: 1. a maximum of 4 boarders ; and 2. boarders are only allowed in a single-family dwelling with a family residing on the premises.	Y	Y	Y	Y	Y
Television or radio antennae.	not exceeding 50 feet above ground level	Y	Y	Y	Y	Y
Special Permit Uses						
Accessory Apartment	1. Purpose: The purpose of the Accessory Apartment bylaw is to: broaden the	SP-Z	SP-Z	SP-Z	SP-Z	N

Uses	Standards	SR-AA	SR-A	SR-B	SR-C	GR
	<p>range of housing choice in Falmouth by increasing the number of small dwelling units available for rent; encourage greater diversity of population with particular attention to young adult citizens; allow for “Aging in Place” for senior citizens; and promote more economic and energy efficient use of the town’s housing supply, while maintaining the appearance and character of the town’s single-family neighborhoods.</p> <p>2. Definition: Accessory Apartment - Sections 240-10.1C., 240-11.2B(2), and 240-11.25A(2)f, notwithstanding, this is an additional dwelling unit, subordinate in size, and accessory to the principal dwelling unit on the lot, located in either the principal dwelling or an accessory structure on the lot. An accessory apartment shall be constructed so as to maintain the appearance and essential character of a single-family dwelling or accessory structure thereto located on the lot.</p> <p>3. Requirements: a) Only one accessory apartment shall be allowed per lot. b) Either the principal dwelling or accessory apartment must be owner-occupied for a period of 7 months in every calendar year, or owned by a nonprofit organization or government authority whose purpose is to provide affordable housing. c) Either the principal dwelling or accessory apartment may be rented, but not both, during the 5 months the owner occupant may be absent. Rental periods shall be not less than 6 months and weekly/monthly rentals (summer rentals so-called) are expressly prohibited. Neither the principal dwelling nor accessory apartment shall be used as commercial accommodations at any time. d) The accessory apartment shall have no more than 2 bedrooms and a maximum of 800 square feet of floor area, or 40 % of the floor area of the principal dwelling, whichever is less. e) The total number of bedrooms on the lot shall not exceed 4 when the lot contains less than 20,000 square feet. f) Whether allowed as a matter of right or by special permit, for accessory apartments located on lots subject to the provisions of the Water Resource Protection or Coastal Pond Overlay Districts, the total number of bedrooms shall not exceed one per 10,000 square feet of lot area, unless both the principal dwelling and accessory apartment are connected to the municipal sewer system or to an on-site septic system with enhanced nitrogen removal approved by the Board of Health.</p> <p>4. Design Standards: Accessory apartments, whether a part of new construction, reconstruction, alteration, or change to a single-family residence or accessory structure attached thereto, shall maintain the following standards: a) An accessory apartment being constructed within the principal dwelling shall have an architectural effect of that of a single-family residence compatible with the surrounding neighborhood. b) An accessory apartment being constructed within an accessory structure shall have an architectural effect of that of a garage or barn customarily incidental to a single-family residence compatible with the surrounding neighborhood. c) Parking for the accessory apartment shall be provided in a manner compatible with the surrounding neighborhood.</p> <p>5. Procedures: a) Accessory Apartment constructed within a single family dwelling: Prior to the issuance of a building permit for an accessory apartment constructed within a single-family dwelling or accessory structure attached thereto a site plan review, pursuant to § 240-12.2, shall be conducted by the Planning Board, taking into account the design standards, requirements, and purposes of this accessory apartment bylaw. The application for site plan review shall include the information contained in § 240-12.2D(3) unless waived by the Planning Board. b) Accessory Apartment constructed within or as a detached accessory structure (not</p>					

Uses	Standards	SR-AA	SR-A	SR-B	SR-C	GR
	<p>attached to a single-family dwelling): In addition to the site plan review requirements above, an accessory apartment built within or as an accessory structure, not attached to a single family dwelling, a special permit from the Board of Appeals shall be required. In addition to the design standards, requirements, and purposes of this accessory apartment bylaw, the Board of Appeals shall take into account the standards found in § 240-12.1E.</p> <p>6. Enforcement: Upon a written determination and notice to the property owner by the Building Commissioner that the property owner has failed to comply with these provisions, the property owner shall bring the accessory apartment into compliance within 90 days of the notice. Failing compliance, the property shall be restored to single family dwelling status within 90 days of said failure determination, in a manner that complies with all requirements of the State Building Code and any local regulations or bylaws.</p> <p>7. Monitoring An affidavit shall be submitted annually to the Building Commissioner, signed by the property owner, attesting that the principal dwelling or accessory apartment has been owner occupied for a period of 7 months and not otherwise rented as set forth in 3(b) above. The Building Commissioner may allow a property owner to be absent during this 7 month period for cause, such as military assignment, work related issues, health issues, academic sabbatical, or similar circumstance.</p>					
Accessory Uses	<p>The following accessory uses may be allowed by special permit:</p> <ol style="list-style-type: none"> 1. garage space for more than 2 cars in the GR District 2. garage space for more than 2 cars if, in the SR-AA, SR-A, SR-B or SR-C Districts only if: <ol style="list-style-type: none"> a) the lot is 30,000 square feet or less; or b) the footprint of the garage is more than 900 square feet or 50% of the footprint of the principal structure, whichever is less. 3. home occupation (See § 240-9.5 for special permit requirements) 4. scientific research (See § 240-5.1E) 5. outside parking of more than one commercial light panel, delivery, pickup truck, school bus, or tow truck 6. temporary parking of school buses for 2 hours or less per day shall not require a special permit 7. outside parking of a motor home, travel trailer, or fifth-wheel not located within the minimum front, side, or rear yard setback requirements 8. outside parking of a commercially registered vehicle with a gross vehicle weight of more than 13,000 pounds 	SP-Z	SP-Z	SP-Z	SP-Z	SP-Z
Boat storage	<p>As a commercial operation under the following standards in addition to the requirements of § 240-12.1.</p> <ol style="list-style-type: none"> 1. The lot shall be a minimum of 2 acres. 2. The side and rear yard setbacks shall be a minimum of 50 feet. Lesser setbacks to a minimum of 30 feet may be allowed when a combination of landscaping and natural features provide visual screening as necessary and in proportion to the need to buffer from adjacent land uses. All allowed structures, fencing, and walls shall meet these setback standards. The dimensional requirements of ARTICLE 11 DIMENSIONAL REQUIREMENTS shall otherwise apply. 3. Sailboats shall be demasted, and no boat on its cradle or other support system shall be higher than 18 feet at any point. 4. No structure or signs, other than security fencing, one security dwelling which meets all other requirements of these zoning districts, and boat supports, shall be allowed. Stacking of boats higher than 18 feet shall be prohibited. 5. No activity such as cleaning, waxing, repairs, or painting shall be allowed. All activities must be specifically approved by the Board of Appeals. 	SP-Z	SP-Z	SP-Z	SP-Z	SP-Z

Uses	Standards	SR-AA	SR-A	SR-B	SR-C	GR
	<p>6. To assure the proposed site will not be located within developed or established neighborhoods, the proposed site shall have a common boundary of not less than 20 feet with an industrial or commercial use (a home occupation does not apply) or be located directly across the street from the same so that if property lines were extended across the street, at least 20 feet of street center line would be common boundary.</p> <p>7. This special permit is only for off-site boat storage associated with marinas and boatyards located within Falmouth’s Marine Zoning District.</p> <p>8. This special permit shall not apply to any property within the Watershed Protection Overlay District.</p>					
Commercial accommodations	see § 240-9.4.	SP-Z	SP-Z	SP-Z	SP-Z	SP-Z
Common driveway		SP-P	SP-P	SP-P	SP-P	SP-P
Conversion of a dwelling unit into multiple units	<p>1. May be converted into not more than 4 dwelling units in the GR District, if the Zoning Board of Appeals finds that:</p> <p>a) the lot was in existence as of January 1, 1980;</p> <p>b) there is no material change to the exterior of the existing dwelling, including architectural features; and</p> <p>c) the size of the dwelling and the lot are suitable for the remodeling.</p> <p>2. May be converted into not more than 4 dwelling units in the SR-AA, SR-A, SR-B and SR-C Districts if the Zoning Board of Appeals finds that:</p> <p>a) the lot was in existence as of January 1, 1980;</p> <p>b) there is no material change to the exterior of the existing dwelling, including architectural features;</p> <p>c) the conversion will not increase the gross floor area of the dwelling as it existed on January 1, 1980;</p> <p>d) there are no additional bedrooms above the number in existence in the dwelling as of January 1, 1980;</p> <p>e) there are no home occupations or taking of boarders; and</p> <p>f) if the dwelling to be converted is located within the Water Resources Protection Overlay District or within a Coastal Pond Overlay District, the minimum lot size is 15,000 square feet for one additional dwelling unit; 20,000 square feet for 2 additional dwelling units; and 25,000 square feet for 3 additional dwelling units.</p> <p>3. The Board of Appeals may grant the following exceptions in approving a special permit:</p> <p>a) Affordable units, as defined in Article 3, need not comply with the additional square footage requirements in subsection f) above as long as the minimum lot size is 15,000 square feet.</p> <p>b) Preexisting conversions performed without the benefit of a special permit under this section shall be exempt from the requirements of subsection (2)f above if an application to obtain a special permit under this section is received by the Board of Appeals within one year of the effective date of the bylaw and the special permit is subsequently approved.</p>	SP-Z	SP-Z	SP-Z	SP-Z	SP-Z
Conversion of a single-family dwelling into office space	<p>A single-family dwelling in existence on the lot as of January 1, 1980 or portion thereof, may be converted into office space associated with the uses specified in subsections (4)a) through (4)f) below. Conversion into medical clinics or retail sales shall not be permitted. Conversions shall meet the following criteria:</p> <p>1. The dwelling shall be located within 500 feet of a business or industrial district.</p> <p>2. The lot shall have frontage on the westerly side of Palmer Avenue south of Ter Heun Drive but north of the intersection of Palmer Avenue and North Main Street and have a minimum of 10,000 square feet.</p>	N	N	N	N	SP-Z

Uses	Standards	SR-AA	SR-A	SR-B	SR-C	GR
	3. Except as may be allowed by the Historic District Commission or required by the State Building Code, the conversion shall not involve material change to the exterior of the existing dwelling including architectural features. The conversion may not increase the gross floor area of the dwelling, as it existed on January 1, 1980. 4. The business office space shall only be associated with the following types of businesses: a) landscaping or landscape design b) construction and construction related trades c) educational d) research e) philanthropic institution f) other general services not more specifically listed 5. Vehicles parked on the premises shall not exceed 13,000 GVW and shall be restricted to side and rear yards. 6. No special permit shall be granted for the uses noted in (4)a) though f) which would, in the opinion of the Board of Appeals: a) negatively impact traffic flow or safety; b) negatively impact the visual character of the neighborhood or surrounding areas; or c) result in the modification of the existing dwelling that, under the requirements of § 240-14.1, requires more than 3 parking spaces.					
Hospital, Philanthropic Institution		SP-Z	SP-Z	SP-Z	SP-Z	SP-Z
Private clubs not conducted for profit		SP-Z	SP-Z	SP-Z	SP-Z	SP-Z
Research Institution		N	N	N	N	SP-Z
Television or radio antennae	exceeding 50 feet above ground level	SP-Z	SP-Z	SP-Z	SP-Z	SP-Z
Wind Energy Systems	subject to the requirements of § 240-9.8	SP-Z	SP-Z	N	N	N

240 – 6.7 Senior Care Retirement District

240 – 6.7A PURPOSE

The purpose of this district is to allow for alternative housing for senior citizens in a setting that provides them with personal and health-related services and programs and allows for their maximum independence.

240 – 6.7B Use Table

N = Not allowed

Y = Allowed by-right

SP-Z = Zoning Board of Appeals Special Permit

SP-P = Planning Board Special Permit

Uses	Standards	Senior Care Retirement District
Permitted Uses		
Bank		Y
One family detached dwelling		Y

Uses	Standards	Senior Care Retirement District
Medical clinic, medical and allied health office		Y
Professional office		Y
Public or nonprofit housing for seniors, subject to the requirements of § 240 – 11.7D		Y
Restaurant, Class I or II		Y
Religious institution	including a parish house or similar dwelling for the institution	Y
Special Permit Uses		
Senior Care Retirement Community (SCRC)	(See § 240 – 6.7C below)	SP-P

240 - 6.7C SCRC SPECIAL PERMIT STANDARDS

- (1) **SCRC DESCRIPTION** – An SCRC contains one or more residential buildings with living units described below, that provides residences exclusively for persons 62 years of age or older (except their spouses and surviving spouses, and also except for staff housing and skilled nursing units), and which includes common areas and community dining facilities. The SCRC provides personal services such as social, psychological, educational, and health-related programs and services, designed to allow residents to safely "age in place" with maximum independence and with skilled caregivers available continuously on-site.
- (2) **SCRC UNITS** – An SCRC may include independent living units (ILUs) for persons who may not require regular assistance with daily living, as well as assisted living units (ALUs) for persons in need of daily assistance from skilled caregivers, and may include skilled nursing rooms (SNRs), as defined by the Massachusetts Department of Public Health. For the purposes of this Bylaw, ILUs, ALUs and SNRs shall be known as "SCRC" units.
- (3) **STAFF HOUSING** – An SCRC may also include staff housing units, provided that the number of staff units shall not exceed 10% of the SCRC units. The total number of units in the development, including both SCRC units and staff housing as determined by the Planning Board, shall not exceed 6 units per acre. No unit may contain more than 2 bedrooms. Assisted living units shall be no less than 350 square feet but no greater than 800 square feet in size. Each skilled nursing room may contain no more than 2 beds.
- (4) **LOT AREA, FRONTAGE & OPEN SPACE** – An SCRC shall have a minimum total area of 15 acres and lot frontage of 100 feet. In calculating the minimum total area the provisions of § 240-9.7E(2)a shall apply. At least 65% of the total area must be set aside as open space consistent with § 240-9.7H. Up to 1/3 or 5 acres of the required open space, whichever is greater, may be located off-site at the discretion of the Planning Board.
- (5) **SETBACKS** – Front yard building setbacks shall be a minimum of 50 feet. Side and rear yard building setbacks shall be a minimum of 25 feet. The Planning Board may require greater setbacks, up to 100 feet for front yard and up to 50 feet for rear and side yard setbacks where needed to provide screening and buffer from the street or adjacent properties. Redevelopment of existing buildings may maintain existing setbacks at the discretion of the Planning Board. Redevelopment does not include the voluntary demolition of an existing building and subsequent rebuilding.

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- (6) HEIGHT – The maximum building height of any SCRC building shall not be more than 3 stories and not more than 35 feet as defined for community service uses. The Planning Board in its discretion may increase this height to 45 feet, upon good cause shown by the applicant, provided that for every one-foot increase in height all minimum setbacks shall be increased by 2 feet.
- (7) ACCESSORY FACILITIES – The development may incorporate, within a residential building, accessory facilities intended solely for the use or benefit of the residents and staff of the development, such as banking and recreational facilities, as limited and approved by the Planning Board.
- (8) IMPACTS – The Planning Board, in order to approve the special permit for an SCRC, shall find that the overall impacts of the SCRC in terms of traffic, wastewater, nutrient loading, and fiscal impact to the Town will be no greater than the impacts associated with other uses allowed as of right or by special permit within Single Residence or Agricultural Zoning Districts on the lot(s). Speculative uses, such as applications made under G.L. c. 40B, shall not be considered in making the comparison of cumulative impacts. The Planning Board may require the applicant to provide specialized studies or information as necessary in order to make such a finding.
- (9) WASTEWATER – The Planning Board shall not approve a SCRC unless tertiary treatment of wastewater is provided. Tertiary treatment shall include enhanced nitrogen removal when a SCRC is located in a Coastal Pond Overlay District.
- (10) PLANNING BOARD REVIEW – The Planning Board may require the applicant to reduce the size, including the height, of any residential structure or to adjust its placement on the lot to reduce impacts on neighborhood visual character, including views or vistas. The Planning Board, in order to approve the special permit for an SCRC, shall make a positive finding under § 240-9.7A(1)g. of the Planned Residential Development Bylaw and 4 or more of the purposes of § 240-9.7A. The Planning Board may require or allow that the development be constructed in phases if necessary to minimize neighborhood impacts or to meet financing or regulatory requirements.
- (11) PARKING – Parking shall be located in side or rear yards behind the front facade line of the building, except that parking may be allowed in front of the building line at the discretion of the Planning Board if appropriately screened or landscaped as determined by the Planning Board. The number of parking spaces shall be determined according to the following: one space per independent living unit; one-half space per assisted living unit; one space per employee. The Planning Board may apply parking reductions to an SCRC as provided for in § 240-14.1F as part of the special permit.
- (12) DENSITY BONUS – Section 240-6.7C(2) & (3) notwithstanding, a density bonus maybe allowed at the sole discretion of the Planning Board as part of the special permit process for an SCRC. The Board may allow up to 8 units per acre, if the applicant provides at least 15% of the SCRC units (not including staff units) as affordable, subject to the requirements below, and one or more of the following: a) tertiary treatment of wastewater that achieves an annual average nitrogen reduction to a level of nine mg/l or less, or; b) the application results in no net increase in nitrogen loading or; c) the SCRC is tied into the municipal sewer system.

As a condition of any density bonus the applicant shall be required to execute an affordable housing restriction and regulatory agreement for recordation at the Registry of Deeds, consistent with the requirements of the Massachusetts Department of Housing and Community Development, for qualification of the affordable units towards the Town's subsidized housing inventory (SHI).

ARTICLE 7 OVERLAY DISTRICTS

240 – 7.1 Accident Prevention Overlay District

240 – 7.1A Use Table

N = Not allowed

Y = Allowed by right

SP-Z = Zoning Board of Appeals special permit

SP-P = Planning Board special permit

Uses	Standards	Accident Prevention Overlay District
Prohibited Uses (except as provided in “Conversion of Existing Structures” below)		
Duplex		N
Hospital		N
Multifamily dwelling		N
Place of assembly		N
Planned residential development		N
Public housing		N
School		N
Theater		N
Conversion of Existing Structures		
Conversion of existing structures for dwelling purposes	The Board of Appeals shall make findings that the proposed conversion will not increase the public exposure to aircraft noise nor to accident potential over that of the existing use.	SP-Z

240 – 7.1B Height Limitation

Any provision in this Bylaw to the contrary notwithstanding, no building or structure, or part thereof or accessory thereto, shall be constructed, erected, converted, or maintained that exceeds 35 feet in height above the ground.

240 – 7.2 Coastal Pond Overlay District

240 – 7.2A Purpose

The purpose of § 240 – 7.2 is to preserve the water quality in Falmouth's coastal ponds and harbors in accordance with adopted plans for both development and preservation, while recognizing that the public and private sectors have equal roles in meeting the established goals for swimmable, fishable, and usable water of the highest possible esthetic and natural quality.

240 – 7.2B DESCRIPTION OF THE COASTAL POND OVERLAY DISTRICT

- (1) DESCRIPTION – The Coastal Pond Overlay District is depicted on a map entitled "Recharge Areas of Coastal Ponds in Falmouth" dated August 1, 2001, scale 1" = 2000' on file with the Town Clerk.
- (2) APPLICABILITY – This District shall apply to the following developments:
- a. subdivisions of more than 5 lots or more than 5 acres
 - b. commercial developments requiring site plan review
- (3) PROCEDURES – The following procedures shall be followed:
- a. All development proposals listed in § 240-7B(2)b. must file an analysis of development impact as specified by § 240-13.1D(3)a, b, c, and di, dii, and diii, with the application made to the reviewing board;
 - b. The authorized reviewing board, the Planning Board, or the Zoning Board of Appeals, as the case may be, shall make all findings regarding the analysis and may withhold approval if the proposal if it does not comply with the standards of this Section. However, the reviewing board shall not withhold approval of an application if the applicant provides measures for the reduction of the nutrient loading rate, on a pounds-per-acre basis, to a rate below that which would produce critical eutrophic levels in the receiving water body. It shall be the responsibility of the applicant to demonstrate that the proposed mitigating measures will work as designed, and the reviewing board may require the applicant to demonstrate on an annual basis that mitigating measures are operating satisfactorily.
- (4) EXEMPTIONS
- a. The special permit granting authority may exempt an application from the requirements of § 240 – 7.2, provided the applicant can demonstrate that:
 - i. nutrients from the development will not in fact be recharged to the designated water body or public water supply well; or
 - ii. the development will not result in any increase in loading of the relevant nutrient.
 - b. In addition to the exemptions found in §§ 240-7.2B(4)a.i. and a.ii., any development that is in the recharge zone of a coastal pond proven to already exceed the limits listed below may be exempted from the requirements of § 240-7.2B(3)a above (analysis of development impact). As part of this exemption, the development shall accept the findings of the Planning Board or special permit granting authority.
- (5) SUPERSESION OF OTHER PROVISIONS – The requirements of § 240-7.2 shall supersede the standards of § 240- 13.1D(3)d.iv. for salt water.

240 – 7.3 Floodplain Overlay District

240 – 7.3A Overview

- (1) INTENT – Recognizing the dangers inherent upon coastal flooding at times of hurricanes or severe storms and as a means of protecting its citizens and their property, the Floodplain Overlay

District is intended to regulate construction of structures and the use of the land within this District.

- (2) MAPS – This district is defined as shown on the Flood Insurance Rate Map, dated July 16, 2014, as published by the Federal Emergency Management Agency.
- (3) BASE FLOOD ELEVATION – The coastal area of the Town shall have base flood elevation levels established according to the Flood Insurance Rate Maps and Flood Insurance Study for the Town of Falmouth.
- (4) APPLICABILITY – Section 240-7.3 shall apply to the following activities:
 - a. new construction of residential and nonresidential structures;
 - b. substantial improvement (as defined in ARTICLE 3 - DEFINITIONS) to a structure that includes, in Velocity (V) Zones, any addition(s), improvement(s), alteration(s), or combinations thereof to a structure that would add more than 200 square feet of gross floor area;
 - c. the addition to existing structures of increased water, electric, or gas service, toilet facilities, or sewage systems;
 - d. alteration of the land form (as defined in ARTICLE 3 – DEFINITIONS); and
 - e. any structure which has sustained substantial damage (as defined in ARTICLE 3 – DEFINITIONS).

240 – 7.3B Requirements

- (1) BUILDING PERMITS – Building permits granted for activities listed under § 240 – 7.3A(4) are subject to the following provisions:
 - a. In new residential structures, there shall be no basement area, and upon the making of a substantial improvement, no new basement shall be installed.
 - b. The lowest floor of new and substantially improved nonresidential structures shall be elevated to or above the base flood elevation level or be floodproofed (as defined in ARTICLE 3 DEFINITIONS) to this level.
 - c. New and replacement utility and water facilities shall be located and constructed to minimize or eliminate flood damage.
 - d. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
 - e. On-site waste disposal systems are to be located to avoid impairment to them or contamination from them during flooding.
 - f. Certification by a professional engineer or architect for floodproofing measures shall be required.
 - g. Storage of fuel oil, toxic, or hazardous materials within the base floodplain shall be floodproofed.
- (2) ADDITIONAL REQUIREMENTS IN THE VELOCITY (V) ZONE – If proposed construction or alteration of the land form is located within a V Zone (as defined in ARTICLE 3 - DEFINITIONS), Floodplain permits granted under § 240 – 7.13A(4) above, shall be subject to the following additional requirements:
 - a. New construction within the V Zones shall be located landward of the reach of mean high tide.

- b. New construction and substantial improvements within the V Zones shall be elevated on adequately anchored pilings or columns and securely anchored to piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level. A registered professional engineer or architect shall certify that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.
- c. New construction and substantial improvements within the V Zones shall have the space below the lowest floor free of obstructions or be constructed with breakaway walls designed to collapse under stress without jeopardizing the structural support of the structure itself so that the impact on the structure by abnormally high tides, wave action, or wind-driven water is minimized. Such temporarily enclosed space shall not be used for human habitation.
- d. The use of fill for structural support of buildings within the V Zones is prohibited.
- e. Man-made alteration of sand dunes within the V Zones is prohibited.

240 – 7.3C Special Permit Requirements

(1) USES – Special permits are required for all the uses listed in the following Table and in accordance with the standards in the Table. Note that SP-Z = a Zoning Board of Appeals special permit.

Special Permit Uses	Standards	Floodplain Overlay District
Alteration of a land form	No alteration of the land form shall be permitted where there may be the risk of altering the drainage or runoff to the detriment of other landholders or the Town. Before granting a special permit for the alteration of the land form, the Zoning Board of Appeals shall duly consider any recommendations by the Conservation Commission and the Planning Board.	SP-Z
Nonresidential structures	Including but not limited to boathouses, boatyards, or structures designed for education and research, the nature of which requires their location in the Floodplain Overlay.	SP-Z
Restoration and reconstruction of structures listed in the National Register of Historic Places or the official State Inventory of Historic Places		SP-Z

- (2) SPECIAL PERMIT FINDINGS – Special permits shall only be issued upon findings made by the Board of Appeals that:
- a. the granting of the special permit will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or conflict with existing bylaws;
 - b. the relief granted is the minimum necessary considering the flood hazard; and
 - c. in an area of critical environmental concern (ACEC) all available means of mitigating or reducing environmental damage have been implemented and any remaining environmental damage is minor or insignificant enough to not irreparably affect the ACEC or its resources.

- (3) BOARD OF APPEALS NOTICE TO APPLICANT – Following the granting of the special permit, the Board of Appeals shall notify the applicant in writing that the issuance of a special permit to construct a structure below the base flood level may result in:
- a. increased premium rates for flood insurance; and
 - b. increased risks to life and property.

240 – 7.3D ADMINISTRATION

The Building Commissioner shall administer § 240 -7.3 as follows:

- (1) REVIEW –The review of the proposed construction and alteration of the land form within the Floodplain Overlay District shall assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, or by town bylaw.
- (2) RECORDS – Records of the elevation (in relation to mean sea level) of the lowest floor of all new or substantially improved structures shall be obtained and maintained. In addition, records as to whether or not such structures contain a basement shall be maintained.
- (3) FLOODPROOFING RECORDS – If a structure has been floodproofed, records of the elevation (in relation to mean sea level) of the lowest floor and the elevation to which the structure was floodproofed shall be obtained and maintained. In addition, records of floodproofing certifications which have been prepared by registered professional engineers and architects in relation to the adequacy of floodproofing methods shall be maintained.
- (4) SUBSTANTIAL IMPROVEMENT – A determination of substantial improvement (as defined in ARTICLE 3 - DEFINITIONS) shall be made using the official records of the Tax Assessor. Any new or revised appraisal submitted for the purpose of determining substantial improvement shall be submitted by the Building Commissioner to the Tax Assessor.

240 – 7.4 Large Scale Ground Mounted Solar Overlay District

240 – 7.4A PURPOSE AND APPLICABILITY

- (1) PURPOSE – The purpose of this bylaw is to promote the creation of new large scale ground mounted solar installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.
- (2) APPLICABILITY – The provisions set forth in this section shall apply to the construction, operation, and/or repair of large scale ground mounted solar installations and shall follow the guidelines set forth in the MA DOER/MA DEP/Mass CEC Clean Energy Results Ground Mounted Solar PV Systems dated June 2015, as amended to the most current guideline.

240 – 7.4B DEFINITIONS

As-of-Right Siting – As-of-Right Siting shall mean that development may proceed without the

need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development shall be subject to site plan review, § 240-12.2, to determine conformance with the Zoning Bylaw. Projects cannot be prohibited, but can be reasonably regulated by the Building Commissioner

Large Scale Ground Mounted Solar Photovoltaic Installation – A Solar Energy System that is structurally mounted to the ground and is not roof mounted; that occupies more than 40,000 square feet of surface area (equivalent to a rated nameplate capacity of about 250kW DC or greater

Rated Nameplate Capacity – The maximum rated output of electric power production of the photovoltaic system in watts of Direct Current (DC)

Solar Energy System – A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation, or water heating

240 – 7.4C General Requirements for all Large Scale Solar Power Generation Installations

The following requirements are common to all solar photovoltaic installations to be sited in designated locations:

- (1) **COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS** – The construction and operation of all large scale solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar energy system shall be constructed in accordance with the State Building Code.
- (2) **BUILDING PERMIT AND BUILDING INSPECTION** – No large scale solar photovoltaic installation shall be constructed, installed, or modified as provided in this section without first obtaining a building permit.
- (3) **FEES** – The application for a building permit for a large scale solar photovoltaic installation must be accompanied by the fee required for a building permit.
- (4) **SITE PLAN REVIEW** – Ground mounted large scale solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall require site plan review by the Planning Board prior to construction, installation, or modification as provided in this section. The site plan review shall be an "expedited" application and permitting process under which said facilities may be sited within 1 year from the date of initial application to the date of final approval by the Planning Board.
- (5) **PLANS AND MAPS** – All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.

240 – 7.4D Required Documents

Pursuant to the site plan review process, the project proponent shall provide the following documents, as deemed applicable by the Planning Board.

- (1) **PLANS** – A site plan showing:

- a. property lines and physical features, including roads, for the project site;
- b. proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- c. blueprints or drawings of the solar energy system signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector, and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
- d. one or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all Massachusetts Electric Code (527 CMR 12.00) compliant disconnects and overcurrent devices;
- e. documentation of the major system components to be used, including the panels, mounting system, inverter and storage batteries;
- f. name, address, and contact information for proposed system installer;
- g. name, address, phone number, and signature of the project proponent, as well as all co-proponents or property owners, if any;
- h. name, contact information and signature of any agents representing the project proponent; zoning district designation for the parcel(s) of land comprising the project site;
- i. locations of active farmland and prime farmland soils, wetlands, permanently protected open space, Priority Habitat Areas and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage & Endangered Species Program (NHESP) and “Important Wildlife Habitat” mapped by the DEP;
- j. locations of floodplains or inundation areas for moderate or high hazard dams; and
- k. locations of local or National Historic Districts.

(2) **SITE CONTROL** – The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar energy system.

(3) **OPERATION & MAINTENANCE PLAN** – The project proponent shall submit a plan for the operation and maintenance of the large scale ground mounted solar energy system, which shall include measures for maintaining safe access to the installation, stormwater controls, as well as general procedures for operational maintenance of the installation.

(4) **PROOF OF LIABILITY INSURANCE** – Documented proof shall be provided to the Board.

(5) **A PUBLIC OUTREACH PLAN** – This shall include a project development timeline, which indicates how the project proponent will meet the required site plan review notification procedures and otherwise inform abutters and the community as required in § 240-12.2.

(6) **UTILITY NOTIFICATION** – No photovoltaic system shall be installed until evidence has been given to the Planning Board that the owner has submitted notification to the utility company of the customer’s intent to install an interconnected customer owned generator.

(7) **FINANCIAL SURETY** – A description of financial surety that satisfies § 240 – 7.4F(3).

240 – 7.4E Site Plan Review Design and Operation Standards

(1) **DIMENSIONAL REQUIREMENTS**

Dimensional Requirements		
DIMENSION	REQUIREMENT	ADDITIONAL REQUIREMENTS
Minimum lot size	7 acres	
Side yard setback ¹	35 feet	provided, however, that where the lot abuts a Residence or Agriculture District, the side yard shall not be less than 100 feet and be maintained as a no disturb zone
Rear yard setback ¹	35 feet	provided, however, that where the lot abuts a Residence or Agriculture District, the rear yard shall not be less than 100 feet and be maintained as a no disturb zone

¹The Planning Board may allow a side or rear yard abutting permanently conserved open space to be reduced to no less than 35 feet in a Residence or Agriculture District. Within any no-disturb zone, the Planning Board may allow landscaping and other screening.

- (2) REASONABLE REGULATIONS – All structures accessory to ground mounted solar voltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking, and building coverage requirements of this Section and of this Bylaw.
- (3) MULTIPLE ACCESSORY STRUCTURES – These shall be clustered to the greatest extent feasible and views of such structures to residential properties and roadways shall be screened with landscaping.
- (4) LAND CLEARING, SOIL EROSION AND HABITAT IMPACTS – Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of solar energy system or otherwise prescribed by applicable laws, regulations, and bylaws.
 - a. Not more than 2 acre of forest land shall be deforested for any one Ground Mounted Solar Photovoltaic Installation, and no such installation shall be placed on land that was deforested within the prior 5 years. The Planning Board may allow additional deforestation of up to 4 more acres or 10% of the lot, whichever is less, but for any deforestation allowed in excess of 2 acres, the Planning Board shall require mitigation, such as the permanent conservation of open space and/or reforestation, on or off site, of at least twice the area of the excess.
 - b. Except as allowed under § 240-7.4E(4)a, land clearing in excess of 2 contiguous acres in connection with any single installation is prohibited.
 - c. No such installation shall be segmented or broken into separate ownerships so as to avoid the prohibitions of §§ 240-7.4E(4)a. and b. above.
- (5) LIGHTING – Lighting of large scale ground mounted solar energy systems shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar energy system shall be directed downward and shall incorporate full cutoff fixtures to reduce light pollution.
- (6) SIGNAGE – Signs on large scale ground mounted solar energy systems shall comply with Chapter

184, Signs, of the Falmouth Town Code. A sign consistent with Chapter 184 shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar energy systems shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar energy system.

- (7) **UTILITY CONNECTIONS** – Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- (8) **EMERGENCY SERVICES** – The large scale ground mounted solar energy system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Chief of the Fire/Rescue Department. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar energy system shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
- (9) **MONITORING AND MAINTENANCE** – The large scale ground mounted solar energy system owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Chief of the Fire/Rescue Department. The owner or operator shall be responsible for the cost of maintaining the solar energy system and any access road.
- (10) **MODIFICATIONS** - All material modifications to a large scale ground mounted solar energy system made after issuance of the required building permit shall require approval by the Planning Board.

240 – 7.4F Site Abandonment or Decommissioning

- (1) **DECOMMISSIONING AND REMOVAL REQUIREMENTS** – Any large scale ground mounted solar energy system which has reached the end of its useful life or has been abandoned consistent with § 240-7.4F shall be removed. For a scheduled decommissioning, the owner shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Board by certified mail of the proposed date of discontinued operations and plans for removal.

Decommissioning shall consist of:

- a. physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site;
 - b. disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations; and
 - c. stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- (2) **ABANDONMENT** – Abandonment shall mean the cessation of a solar energy system accompanied by

an intent to abandon and voluntary conduct whether affirmative or negative. Time is not a controlling factor of abandonment. Although the lapse of time may be evidence of an intent to abandon, and where it is accompanied by acts of abandonment, it may be considered in determining whether there has been abandonment. Abandonment may arise from a single act or a series of acts.

If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town retains the right, to enter and remove an abandoned, hazardous, or decommissioned large scale ground mounted solar energy system in accordance with applicable laws. As a condition of site plan approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation.

- (3) **FINANCIAL SURETY** – Proponents of large scale ground mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape. This shall be in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent.

The surety will not be required for town- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

240 – 7.5 Search and Rescue Corridor Overlay District

240 – 7.5A PURPOSE

The purpose of this district is to preserve two 3000-foot wide, helicopter flight corridors for the USCG Air Station Cape Cod when responding to distress calls during inclement weather.

240 – 7.5B DISTRICT MAP

The Search and Rescue Overlay District is an overlay district superimposed on the underlying zoning districts as depicted on a map entitled: "Search & Rescue Corridor USCG Air Station Cape Cod Emergency Visual Routes," dated June 5, 2007, scale one inch equals 2,000 feet, and on file with the Town Clerk.

240 – 7.5C Height Limitation

Any provision in this Bylaw to the contrary notwithstanding, no building or structure, or part thereof or accessory thereto, shall be constructed, erected, converted, or maintained that exceeds 100 feet in height above the ground.

240 – 7.6 Water Resource Protection Overlay District

240 – 7.6A Overview

(1) – The purpose of the Water Resource Protection Overlay District (WRPOD) is to:

- a. promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water;
- b. preserve and protect existing and potential sources of drinking water supplies;
- c. conserve the natural resources of the town; and
- d. prevent temporary and permanent contamination of the environment.

(2) DELINEATION OF THE WATER RESOURCE PROTECTION OVERLAY DISTRICT (WRPOD)

- a. The WRPOD is an overlay district that shall apply to all new construction, reconstruction, or expansion of existing buildings, and new or expanded uses.
- b. There are hereby delineated within the town certain water resource protection areas consisting of aquifers or recharge areas which are shown a map, at a scale of one inch to 1,500 feet, and entitled "Water Resource Protection District, Town of Falmouth," dated March 29, 2011. This map, as it may be amended from time to time by Town Meeting, is hereby made a part of the Zoning Bylaw and is on file in the office of the Town Clerk.
- c. Applicable activities or uses which fall within the WRPOD must comply with the requirements of this district as well as with the underlying zoning.

(3) DEFINITIONS – For Definitions related to this section, see ARTICLE 3 – DEFINITIONS.

(4) BOUNDARY DISPUTES – If the location of the district boundary, as delineated on the Water Resource Protection Overlay District Map in relation to a particular parcel is in doubt or dispute, the burden of proof shall be on the property owner(s) of the land in question to show where the boundaries should properly be located. At the request of the owner(s), the Town may engage a professional engineer, hydrologist, geologist, or soil scientist to determine the boundaries of the district more accurately with respect to individual parcels of land and may charge the owner(s) for all or part of the cost of the investigation.

240 – 7.6B Uses

(1) UNDERLYING DISTRICT REQUIREMENTS – Applicable activities or uses which fall within the WRPOD must comply with the requirements of this district as well as with the underlying zoning. Uses prohibited in underlying zoning districts are prohibited in the WRPOD.

(2) ADDITIONAL PERMITS – All uses listed in the Use Table shall also obtain necessary permits, orders, or approvals required by federal, state, or local governments.

(3) USE TABLE – WATER RESOURCE PROTECTION OVERLAY DISTRICT

N = Not allowed

Y = Allowed by right

SP-Z = Zoning Board of Appeals special permit

SP-P = Planning Board special permit

WATER RESOURCES PROTECTION OVERLAY DISTRICT – USE TABLE		
USES	STANDARDS	WRPOD
Permitted Uses		
Bicycle, foot, and horse paths and bridges		Y
Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as wells, pipelines, aqueducts, and tunnels	Underground storage tanks related to these activities are not permitted.	Y
Farming, gardening, nursery, conservation, forestry, harvesting, and grazing	Uses are subject to the PROHIBITED USES and SPECIAL PERMIT USES sections listed below. See the “Agriculture and Farming Related Terms” section of ARTICLE 3 – DEFINITIONS. Uses are subject to the agricultural exemptions of G.L. c. 40A, § 3	Y
Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices	Uses are subject to the agricultural exemption from wetlands regulation accorded by the Wetlands Protection Act (WPA), at G.L. c. 131, § 40, et seq., and by the Wetlands Regulations at 310 CMR 10.00 et seq.	Y
Uses and structures permitted in the underlying zoning district	Uses are subject to the PROHIBITED USES and SPECIAL PERMIT USES sections listed below.	Y
Prohibited Uses		
Animal manure - storage	The use is prohibited unless it is covered or contained.	N
Automobile recycling (including automobile graveyard and junkyard as defined in G.L. c. 140B, §1)		N
Auto services or repair		N
Bus terminal		N
Car washing facility		N
Commercial accommodation		N
Commercial laundry		N
De-icing chemical storage facility		N
Dry cleaning establishment		N
Gas station		N
Hazardous waste facility	A facility that generates, treats, stores, or disposes of hazardous waste that is subject to G.L. c. 21C, except for the following licensed activities: <ol style="list-style-type: none"> 1. very small quantity generators as defined under 310CMR 30.00; 2. household hazardous waste collection centers and events under 310 CMR 30.930; 3. waste oil retention facilities required by G.L. c. 21C § 52A; and 4. waste remediation treatment works approved under 314 CMR 5.00. 	N

WATER RESOURCES PROTECTION OVERLAY DISTRICT – USE TABLE		
USES	STANDARDS	WRPOD
Prohibited Uses		
Industrial and commercial use	Specifically industrial and commercial uses that discharge process wastewater on site.	N
Landfill and open dump	These uses as defined in 310 CMR 19.006.	N
Liquid petroleum product	Storage of these products except for: <ol style="list-style-type: none"> 1. products for household use, outdoor maintenance, and heating of a structure; 2. waste oil retention facilities required by statute, rule, or regulation; 3. emergency generators required by statute, rule, or regulations; 4. treatment works approved under 314 CMR 5.00 for treatment of ground or surface waters, provided that storage of items listed in 1 through 3 is in freestanding containers within buildings or above ground with secondary containment adequate to contain a spill the size of the container's total storage capacity plus 10% 	N
Parking lot	Parking lots that are set apart primarily to accommodate off-site activities.	N
Sludge or septage - landfilling	Use as it is defined in 310 CMR 32.05.	N
Sludge or septage - storage	This is prohibited unless the storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31.	N
Snow and ice – stockpiling & disposal	This is prohibited if the stockpiling and disposal of snow and ice containing de-icing chemicals is brought in from outside the district.	N
Treatment facility – sewage and groundwater	A treatment facility that is subject to 314 CMR 5.00 including privately owned sewage treatment facilities, except for the following: <ol style="list-style-type: none"> 1. the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works; 2. the replacement of existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s); and 3. treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated groundwater. 	N
Trucking terminal		N
Special Permit Uses		
Fertilizer, pesticide, herbicide, and soil conditioner storage	This refers to the storage of commercial fertilizers, pesticides, herbicides, and soil conditioners as defined in G.L. c. 128 § 64. All storage must be within a structure designated to prevent the generation and escape of contaminated runoff or leachate	SP-Z
Hazardous liquid material storage	This shall be storage of liquid hazardous materials as defined in G.L. c. 21E, in a freestanding container within a building or above ground, with secondary containment adequate to contain a spill the size of the container's total storage capacity plus 10%.	SP-Z
Hazardous and toxic material handling	Includes activities that involve the handling of hazardous or toxic materials in quantities greater than those associated with normal household use and that are permitted in the underlying zoning (except as prohibited in the Prohibited Uses category in this Table).	SP-Z

WATER RESOURCES PROTECTION OVERLAY DISTRICT – USE TABLE		
USES	STANDARDS	WRPOD
Impervious limitation	Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater, shall require a special permit subject to the following: 1. A system for groundwater recharge shall be provided that does not degrade groundwater quality. 2. For nonresidential uses, recharge shall be by stormwater infiltration basins or similar systems covered with natural vegetation. Dry wells shall be used only where other methods are infeasible. 3. For all nonresidential uses, all basins and wells shall have oil, grease, and sedimentation traps to remove contamination. 4. Any and all recharge areas shall be permanently maintained by the owner, according to established best management practices.	SP-Z
Nonconforming use and structure	Existing uses that do not conform to the Water Resource Protection Overlay District may be enlarged or altered, provided that the enlargement or alteration shall not be permitted for any existing use listed in the Prohibited Uses category above.	SP-Z
Pesticide, herbicide, insecticide, fungicide, and rodenticide application	Application for nondomestic and nonagricultural uses, such as golf courses, shall be in accordance with state and federal standards. A special permit shall be granted if those standards are met. If applicable, the applicant should provide documentation of compliance with a yearly operating plan (YOP) for vegetation management operations under 333 CMR 11.00 or a Department Agricultural Resources approved Pesticide Management Plan or integrated Pest Management (IPM) program under 333 CMR 12.00.	SP-Z
Water control device	These facilities include dams or other water control devices, ponds, or other changes in water bodies or courses created for swimming, fishing, or other recreational uses. These facilities shall not adversely affect water quality or quantity. Agricultural uses, or drainage improvements, shall be subject to the protections accorded to agricultural uses by the Massachusetts General Laws.	SP-Z

(4) SPECIAL PERMIT PROCEDURES

- a. The special permit granting authority shall be the Board of Appeals. A special permit shall be granted if the Board determines that the special permit, with conditions, satisfies the standards and criteria prescribed in § 240-7.6B(4)e. below. The Board of Appeals shall not grant a special permit under this section unless the petitioner's application materials include, in its opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards prescribed in this section. The Board shall, in its decision, document the basis for any departures from the recommendations of the other Town boards or agencies.
- b. The applicant shall file 3 copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the Board and be stamped by a professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and its attachments shall at a minimum include the following information where pertinent:
 - i. a complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;

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- ii. those activities using or storing hazardous materials, shall file a hazardous materials management plan with the Board of Appeals for use by the Hazardous Materials Coordinator, the Fire Chief, and the Board of Health. The plan shall include:
 - provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and cleanup procedures;
 - provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces; and
 - evidence of compliance with the regulations of the Massachusetts Hazardous Waste Management Act, 310 CMR 30.00, including obtaining an Environmental Protection Agency (EPA) identification number from the Massachusetts Department of Environmental Protection.
 - iii. proposed down-gradient location(s) and specifications for groundwater monitoring well(s) should the Board of Appeals deem the activity a potential groundwater threat;
 - iv. proposed stormwater drainage system;
 - v. provisions to control soil erosion and sedimentation; and
 - vi. names, address, and phone numbers of key contact persons if not provided elsewhere
- c. Upon receipt of the special permit application, the Board of Appeals shall transmit one copy each to the Board of Health, the Conservation Commission, the Public Works/Engineering Departments, the Planning Board, and the Town Administrator for their written recommendations. Failure to respond in writing within 35 days of receipt by the above boards or departments 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.
 - d. The Board of Appeals shall hold a hearing in conformity with the provision of G.L. c. 40A, § 9. Notice of the public hearing shall be given by publication and posting and by first-class mailings to "parties of interest" as defined in G.L. c. 40A, § 11. The decision of the Board of Appeals and any extension, modification, or renewal shall be filed with the Board of Appeals and Town Clerk within 90 days following the close of the public hearing. Failure of the Board of Appeals to act within 90 days may be deemed as a granting of the permit in accordance with G. L. c. 40A, § 9. No work shall commence until the special permit is recorded as required by G.L. c. 40A, § 11.
 - e. The Board of Appeals may grant the required special permit only upon finding that the proposed use meets the following standards and criteria, those specified in § 240-7.6 and any regulations or guidelines adopted by the Board of Appeals. The proposed use shall not:
 - i. adversely affect the existing or potential quality or quantity of water available in the Water Resource Protection Overlay District;
 - ii. result in any substantial disturbance of the soils, topography, drainage, vegetation, or other water-related natural characteristics of the site; or
 - iii. exceed a maximum loading standard for nitrate-nitrogen impact on groundwater of five parts per million, unless a cumulative impact analysis indicates a more stringent loading standard is necessary.
 - f. The Board of Appeals may adopt regulations for design features of special permit proposals. These shall be consistent with subdivision regulations adopted by the Planning Board.

- g. Written notice of any violations of this section shall be given by the Building Commissioner to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. A copy of the notice shall be submitted to the Board of Health, the Conservation Commission, the Public Works/Engineering Departments, the Building Commissioner, the Water Department and the Town Administrator. The notice shall:
 - i. specify the requirement or restriction violated and the nature of the violation;
 - ii. identify the actions necessary to remove or remedy the violations;
 - iii. identify preventive measures required for avoiding future violations; and
 - iv. establish a schedule of compliance.
- h. The cost of containment, cleanup, or other curative measures shall be borne by the owner or operator of the premises. For situations that require remedial action to prevent adverse impact to the water resources within the WRPOD, the Building Commissioner or any agent shall order the owner and/or operator of the premises to remedy the violation. If the owner and/or operator does not comply with the order, the Town of Falmouth, the Board of Health, the Building Commissioner, or any of their agents, if lawfully authorized to enter upon the premises under the terms of the special permit or otherwise, may act to remedy the violation. The remediation cost shall be the responsibility of the owner and operator of the premises.

(5) DENSITY LIMITATIONS – The following density restrictions shall apply within the WRPOD:

- a. minimum lot size: 80,000 square feet
- b. minimum lot width: 200 feet
- c. minimum lot frontage: 150 feet
- d. maximum lot coverage by impervious surfaces: 20%

(6) SEWAGE FLOWS – Nonresidential uses shall not exceed 7.5 gallons sewage per day per 1,000 square feet of lot area. Estimated sewage flows shall be based on Title V of the State Environmental Code, 310 CMR 15.00. Maximum lot coverage by impervious surfaces shall not exceed 40%.

(7) SEVERABILITY – A determination that any portion or provision of this WRPOD is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.

240 – 7.7 Wildlife Corridor Overlay District

240 – 7.7A Purpose & Applicability

- (1) PURPOSE – The purpose of this District is to establish and protect permanent and contiguous corridors and special areas for the feeding, breeding, and normal home range movement of wildlife through the defined habitat areas. This purpose is based on the following:
- a. One of the purposes of zoning is the conservation of natural resources.
 - b. Wildlife is a valued natural resource in Falmouth.
 - c. The Commonwealth of Massachusetts has established the importance of protecting wildlife through numerous laws.

- d. Falmouth has a significant stock of wildlife which moves through a large, defined area of Town.
- e. Development under zoning can be designed to coexist with wildlife and important habitat areas.

(2) APPLICABILITY – All uses of land that are governed by a definitive subdivision plan, a special permit, or a site plan review application shall be subject to the requirements of § 240-7.7.

240 – 7.7B Procedure

(1) NATURAL RESOURCES DEPARTMENT REVIEW – Upon submittal to the reviewing board of plans for development, all plans subject to § 240-7.7 shall be referred to the Natural Resources Department. Within 35 days of this referral, the Natural Resources Department shall file a recommendation with the reviewing Board. This time may be extended at the request of the applicant. These recommendations shall be considered prior to the final decision of the reviewing Board, and all restrictions to the property added by the reviewing Board as a result shall be shown on a separate document to which reference is made on the final approved plan.

(2) WILDLIFE HABITAT PROTECTION – All areas on the plan set aside for protection of wildlife habitat shall be permanently conveyed in accordance with § 240- 9.7H. Ownership of open spaces shall be subject to a permanent conservation easement or restriction.

(3) COVENANT – No covenants, easements, or restrictions imposed by this section shall:

- a. permit public access on private property;
- b. use of the covenant to control density of development; or
- c. cause any loss of lot coverage. (lot coverage shall be based on the total area of the property)

(4) STANDARDS – For those sites within Area 1, Deer Migration Areas, the following standards shall apply:

- a. Subdivisions which total more than 5 acres in the AGA, AGB, SR-A, PU, and SR-B zoning districts and more than 20 acres in the AGAA and SR-AA zoning districts shall submit to the Planning Board a preliminary cluster subdivision plan. The Planning Board shall encourage the submittal of a cluster-type definitive subdivision in accordance with § 240-9.7 if it facilitates the purpose of § 240-7.7.
- b. The applicant shall prepare a corridor plan. The proposed corridor shall be contiguous with any existing or potential corridors on abutting parcels. The plan shall meet the following requirements:
 - i. The applicant’s proposed corridor shall be subject to the approval of the reviewing Board under the 2 criteria listed below. If more than one corridor is proposed the reviewing Board may allow the applicant to choose either or both proposed corridors.
 - actual use for: migration, browsing, or bedding by white tailed deer; shelter or bedding by fox, coyote, or other large or medium size mammals which typically do not thrive in proximity to human habitation; nesting by quail, grouse, pheasants, or other ground nesting birds, which typically do not thrive in proximity to human habitation; egg deposition and/or migration of reptiles and amphibians.

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- the presence of any rare, threatened, or endangered species as listed by the U.S. or Massachusetts Division of Fish and Wildlife.
- ii. On any parcel on which there is inconclusive evidence of wildlife use, a corridor shall be established no wider than necessary to permit migration of white-tailed deer in order to maintain contiguity of such corridors within the overlay district. No corridor under this section shall exceed 300 feet in width. Within this constraint, no corridor shall be greater in area than is equivalent to the actual area of observed wildlife use of the parcel divided by the total area of the parcel.
 - iii. Any covenant or restriction under this section shall be coordinated with any restriction of record by the State Wetlands Act, Town Wetlands bylaw, State Natural Heritage Program or similar laws.
- c. Fencing or any structural barrier to wildlife movement within corridors shall be prohibited.
 - d. The applicant shall ensure drainage from roadways be diverted away from depressed areas that may be used as shelter for wildlife.
 - e. Natural, native vegetation shall be encouraged or enhanced by the project. Disturbed areas shall be revegetated as rapidly as possible or within a time required by the reviewing Board.
 - f. Dramatic changes in topography shall be discouraged and the footprint of disturbed areas shall be limited.
 - g. Natural native vegetation shall be reestablished and maintained or enhanced by the project. Areas disturbed during construction shall be revegetated as rapidly as possible after construction is completed or within such further time as permitted by the reviewing Board.
- (5) ANNUAL REVIEW – Annual reports from the Natural Resources Department shall be filed with the reviewing board and the owner or owners of the subject property. These reports shall reevaluate the corridors and open space and make recommendations for any adjustments in vegetative plantings.
- (6) SUBDIVISIONS – REDUCTION IN LOT SIZE – Subdivisions of land as specified in § 240 – 7.6B(4) may vary lot size by the approval of a special permit from the Planning Board from that required by the applicable zoning district. The lot variance shall be no more than 25% less than that required by § 240-11.2B, Minimum Lot Dimensions, so long as the total number of lots is not greater than the zoning district would allow under a conventional grid subdivision. The Planning Board shall make a finding that this special permit is necessary to effect the purpose of this District.

ARTICLE 8 SPECIAL USE DISTRICT

240 – 8.1 Areas of Critical Environmental Concern (ACEC)

240 – 8.1A ACEC

- (1) **PURPOSE** – This district is established to affirm and strengthen the intent of state legislation establishing areas of critical environmental concern (“ACEC”), namely to protect environmental values significant to flood control, the prevention of storm damage, the protection of waters containing shellfish and fisheries, and other public interests protected by the Wetlands Protection Act (G.L. c. 131, §§ 40 and 40A) and Chapter 235 of the Town Code (the Falmouth Wetlands Protection Bylaw).

- (2) **GEOGRAPHIC APPLICABILITY** – Section 240-8.1 shall apply to any ACEC within the Town and to a buffer zone extending 50 feet landward from the edge of the ACEC. For those lots or land parcels totally encompassed by the ACEC, applicability of § 240-8.1 will be limited to 100 feet landward of the edge of wetlands, as defined by G.L. c. 131, §§ 40 and 40A.

- (3) **REGULATION OF CONSTRUCTION** – Within the above described areas, there shall be no construction of structures other than accessory buildings as defined in ARTICLE 3 – DEFINITIONS. Section 240-8.1 shall not apply to the issuance of building permits for principal structures on lots shown on a plan endorsed by the Planning Board on or before April 4, 1983.

- (4) **ALTERATION OF VEGETATION AND WILDLIFE HABITATS** – Within the area described in § 240-8.1A(2), there shall be no clear cutting of existing vegetation or alteration of wildlife habitats, except to provide access to permitted structures. However, this section shall not apply in cases where the Conservation Commission determines that its application would adversely affect the purposes of G.L. c. 131, § 40, or Chapter 235 of the Town Code (the Falmouth Wetlands Protection Bylaw).

ARTICLE 9 SPECIAL USE REGULATIONS

240 – 9.1 Adult Uses

240 – 9.1A Intent and Purpose

- (1) **INTENT** – The intent of § 240–9.1 is to regulate the locations of adult uses in order to lessen the harmful secondary effects on adjacent areas. These secondary effects, which are documented in various studies of towns comparable in size and composition to Falmouth, include an increase in crime, a decline in property values, a flight of existing businesses, and gradual blight of residential neighborhoods.
- (2) **PURPOSE** – The purpose of the § 240–9.1 is to prevent crime, maintain property values, protect the Town's retail trade, and protect and preserve the quality of residential neighborhoods. The Bylaw does not prohibit adult uses, but rather provides reasonable alternative avenues of expression in the Town.

240 – 9.1B Special Permit Requirements

- (1) **ZONING DISTRICTS WHERE ALLOWED** – Adult uses, as defined in ARTICLE 3, DEFINITIONS, are allowed by a special permit from the Zoning Board of Appeals in Light Industrial A and Business 2 Zoning Districts. Adult uses must comply with the following requirements found in §§ 240-9.1B(2) and (3) below, in addition to the requirements in § 240-12.1, Special Permits.
- (2) **DIMENSIONAL REQUIREMENTS** – The proposed adult use must comply with the following minimum distance separations:
- a. A minimum 4,000 foot separation is required from any other adult use.
 - b. A minimum 600 foot separation is required from the adult use structure to existing residential uses and districts, educational uses, religious uses, public beaches, public active recreation facilities (including school athletic fields and facilities), Town parks, and the Gus Cauty Recreation Center/Fuller Field complex, as documented in Table 4 of the Town's Open Space Element.
 - c. A minimum 500 foot separation is required from any establishment licensed under the provisions of G.L. c. 138, § 1.
 - d. A 20 foot vegetative buffer containing adequate screening given the character of the neighborhood and the intensity of the use shall be provided between adult uses and abutting commercial uses.
- (3) **OTHER REQUIREMENTS**
- a. Adequate provision for security provided by public safety officers must be documented.
 - b. The applicant or owner must disclose if they have been convicted of violating the provisions of G.L. c. 119, § 63, or G.L. c.272, § 28. A special permit shall not be issued to any person convicted of violating those provisions.
 - c. The applicant shall disclose any and all involvement with other adult uses in the Town.
 - d. No signs, pictures, publications, videotapes, movies, or other advertising that fall within the definition of adult use or are erotic, prurient, or related to violence, sadism or sexual

exploitation shall be displayed in the windows of, or on, the building of any adult use, or be visible to the public from the pedestrian sidewalks or walkways or from other public or semipublic areas outside such establishments.

- e. Any commercial establishment or activity that promotes or portrays, under the guise of entertainment or education, sexual abuse of or by or among men, women, and children, and any such abuse that threatens their health and the health of a community, shall not be granted a permit. Furthermore, any such commercial establishment or activity that violates the community standards of the Town shall not be granted a permit.

(4) PROCEDURES – Adult use special permits shall only be issued following public hearings held within 65 days after filing of an application with the Board of Appeals, a copy of which shall forthwith be given to the Town Clerk by the applicant. The Board shall act within 90 days following the close of a public hearing for which notice has been given by publication or posting as provided in G.L. c. 40A, § 11, and by mailing to all parties in interest. Failure by the Board to take final action upon an application for a special permit within 90 days following the close of the public hearing may result in a constructive grant of the special permit. A special permit approved by the Board shall require a concurring vote of four members of a five-member board.

(5) LAPSE – Special permits shall lapse under the following conditions:

- a. Notwithstanding the provisions of § 240-12I, a special permit granted under this section shall lapse after 1 year from the grant thereof, if substantial use has not begun by such date except for good cause, or in the case of a permit for construction, if the construction has not begun by such date, except for good cause; the lapse time shall include time required to pursue or await the determination of a G.L. c. 40A, § 17, appeal. The determination of good cause shall be made by the Board of Appeals.
- b. A special permit issued under § 240-9.1 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 § 240-9.1B(4) above.

240 – 9.2 Affordable Housing Development

240 – 9.2A Purpose and Authority

(1) AFFORDABLE HOUSING – Section 240-9.2 is established for the following purposes:

- a. in furtherance of the purpose stated in § 240-1.1A, "... to encourage housing for persons of all income levels";
- b. to authorize adoption of "incentive" bylaws for the creation of affordable housing in accordance with G.L. c. 40A, § 9;
- c. to assist people who have lived and worked in Falmouth and who, because of rising land prices, have been unable to obtain suitable housing at a reasonable price; and
- d. to maintain a stable economy by preventing the out-migration of lower-income groups who provide essential services.

(2) AFFORDABLE UNITS – The Planning Board, upon issuance of a special permit which allows an increase in density through a partial waiver of ARTICLE 11, DIMENSIONAL REGULATIONS and which otherwise conforms to the requirements of § 240-9.7, Planned Residential Development, shall require that all units constructed above "as-of-right" density limitations be sold at prices that qualify the units for inclusion on the state's Subsidized Housing Inventory.

- (3) DESIGN STANDARD WAIVER/TRANSFER OF DEVELOPMENT RIGHTS – As further incentive for the construction of affordable housing, the Planning Board may, in its discretion, waive certain design standards for improvements that are required by Chapter 305 of the Town Code, the Subdivision Regulations of Falmouth, or permit a transfer of development rights per § 240-14.7.

240 – 9.2B Standards

- (1) SALE PRICE – The sale price shall be consistent with § 240-12.1E.
- (2) NUMBER OF AFFORDABLE UNITS – The number of units allowed above "as-of-right" density shall be subject to negotiation and shall be determined with due regard to the project approval requirements of § 240-9.2. The maximum density increase shall be no more than 25% than that allowed by a standard subdivision. Increases in density shall be prohibited within the Water Resource Protection Overlay District as shown on the Official Zoning Map.
- (3) DESIGN STANDARDS – Specific design standards for construction within the plan shall be made part of the special permit and shall be used to ensure conformity and compatibility among units. Other requirements for design shall be as required under § 240-9.7, and applicable sections of Chapter 305 of the Town Code, the Subdivision Rules and Regulations of Falmouth.
- (4) MODIFICATION STANDARDS – The standards of § 240-9.7, may be modified upon a finding by the Planning Board that the modification creates no adverse impacts on health, safety, and welfare, and is found to be in the public interest because of the high quality of design that would result from the modification.
- (5) PHASING – A schedule of construction shall be submitted providing the timely delivery of the affordable units.

240 – 9.2C Application Requirements

- (1) PRELIMINARY PLAN – Preliminary plan applications for proposed planned residential developments are to be made to the Planning Board in accordance with Article III of Chapter 305 of the Town Code, Subdivision Rules and Regulations of Falmouth. In addition to those requirements listed in the same Article III, a statement as to how the proposal conforms to the purposes and objectives of § 240-9.2, shall be required for preliminary submittals.
- (2) SPECIAL PERMIT – Applications for approval of a special permit and a development plan may be submitted after completion of the preliminary plan review. Special permit applications shall be submitted and reviewed in accordance with Article V of Chapter 305 of the Town Code, the Subdivision Rules and Regulations. Additional information as may be required in the preliminary plan or as specified above shall also be submitted at the request of the Planning Board.

240 – 9.2D Project Approval Requirements

- (1) PLANNING BOARD REVIEW – The Planning Board shall review all projects and may approve the special permit if, in the Board's sole discretion:
- a. The Board is satisfied that the applicant has conformed to the design standards of § 240-9.2, and will deliver the needed affordable units.
 - b. The proposed development site plan is designed in its site allocation proportions, orientation, materials, landscaping, and other features, so as to provide a stable and desirable character

complementary and integral with the site's natural features, in accordance with the standards of § 240-12.1E.

- c. The Board makes a finding that the development, density increase, relaxation of zoning standards, or transfer of development rights, do not have a material, detrimental effect on the character of the neighborhood or the Town and are consistent with the performance standards of ARTICLE 13, PERFORMANCE REQUIREMENTS.
- d. The Board makes a positive finding as to the adequacy of the environmental impact statement as required by § 305-14 of Chapter 305 of the Town Code, the Falmouth Subdivision Rules and Regulations.
- e. The proposed development is consistent with the Falmouth Local Comprehensive Plan.

240 – 9.3 Automobile Regulations

240 – 9.3A Location of Automotive Services

- (1) BUILDING SETBACK – No portion of the front or side lines of a public garage, automobile repair shop, storage battery station, or motor vehicle service station, or any of their appurtenances or accessory uses, shall be placed within 50 feet of any residence district.
- (2) DRIVEWAY LOCATION – No driveway to these premises shall be in any part located within 50 feet of any residence district. No premises shall have any driveway entrance or exit within 300 feet of the property used by any public or private school, public library, religious institution, playground, or institution for the sick or infirm.
- (3) VEHICLE FILLING REQUIREMENT – No gasoline or diesel filling shall be performed except into vehicles located on the property of the service station.

240 – 9.3B Unregistered Motor Vehicles

- (1) NUMBER OF UNREGISTERED VEHICLES – Not more than one unregistered car, bus, truck, or other registerable motor vehicle shall be permitted ungaraged on any premises in any district, except as are clearly incidental to the lawful conduct of a nonresidential activity permitted in a Business or Industrial District.
- (2) LOCATION OF UNREGISTERED VEHICLES – In no event shall any unregistered vehicle be stored in the front yard.
- (3) FARM OR BOATYARD VEHICLE – Vehicles that are in operating condition and regularly used on the premises of a farm, boatyard, or comparable activity are exempt from § 240 – 9.3.B(1).

240 – 9.4 Commercial Accommodations

240 – 9.4A Cooking and Housekeeping Facilities

Commercial accommodation units may contain amenities for private cooking and housekeeping only as the Zoning Board of Appeals allows by special permit and upon the Board's determination that the allowed amenities are customary to guest units and will not change the nature of the use as commercial accommodations.

240 – 9.4B Dining Facilities

Except in Business or Light Industrial Districts, dining facilities accessory to a hotel, inn, or motel shall be integral with the hotel, inn, or motel, unless the dining facilities existed prior to the construction of a new hotel, inn, or motel. The total seating capacity of any new dining facilities or areas shall not exceed twice the total number of guest rooms (units) permitted for the hotel, inn, or motel. In Business or Light Industrial Districts these limitations shall not apply.

240 – 9.4C Garage

A special permit shall be required for the construction of a garage as an accessory to a hotel, subject to the provisions of § 240-9.4C. The lot area of the parcel where the garage is located shall be of sufficient size to minimize or prevent any negative impacts from the garage to the those properties in the neighborhood that are “parties in interest”.

240 – 9.4D Extended Development Plan Request

- (1) EXTENDED PLAN – Any petitioner who applies for a special permit under a use listed in Special Permit sections in ARTICLE 6 USE TABLES in the Single Residence, General Residence, Public Use, Agriculture, or Business Districts may seek an extended development plan provision to the special permit, under the authority of this section.
- (2) PURPOSE – The purpose of the provision in § 240-9.4D(1) above is to ensure the long-term development rights of the petitioner.
- (3) PHASED GROWTH PLAN – The petitioner may present a phased growth plan culminating in the normal, detailed plan. The special permit, if granted, shall detail the permitted uses, structures, density, time schedule, etc., at the culmination of the development. The petitioner shall have the right to make changes within the approved time schedule without violating the terms of the special permit. No other changes to the conditions of the special permit may be made except in the discretion of the Zoning Board of Appeals.

240 – 9.4E Time-share Conversion of Existing Commercial Accommodations

- (1) SPECIAL PERMIT – A special permit approved by the Zoning Board of Appeals shall be required for the conversion of a commercial accommodation lawfully in existence and operating as a commercial accommodation as of January 1, 1984. The special permit shall be required whether the conversion is in whole or part of the commercial accommodation.
- (2) TIME-SHARE INTERVAL OWNERSHIP – The special permit shall be required for any use functioning as a time-share interval ownership or similar, whereby unit owners are entitled by deed or other instrument to occupancy of the units for only specified, recurring periods of less than one year during the course of one year.
- (3) REQUIREMENTS – The Zoning Board of Appeals shall specifically address whether the proposed use is a time-share interval ownership use.
- (4) MINIMUM LOT SIZE REQUIREMENTS – The Zoning Board of Appeals shall determine that the minimum lot size requirements in the Table below have been met.

Table for Time-share Conversion - Lot Size Requirements	
Zoning Districts	Minimum Lot Area Calculation
Business Districts	10,000 square feet/time-share unit
General Residence	10,000 square feet/time-share unit
Light Industrial Districts	10,000 square feet/time-share unit
Residential C	10,000 square feet/time-share unit
Agricultural B	15,000 square feet/time-share unit
Residential B	15,000 square feet/time-share unit
Agricultural A	20,000 square feet/time-share unit
Public Use	20,000 square feet/time-share unit
Residential A	20,000 square feet/time-share unit
Agricultural AA	40,000 square feet/time-share unit
Residential AA	40,000 square feet/time-share unit

- (5) MIXED-USES – Lot size requirements for mixed uses are to be added, i.e., lot requirements for the number of time-shared units plus lot requirements for standard commercial accommodations.

240 – 9.4F Time-share Construction or Conversion of New Commercial Accommodations

- (1) SPECIAL PERMIT – A special permit approved by the Zoning Board shall be required for new construction, or conversion of a commercial accommodation lawfully in existence and operating as a commercial accommodation after January 1, 1984. The special permit shall be required whether the conversion or construction is in whole or part of the commercial accommodation.
- (2) TIME-SHARE INTERVAL OWNERSHIP – A special permit shall be required for any use functioning as a time-share interval ownership, or otherwise, whereby unit owners are entitled by deed or other instrument to occupancy of the units for only specified, recurring periods of less than one year during the course of one year.
- (3) REQUIREMENTS – The Zoning Board of Appeals shall specifically address whether the proposed use is a time-share interval ownership use.
- (4) MINIMUM LOT SIZE – The Board of Appeals shall determine that the lot or lots on which the construction and/or conversion is proposed equals or exceeds the minimum square footage required by the unit to be time-shared as found in the Time-share Lot Conversion Table in § 240 – 9E(4).
- (5) MIXED-USES – Lot size requirements for mixed uses are to be totaled, i.e., lot requirements for number of time-shared units plus lot requirements for standard commercial accommodations.

240 – 9.5 Home Occupation

240 – 9.5A Requirements

- (1) GROSS FLOOR AREA – A home occupation is allowed provided that not more than 30% of the gross floor area of the dwelling unit shall be used in the conduct of any or all home occupations.
The

area devoted to home occupations may be allocated between the dwelling unit and accessory building, but in no case shall the total floor area of the home occupation exceed 30% of the gross floor area of the dwelling unit.

- (2) **OUTWARD APPEARANCE** – There shall be no change in the outside appearance of the premises, nor any other visible evidence of such home occupations other than one nonilluminated sign, not exceeding 2 square feet in area. All home occupations conducted therein must be inscribed or displayed, if at all, on the one sign. There shall be no exterior storage of material or equipment.
- (3) **MERCHANDISE** – No trading in merchandise may be conducted except for products made on the premises or of other parts or other items customarily maintained in connection with, and incidental to, such merchandise.
- (4) **NEGATIVE IMPACTS** – No equipment or process shall be used in home occupations which creates noise, vibration, flare, fumes, odors, or electrical interferences, detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises.
- (5) **TRAFFIC AND PARKING** – No traffic shall be generated by home occupations in greater volume than would normally be expected in that residential neighborhood, nor which jeopardizes the traffic safety of that neighborhood. A home occupation may increase parking by not more than 2 additional vehicles at a time. Parking generated by the conduct of the home occupation shall be provided on the same lot as the home occupation and shall not be located in a required front yard or within 5 feet of any side or rear property line.
- (6) **EMPLOYEE** – No person other than family residents may be regularly employed on the premises in connection with the home occupations. The Zoning Board of Appeals may grant a special permit to one person who is not a family member, to be a regularly employed on the premises of the home occupation.

240 – 9.5B Special Permit

- (1) **CRITERIA** – A special permit shall be required for certain home occupations as follows.
 - a. Any home occupation which otherwise meets the applicable provisions of § 240-9.5, except that it is located on a lot which does not conform to the minimum lot dimensional requirements, shall require a special permit from the Zoning Board of Appeals.
 - b. The use of any structure which is nonconforming as to the minimum yard requirements in connection with the home occupation shall require a special permit from the Zoning Board of Appeals.
 - c. Any home occupation which satisfies the definition of a home-based service business (HBSB) shall require a special permit from the Zoning Board of Appeals; in acting on the special permit, the Board may approve an application that demonstrates compliance with all applicable requirements of § 240-9.5A above and the following criteria:
 - i. The Board may approve up to 4 company vehicles parked overnight on the premises with the following conditions.
 - All company vehicles must be kept on a driveway, in a garage, or within a screened area in a side or rear yard that effectively screens the vehicle from view.
 - No more than 2 company vehicles may be kept on any driveway area.
 - Unless specifically approved by the Board no ungaraged company vehicle shall be parked overnight within 5 feet of any lot line or within 15 feet of any off-premises

- dwelling in existence as of the effective date of this bylaw.
- Company vehicles shall be limited to the following types: passenger car, minivan, van, sport utility vehicle (SUV), trailers over 18 feet in bed length, pick-up truck, or other truck not to exceed 13,000 pounds GVW except as may permitted by the Board in accordance with § 240-6.1B, under the Special Permit – Accessory Use category, Accessory Uses - Incidental.
- ii. The maximum amount of exterior storage shall not exceed 10% of the lot area, with the following conditions:
- All exterior storage, including trailers under 18 feet in bed length, shall be completely screened from view.
 - Any exterior storage shall not be closer than 30 feet to any off-premise dwelling in existence as of the effective date of this bylaw.
 - Unless specifically approved by the Board no exterior storage shall occur within 5 feet of any lot line.
 - No exterior storage shall be allowed within any front yard area as defined in ARTICLE 3 DEFINITIONS. Materials that require use of a motorized device to off-load or load shall not be stored on the premises of a home-based service business.
- iii. There shall not be more than 2 employees who are not family members assigned to work on the premises of the home-based service business, under the following conditions.
- Every such nonfamily employee is engaged in work within the dwelling or in an accessory structure or screened in area subject to the provisions of § 240-13.1A.
 - No work other than moving goods, materials, or equipment shall occur outside a structure on the premises.
 - The business may employ other individuals to perform work at off-site locations and only limited visits of an occasional nature to the premises by such employees shall not constitute employment on the premises for the purposes of § 240-9.5. However, limited employee visits to the business to pick up work assignments or supplies may occur, provided no such visits shall occur more than twice a day, exceed 30 minutes, and are made only during regular business hours.
- iv. Hours of operation, equipment management requirements, storage of equipment, and other conditions necessary for the issuance of the special permit shall be as follows.
- Except for emergency situations, regular business hours for the home-based service business, as well as any loading or off-loading of equipment or supplies, shall be limited to between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.
 - No vehicles used for delivery or pick-up purposes shall exceed 13,000 pounds of gross vehicle weight.
 - There shall be no running or servicing of motorized equipment used in connection the home-base service business on the premises of the business or within the layout of any street or way on which the business premises has frontage, except for normal business activities in connection with providing services to a customer of the business on the street or way; this provision specifically excludes the operation of licensed company vehicles.
 - Company vehicles shall be serviced off-site in an approved vehicle service facility.
 - Motorized equipment, such as lawnmowers and so-called "bobcat" excavation machines, may be loaded and off-loaded only between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday. All such loading and off-loading shall take place only within a driveway, garage, or equipment storage area on the business premises and not within any street or way, except for normal business activities in connection with providing services to a customer of the business.
 - Any motorized equipment registered for on-street travel, including but not limited to

so called "bucket trucks" or similar vehicles, shall not be considered equipment for the purposes of this Bylaw.

- There shall be no stockpiling or other storage of landscape materials, including but not limited to the following: topsoil, sand or other fill material, crushed stone, gravel, seashells, seaweed, mulch, or wood chips for resale, by any home-based service business.

(2) **ADDITIONAL SPECIAL PERMIT CRITERIA** – In addition to § 240-9.5A(1) and the criteria found in § 240-12.1E, the Zoning Board of Appeals shall find the following criteria have been satisfied:

- a. The ways providing access are adequate and can safely accommodate the traffic of the home-based service business (HBSB) to and from the site.
- b. The Board shall limit the number of employees or subcontractors who routinely visit the site for the purposes of § 240-9.5B(1)c.iii., above, taking into consideration neighborhood characteristics and the nature of the HBSB.
- c. The Board shall make a finding that the hazardous materials storage requirements of the Water Resource Protection Overlay District have been satisfied.
- d. The Board shall consider the cumulative effects of allowing more than one HBSB located in any given neighborhood taking into account the density of the neighborhood, the distance separating each HBSB, the nature of each HBSB, and the effects on abutters, if any.
- e. For other special permits that may be applied for, including applications under § 240-6.1B, under the Special Permit – Accessory Use category - Accessory Uses, Incidental, the Board shall consider the combined effects associated with each application.

240 – 9.6 Marijuana Treatment Centers

240 – 9.6A Marijuana Treatment Centers

- (1) **PURPOSE** – This article defines permitting requirements and standards for medical marijuana treatment centers, also known as "registered marijuana dispensaries", which are consistent with the regulations adopted for such facilities by the Cannabis Control Commission. Additional definitions and regulations are in 935 CMR 501.000, relative to the registration, establishment, operations, and regulation of such centers/dispensaries, as well as hardship cultivation registration by the Cannabis Control Commission. Nothing in § 240-9.6 is intended to regulate or prohibit uses or activities under a hardship cultivation registration.
- (2) **PERMITTING** – Marijuana treatment center/registered marijuana dispensary shall be a use allowed subject to the issuance of a special permit by the Planning Board, as provided for in Business 2 Zoning Districts only.
- (3) **SPECIAL PERMIT CRITERIA STANDARDS** – In addition to the requirements for the issuance of a special permit found in § 240-12.1, any marijuana treatment center/registered marijuana dispensary shall:
 - a. not be located within 500 feet of a public or private kindergarten, primary or secondary school, place of worship, day nursery, nursery school, or public park or playground; no other specific separation requirements will apply;
 - b. be approved for operation, or remain in operation, with a MTC license from the Massachusetts Cannabis Control Commission and a certificate of registration issued by the Massachusetts Department of Public Health;

- c. be compliant at all times with the security measures required by 105 CMR 725.000.
- d. provide a description of security measures, including any updates, to the Falmouth Police Department, along with after-hours contact information;
- e. locate (or remove) trees, bushes, and other foliage located on the site outside of the center/dispensary so they do not allow for a person or persons to conceal themselves from sight within 50 feet of any entrance or of any parking space designated to be utilized by registered qualifying patients, personal caregivers, and dispensary agents of the center/dispensary, notwithstanding any other provisions of this Bylaw regarding required landscaping or vegetated buffers;
- f. be in compliance with 105 CMR 725.105(D) and cultivation, production, preparation, transport, or analysis shall be done in a manner to prevent diversion, theft, or loss; all phases of the cultivation of marijuana shall take place in designated, locked, limited access areas that are monitored by a surveillance camera system in accordance with 105 CMR 725.110(D)(1)(d) through (i);
- g. adopt emergency procedures, including a plan with procedures to be followed in case of fire or other emergencies, copies of which shall be filed with the Police and Fire Departments;
- h. provide parking applicable to retail establishments for that portion of the floor area designated for sales, and to manufacturing or other industrial buildings for floor area designated for storage or for cultivation of marijuana or preparation of MIPs; and
- i. be in compliance with 105 CMR 725.105(L) regarding marketing, advertising, and signs.

240 – 9.6B Definitions

See ARTICLE 3 – DEFINITIONS for definitions related to Marijuana Treatment Center.

240 – 9.7 Planned Residential Development

240 – 9.7A Purposes and Applicability

- (1) **PURPOSES** – The Planning Board may permit the use of a Planned Residential Development (PRD) if, in the Planning Board's sole judgment, it serves the following purposes:
- a. Agricultural or farming activity will be preserved and protected from redevelopment.
 - b. The natural integrity of environmentally sensitive or wildlife habitat areas will be enhanced.
 - c. Scenic vistas will be highlighted and preserved.
 - d. Existing recreational activities, integral with the regional and local tourist and recreational economy, which cannot otherwise be self-supporting, will be preserved and protected from redevelopment.
 - e. The excellence of the overall design and residential amenities are such as to warrant special consideration for modification of existing standards elsewhere in this Bylaw.
 - f. The proposed development is consistent with municipal comprehensive plans and objectives.
 - g. The proposed development site plan is designed in its space allocation, proportions, orientation, materials, landscaping, and other features so as to produce a stable and desirable character, complementary and integral with the site's natural features.
- (2) **APPLICABILITY** – Any requirements for residential districts in the Bylaw to the contrary notwithstanding, a parcel of land or aggregation of parcels of land with property lots of less than the minimum areas, setbacks, widths, coverage, or frontages specified in ARTICLE 11 DIMENSIONAL REGULATIONS, when shown on a plan endorsed by the Planning Board as "Approved for Planned Residential Development", may be laid out, and dwellings of different

types may be erected on the lots. Existing recreational or agricultural uses may be included within the perimeter of the parcel as a mixed-use development, but only in conformance with conditions set forth herein.

240 – 9.7B Special Permit

PLANNING BOARD SPECIAL PERMIT – A Planned Residential Development shall require a special permit. The special permit granting authority for the PRD shall be the Planning Board. Approval by the Board may be given only if the plan meets the minimum requirements of § 240-9.7E., and conditions and 4 or more of the purposes of § 240-9.7A(1).

240 – 9.7C Permitted Uses and Structures

(1) HOUSING – A PRD may contain one or more of the housing types specified below and defined in ARTICLE 3 – DEFINITIONS, Residential/Dwelling/Housing Related terms:

- a. one-family detached dwelling;
- b. two-family dwelling;
- c. semidetached dwellings;
- d. multifamily detached structure with four units or less per structure.

(2) AGRICULTURAL AND RECREATIONAL USES – Planned Residential Development may also contain an agricultural or recreational use specified here and otherwise in accordance with § 240-9.7I:

- a. agricultural, horticultural, or similar uses which conform to G.L. c. 40A;
- b. recreational uses which conform to G.L. c. 61B with the exception of camping areas, which are specifically excluded as being incompatible with residential buildings; or community dock.

(3) DEFINITIVE PLAN NOTATION – Each lot within the development shall contain a notation on the definitive plan identifying the use of that lot for one of the allowed housing types or uses specified above, and the notation shall not be altered without a vote of approval by the Planning Board to modify the notation as required by G.L. c. 41, § 81W, and G.L. c. 40A, § 9.

240 – 9.7D Dimensional Requirements

(1) SETBACKS – Setbacks for lot lines and roadways from the perimeter of the total parcel shall be not less than 25 feet, unless the Planning Board determines greater setbacks are required to fulfill the intent of § 240-9.7.

(2) LOT DIMENSIONS AND YARD REQUIREMENTS – The minimum lot dimensions and yard requirements under § 240-9.7 are listed in the Table below, except where a greater area may be required for sanitary reasons, or because of pollutant impacts or other hazards:

Table of Dimensional Requirements					
Housing Type	Lot Width (feet)	Lot Area (square feet)	Lot Frontage (feet)	Front Yard Setback (feet)	Side & Rear Yard Setback (feet)
Single-family detached	75	10,000	50	25	10

Table of Dimensional Requirements					
Housing Type	Lot Width (feet)	Lot Area (square feet)	Lot Frontage (feet)	Front Yard Setback (feet)	Side & Rear Yard Setback (feet)
Two-family & semi-detached	125	15,000	75	25	20
Multi-family; municipal water and sewer	125	20,000	75	25	20
No municipal sewer	150	30,000	75	25	20

- (1) RESOURCE AREAS – No buildable lot shall include resource areas as referred to in § 240-9.7E(2), and no buildable lot boundary shall be located closer than 100 feet from the edge of such resource areas or further if necessary to accomplish the purposes of § 240-9.7A(1).
- (2) CLUSTERED LOTS – The lots for building purposes shall be grouped in a cluster of approximately 3 to 5 lots, and within each cluster the lots shall be contiguous.
- (3) LOT COVERAGE – In a Planned Residential Development having at least 50% open space of the entire parcel, lot coverage of developable lots shall be limited to 40% lot coverage by structures.
- (4) LOT AREA – The minimum lot area shall be as required in the above Table, except where a greater area may be required by the Board of Health for sanitary reasons or because of pollutant impacts or other hazards.

240 – 9.7E Density and Land Area Required

- (1) PARCEL AREA – The minimum parcel area for a PRD shall meet the following:

Table of Land Area Required	
Multi-family Units Included	Minimum Parcel Area
Agricultural B	5 acres
Residential B	5 acres
Residential C	5 acres
General Residence	5 acres
Agricultural A	10 acres
Agricultural AA	10 acres
Residential A	10 acres
Residential AA	10 acres
Public Use	10 acres
Multi-family Units Not Included	Minimum Parcel Area
Agricultural A	The total area required shall be at least the area required for 2 conforming building lots under the schedule of requirements in § 240-11.2B.
Agricultural AA	
Agricultural B	
Residential AA	
Residential A	
Residential B	
Residential C	
Public Uses	

- (2) **PARCEL AREA EXCLUSIONS** – In determining the minimum total area of the tract and the allowed density under § 240-9.7E, for the purpose of a PRD, the following shall not be included:
- a. dunes, beach, waterbody, bog, swamp, wet meadow or marsh, and all other critical natural resources as defined in G.L. c. 131, § 40, otherwise known as resource areas;
 - b. land otherwise prohibited from residential development by local or state law, regulation, statute, or by a prior conservation or easement restriction recorded in the Barnstable County Registry of Deeds; and
 - c. any land having grades in excess of 25%.

240 – 9.7F Density Limitations

- (1) **DENSITY MAXIMUM** – The maximum number of dwelling units permitted within the perimeter (total area) of a PRD shall be determined by the standard density allowed in the District in which the PRD is located, as set forth in ARTICLE 11 DIMENSIONAL REGULATIONS, but after subtracting land area excluded under § 240-9.7E.(2).
- (2) **DENSITY CALCULATION** – To establish the maximum number of dwelling units, an applicant shall submit a conventional preliminary subdivision plan showing a lot layout complying with the minimum lot area, frontage, and width requirements of the Bylaw, and showing a street layout that complies with the Planning Board's Rules and Regulations Governing the Subdivision of Land. Density may be less where a determination is made by the Board that physical and topographic features of the land would preclude attainment of the density allowed under existing zoning.
- (3) **MIXED-USE DENSITY** – When the proposed PRD incorporates a commercial, agricultural, or recreational use under § 240-9.7C, the allowed density of units calculated may be further reduced according to the results of a comparative analysis, submitted as an environmental impact study, between the potential residential development allowed as of right and the proposed mix of residential and agricultural or recreational use that supports such a density reduction in the discretion of the Planning Board.

240 – 9.7G Density Bonus

- (1) **OPEN SPACE DENSITY BONUS** – If a proposed PRD incorporates land identified in the Cape Cod Regional Policy Plan or the Falmouth Local Comprehensive Plan/Open Space Element into the proposed open space, and that land is part of the regional or local greenbelt, walking, hiking, or biking network, the maximum number of dwelling units permitted within the PRD may be increased by 20% over that allowed under § 240-9.7F and § 240-9.7G, to a maximum of 4 units.
- (2) **PLANNING BOARD DECISION** – The density bonus may only be allowed by the Planning Board as part of the special permit process for a PRD. To qualify for the density bonus, the Planning Board must find that the open space set-aside meets criteria (2)a. below, in addition to at least 1 of the 3 criteria listed under (2) b., c., and d., below:
- a. the proposed open space parcel abuts existing public open space or protected open space owned by a nonprofit land trust;
 - b. there are rare, threatened, or endangered species in the open space parcel to be provided in the planned residential development or the addition of the proposed open space parcel further protects rare, threatened, or endangered species on any adjoining open space parcel, whether public or private;

- c. the proposed open space parcel links, via a public access easement or similar instrument, existing or proposed public hiking or walking trails, bikeways, access points to the shoreline, etc.;
- d. the applicant proposes to donate the open space to a land trust or public entity to allow for public access.

240 – 9.7H Open Space

- (1) OPEN SPACE PARCELS – All the remaining land within the PRD not contained in the lots or within the road right-of-way shall be contiguous in parcels of not less than 1 acre in area. The Planning Board may permit open space parcels that are not contiguous if the intent and purpose of the Bylaw is fulfilled. Parcels of less than 1 acre in area may be permitted for use as a bicycle path or walkway within the subdivision at the discretion of the Board. Any and all structures or uses of open space areas will only be permitted at the discretion of the Board.
- (2) OPEN SPACE REQUIREMENT – The total area of open space shall be required according to the following Table and in accordance with the allowed density of the zoning district as set forth in ARTICLE 11 DIMENSIONAL REGULATIONS.

Table of Open Space Required	
Development Type	Open Space Required
Single-family units in 30,000 square foot zoning districts or smaller	Not less than 40% of the land area
Single-family units in 45,000 square foot zoning districts or larger	Not less than 50% of the land area
Two or more multi-family units in any zoning district	Not less than 60% of the land area

- (3) OPEN SPACE OWNERSHIP – Ownership of all remaining land set aside according to § 240-9.7H(2) shall be permanently conveyed to one of the following:
 - a. a corporation or trust owned or to be owned by the owners of lots or residential units within the development tract for recreational or open space purposes only, which shall not be further subdivided or used for building purposes or recreational activities unless specifically approved by the Planning Board;
 - b. to a recognized nonprofit organization as approved by the Planning Board, the principal purpose of which is the conservation of open space; or
 - c. the Town of Falmouth, in which case the Town shall not use any land conveyed for open space for any purpose other than for recreation, parkland, or open space.
- (4) OPEN SPACE RESTRICTION – For land not conveyed to the Town, a Town enforceable restriction shall be recorded that requires all open space be kept in an open or natural state and not be built for commercial or residential use or developed for accessory uses such as parking or roadway.
- (5) OPEN SPACE EXCLUSION – Not included under § 240-9.7H shall be that area of open space set aside according to § 240-9.7I.

240 – 9.7I Agricultural and Recreational Use

- (1) STANDARDS – If a parcel of land contains a use under § 240-9.7C(2) it may be included in the

PRD

if the following additional standards are met:

- a. The activity or use shall be set aside in a lot with dimensions necessary to continue the activity or use at a level deemed appropriate in accordance with the objectives of § 240-9.7.
- b. The area of the lot in which the activity or use is incorporated may not count towards more than $\frac{1}{3}$ of the required open space necessary to meet § 240-9.7F(3) requirements.
- c. A permanent deed restriction eliminating further development of the property shall be required; allowance for modification or expansion of the existing use within that deed restriction may be mutually agreed upon by the applicant and the Planning Board.
- d. No access to the agricultural or recreational use shall be allowed over residential lots, either existing or approved, as part of the PRD.
- e. Parking requirements for the agricultural or recreational use may be waived by the Planning Board when the Board finds that such waiver is necessary to meet the purposes and objectives of § 240-9.7.

240 – 9.7J Conformance with Other Bylaw Provisions

All dwellings and accessory buildings erected under the provisions of § 240 – 9.7 shall conform to all provisions of § 240-9.7, and shall not be varied except by special permit from the Board of Appeals.

240 – 9.7K Application Requirements

- (1) PRELIMINARY PLAN – Preliminary plan applications for a proposed PRD are encouraged to be made to the Planning Board according to Article III of Chapter 305, the Subdivision Rules and Regulations of Falmouth. In addition to those requirements listed in Article III of Chapter 305, the following shall be required for preliminary plan submittals:
 - a. a statement as to how the proposal conforms to the purposes and objectives of § 240-9.7; and
 - b. information as necessary to justify any proposed modification or reduction of an existing agricultural or recreational use.
- (2) SPECIAL PERMIT – Applications for issuance of a special permit and approval of development plans may be submitted after completion of a preliminary plan review. Applications for approval of a special permit and definitive subdivision plans shall be submitted and reviewed according to Article V of Chapter 305 of the Town Code, the Subdivision Rules and Regulations of the Town of Falmouth. Additional information as may be required in the preliminary plan review or as specified in §§ 240-9.7K(1) and (2) shall also be submitted.

240 – 9.8 Wind Energy Systems

240 – 9.8A Purpose

The purpose of § 240-9.8 is to accommodate wind energy systems as accessory land uses to supplement the power used by residents, municipal government bodies, and businesses and to provide standards for the placement, design, construction, monitoring, modification, and removal of wind energy systems through a special permitting process based on the procedures, provisions, and requirements established herein.

240 – 9.8B Permitted; Prohibited: Exceptions

- (1) WIND ENERGY SYSTEMS ALLOWED WITH LIMITATIONS – Any provisions or requirements of the Zoning Bylaw to the contrary notwithstanding, wind energy systems as defined shall only be constructed or modified through a special permit issued by the Planning Board as the Special Permit Granting Authority, (SPGA) subject to the following limitations:
- a. A small wind energy systems (SWES) may be permitted in Single Residence A and AA, Agricultural A and AA, Business 2, Public Use, and Light Industrial Zoning Districts, as further specified herein.
 - b. Large wind energy systems (LWES) may be permitted in Public Use or Light Industrial Zoning Districts and only freestanding monotube tower designs are permitted for LWES.
 - c. WES may only be permitted when accessory to a principal land use.
- (2) WIND ENERGY SYSTEMS PROHIBITED – Any provisions or requirements of § 240-9.8 to the contrary notwithstanding, no wind energy system as defined shall be constructed or modified, and no special permit shall issue, for any wind energy system under this bylaw:
- a. that has a rated capacity greater than 250 kilowatts in any zoning district;
 - b. that is not an accessory land use, as defined herein; or
 - c. where the primary use of the facility is electrical generation to be sold to the power grid or accounted for through net metering.
- (3) EXCEPTIONS – Any provisions or requirements of § 240-9 to the contrary notwithstanding, a WES lawfully in existence as of the effective date of this article shall be considered conforming and may apply for a special permit under this article to alter, modify, re-locate, or otherwise make improvements consistent with § 240-9.8.

240 – 9.8C Definitions

See ARTICLE 3 – DEFINITIONS, for definitions related to Wind Energy Systems.

240 – 9.8D Special Permit Application Requirements

- (1) PRE-APPLICATION MEETING – All applications shall be reviewed by the Planning Department at a mandatory pre-application meeting prior to submittal to the Planning Board.
- (2) APPLICATION REQUIREMENTS – In addition to the requirements found in the Town of Falmouth Code §§ 300-1 through 300-15 (the Planning Board Rules and Regulations Governing the Issuance of Special Permits) applications for a special permit to determine compliance under § 240 – 9.8 shall include all material that the Planning Board may reasonably require, and shall provide the following, unless waived by the Board:
- a. a copy of the application for interconnection with the electricity utility provider, if the WES is proposed to be connected to the power grid;
 - b. proof of liability insurance for an amount and duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility, in the form of a preliminary commitment from a recognized carrier; and
 - c. documentation of actual or prospective control of the project site sufficient to allow for construction and use of the proposed facility.

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- (3) DOCUMENTATION DETAILS – Documentation shall include proof of control over setback areas and access roads, if necessary, as well as the following information:
- a. names and addresses of property owners within the public outreach area as defined; and
 - b. certifications, if any, of the WES shall be noted; for example: Small Wind Certification Council, American Wind Energy Association, National Renewable Energy Laboratory, California Energy Commission, or the New York State Energy Research and Development Authority.
- (4) SITE PLAN DETAILS – The following site plan information shall be provided:
- a. property lines and physical dimensions of the subject property;
 - b. all other parcels and occupied structures within the public outreach area as defined;
 - c. location, dimensions, and types of existing structures on the site property;
 - d. location of the proposed wind turbine foundation(s), guy anchors, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, and exterior lighting;
 - e. distance between foundation and property lines;
 - f. all overhead utility wires; and
 - g. extent of clearing necessary for installation and any areas to be revegetated.
- (5) ENGINEERING DETAILS – The following engineering details shall be provided:
- a. wind energy system specifications, including manufacturer and model, rotor diameter, tower height, and tower type;
 - b. for large WES MET Tower data, 12 months or equivalent available data;
 - c. electrical plans and components, in sufficient detail, and stamped by an electrical engineer licensed in the Commonwealth of Massachusetts, to allow for a determination that the manner of installation conforms to all applicable codes; and
 - d. evidence of compliance or nonapplicability with Federal Aviation Administration requirements.
- (6) OPERATING DETAILS – The applicant shall submit an operations and maintenance (O&M) plan, to remain on file with the Planning Board, for maintenance of access roads and stormwater controls, if any, as well as general procedures for operational maintenance of the WES. The O&M Plan shall address the following:
- a. fully identify the parties responsible for owning and operating the turbine;
 - b. normal maintenance schedule and procedures;
 - c. methods for measuring sound, flicker, and other potential impacts throughout normal operations; and
 - d. emergency contacts and procedures.
- (7) SOUND IMPACT ANALYSIS & REQUIREMENTS – The applicant shall submit a manufacturer's documentation of sound impacts of the wind turbine(s) under various wind conditions, represented by a chart or map indicating the expected decibel levels at given distances from the wind turbine, including along the property lines. The sound analysis shall include the following information and the following requirements shall be met:
- a. The sound analysis shall include measurements of ambient sound levels under typical daytime and nighttime conditions.
 - b. The applicant shall specify the conditions under which ambient sound levels are measured, as well as the frequency and duration of these measurements.

- c. The Planning Board reserves the right to request measurement or modeling to the degree necessary to determine the potential sound impacts of a proposed WES, and to employ the services of its own acoustical expert at the expense of the applicant.
- d. Sound modeling shall include analysis of, but not limited to, the following: intermittent sound; sound power; spreading loss; atmospheric attenuation; barriers; ground attenuation and topography; meteorology, including seasonal variation; and wind direction, speed, and shear.
- e. The applicant shall have the burden of proving that the sound generated by the proposed WES will not have a significant adverse impact on adjacent land uses.
- f. The sound setback shall be determined by the Planning Board from the Sound Impact Analysis described above in order to not exceed increases in broadband sound levels by more than 6 A-weighted decibels or "pure tone" sound levels by more than 3 A-weighted decibels over ambient sound levels at the property line.
- g. An analysis prepared by a qualified acoustical expert shall be presented to demonstrate compliance with the noise setback.
- h. A larger setback may be required by the Planning Board to fulfill the intent of the safety or sound setback based on manufacturer or industry standards for the type of WES under review.

(8) FLICKER ANALYSIS & REQUIREMENTS – The applicant shall submit an evaluation of the flicker effects of the wind turbine(s) as proposed to be sited on the parcel. The analysis shall include the following information:

- a. Seasonal differences in time and duration must be provided.
- b. A plan delineating all impacted areas must be provided, with mitigation measures identified.
- c. A plan showing the WES sited in a manner that minimizes flicker impacts.

The following requirements shall be met:

- a. The applicant must demonstrate that flicker will not occur more than 30 minutes per day, and will not exceed 10 total hours per year over the property line.
- b. The applicant has the burden of proving that flicker will not have a significant adverse impact on adjacent land uses either through siting or mitigation.

(9) DESIGN STANDARDS – The following design standards shall be met:

- a. Color and finish: All components of the WES shall be painted a neutral, nonreflective color.
- b. Lighting: Wind turbines shall be lighted only if required by the Federal Aviation Administration; lighting of appurtenant structures shall be limited to that required for safety, security, and operational purposes, and shall be shielded from abutting properties to the extent possible.
- c. Signs: A WES shall not display any permanent or temporary signs, writing, symbols, logos, or any graphic representation except the following:
 - i. signs necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger;
 - ii. educational signs providing information about the facility, and the benefits of renewable energy; and
 - iii. reasonable identification of the manufacturer or operator of the WES.
- d. Utilities: Utility connections shall be installed underground; electrical transformers for utility interconnection may be above ground, if required by the utility provider.

(10) SAFETY AND ENVIRONMENTAL STANDARDS

- a. Emergency Services
 - i. The applicant shall provide a copy of the project approval and site plan to the Falmouth Police Department and Falmouth Fire and Rescue Department.
 - ii. The applicant shall cooperate with the FFRD in developing an emergency response plan, which must be approved by the Planning Board.
 - iii. The emergency response plan shall account for any hazardous materials located at the property necessary for the operation of the WES.
- b. Utilities
 - i. Utility connections shall be installed underground.
 - ii. Electrical transformers for utility interconnection may be above ground, if required by the utility provider.
- c. Access
 - i. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
 - ii. The tower shall be designed and constructed so as to not provide stop bolts or a ladder readily accessible to public for a minimum height of 10 feet above the ground.

(11) CLEARING STANDARDS – The following clearing standards shall be met:

- a. The extent of clearing shall be limited to that which is necessary for access, construction, operation, and maintenance of the WES.
- b. Extensive clearing shall require runoff control and stormwater management.
- c. Temporary construction staging areas shall be revegetated.

240 – 9.8E Special Permit Process & Review Criteria**(1) SPECIAL PERMIT PROCESS CRITERIA – In addition to the requirements found in §§ 300-1 through 300-8 of the Town Code, (Planning Board Rules for Special Permits,) applications for a special permit under § 240-9.8 shall be subject to the following procedural requirement:**

- a. In addition to those property owners identified as parties-in-interest, the Planning Board shall, by regular mail, alert property owners within the public outreach area of the time, place, and date of the required public hearing for any WES. The purpose of this outreach effort is to broaden the base of information gathering beyond that typically required of other special permit applications, while not conferring party-in-interest status beyond that defined by G. L. c. 40A, § 11.

(2) SPECIAL PERMIT REVIEW CRITERIA – Applications for WES shall be subject to the following performance requirements:

- a. System Height: The maximum height of a WES shall be determined by the Planning Board based on the operational characteristics of the WES, but in no case shall the maximum permitted height exceed the setback requirements.
- b. Setbacks: The setback from property lines shall be not less than the system height plus 10% to mitigate risk from ice throw or mechanical failure.

(3) SPECIAL PERMIT MODIFICATION – Modifications to a WES made after issuance of the special permit

shall require approval by the Planning Board as provided in § 240-9.8.

240 – 9.8F Special Permit Decision

- (1) SPECIAL PERMIT FINDINGS – Applications under § 240-9.8 shall only be approved by the Planning Board upon its finding that the review criteria above have been satisfied together with the standards found under § 240-12.1E.
- (2) APPROVAL – No special permit shall be approved for any application not able to demonstrate compliance with the sound or safety setbacks.
- (3) STANDARD CONDITION – Any special permit issued under § 240-9.8 shall include a condition requiring the applicant to maintain the WES in good condition.

240 – 9.8G Maintenance

- (1) REQUIREMENTS – Maintenance requirements shall include;
 - a. painting;
 - b. structural repairs;
 - c. integrity of security measures; and
 - d. maintenance of site access.
- (2) COSTS – The WES owner shall be responsible for the cost of maintaining the WES and any access roadways or driveways, and the cost of repairing any damage occurring as a result of construction and operation.

240 – 9.8H Enforcement

- (1) BUILDING COMMISSIONER – The Building Commissioner shall be responsible for enforcement of the provisions of § 240-9.8 pursuant to § 240-2.4.
- (2) ZONING BYLAW VIOLATION – Failure of the owner of any WES to comply with operational standards, mitigation measures, or annual inspection requirements, shall be considered a violation of the Zoning Bylaw.

240 – 9.8I Annual Inspections

- (1) INSPECTION AND REPORT – Every LWES shall be subject to an annual inspection, with a report submitted to the Planning Board and Building Commissioner.
- (2) INSPECTION EVALUATION – The inspection shall include an evaluation of all mechanical and structural components, especially safety, performed by professional engineers with the proper registrations (i.e., structural, electrical, mechanical, etc.).

240 – 9.8J Decommissioning or Abandonment

- (1) DECOMMISSIONING – REMOVAL REQUIREMENTS – A WES which has reached the end of its useful life or has been abandoned shall be removed. For a scheduled decommissioning, the owner shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. The owner shall physically remove the WES not more than 150 days after the

date of discontinued operations. Decommissioning shall consist of:

- a. physical removal of all wind turbines, structures, equipment, security barriers, and transmission lines from the site;
 - b. disposal of all solid and hazardous waste in accordance with local and state regulations; and
 - c. stabilization or revegetation of the site as necessary to minimize erosion; the Planning Board may allow the owner to leave below-grade foundations in place in order to minimize disruption.
- (2) ABANDONMENT – Absent notice of a proposed date of decommissioning, the WES shall be considered abandoned when the facility fails to operate for more than 12 consecutive months.
- (3) NOTIFICATION – Prior to declaring the WES to be abandoned, the Planning Board shall notify the owner by certified mail that corrective action must be taken. The owner shall have 30 days to respond and provide a schedule for corrective action.
- (4) FINANCIAL SURETY – The Planning Board shall require the applicant for any LWES to provide surety, either as a bond or escrow account, to cover the cost of removal in the event the Town must remove the LWES together with a right-of-entry onto the property in the event of default. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall be adjusted for inflation.
- (5) PUBLIC INQUIRIES/COMPLAINTS – The applicant shall identify a responsible person and contact phone number in the event of public inquiries or complaints, for as long as the WES is in place. Complaints that cannot be resolved by the parties shall be forwarded to the Building Commissioner, with a copy to the Planning Board, by the responsible person identified above.

ARTICLE 10 NONCONFORMING STRUCTURES, USES & LOTS

240 – 10.1 Applicability

240-10.1A – Preamble & Overview

- (1) NONCONFORMING STRUCTURES AND USES and Lots – Nonconforming structures, uses, and lots shall be understood to mean structures, uses, and lots that do not conform to the Zoning Bylaw. Nonconforming structures and uses that had conformed to the Zoning Bylaw, but that became nonconforming upon adoption or amendment of the Zoning Bylaw, shall be understood to be lawful, pre-existing nonconforming structures and uses. Additionally, where State law expressly declares a nonconforming structure to be deemed a lawful, pre-existing nonconforming structure – such as in G.L. c. 40A, § 7 and in § 240-10.3 of this Bylaw – it shall be understood to be deemed such a nonconforming structure in the application of both state law and this Bylaw.
- (2) STATE AND TOWN REGULATORY AUTHORITY – Nonconforming structures, uses, and lots are regulated by both the State Zoning Act (G.L.c.40A, § 6) and by Town of Falmouth Chapter 240 Zoning. Unless preemptively regulated under state statute, all structures and uses within the Town shall comply with the Town’s Zoning Bylaw.
- (3) GOVERNING PROVISIONS – Except as otherwise expressly governed by other sections of this Bylaw, the provision of this ARTICLE 10, shall govern.

240-10.1B – Preemptive Effect of G.L. c. 40A, § 6.

- (1) CHAPTER 40A, § 6 CONFLICT – No provision of this Bylaw shall be interpreted or applied so as to conflict with the following provisions of G.L. c. 40A, § 6, which have the following preemptive effect.
 - a. Building Permits – Zoning bylaws adopted or amended shall not apply to building permits issued before the first notice of the planning board hearing on the bylaw required by G.L. c. 40A, § 5 (“the first notice”).
 - b. Special Permits – Zoning bylaws adopted or amended shall not apply to special permits issued before the first notice.
 - c. Uses Lawfully Begun – Zoning bylaws adopted or amended shall not apply to uses lawfully begun before the first notice. The bylaw shall apply to any change or substantial extension of such use.
 - d. Structures Lawfully in Existence – Zoning bylaws adopted or amended shall not apply to structures lawfully in existence before the first notice. Except as stated in the preemption listed in § 240-10.1B(1)e, the Bylaw shall apply to:
 - i. any reconstruction, extension, or structural change of the structure; and
 - ii. any alteration of a structure begun after the first notice to provide for its use for a substantially different purpose or for the same purpose, in a substantially different manner or to a substantially greater extent.
 - e. Single- and Two-family Residential Structures – Zoning bylaws adopted or amended shall not

apply to the alteration, reconstruction, extension, or structural change to a single or two-family residential structure that does not increase the nonconforming nature of the structure. Where the alteration, reconstruction, extension, or structural change increases the nonconforming nature of the structure, that exemption shall apply where the Zoning Board of Appeals finds that it is not substantially more detrimental to the neighborhood.

- f. All Other Structures – Amendments to the Zoning Bylaw shall apply to the alteration, reconstruction, extension, or structural change to all structures other than those preempted under § 240-10.1B(1)e. above. However, bylaw amendments shall not apply where the Board of Appeals finds that the alteration, reconstruction, extension, or structural change:
 - i. does not increase the nonconforming nature of the structure, and
 - ii. is not substantially more detrimental to the neighborhood.

A variance shall be required where the alteration, reconstruction, extension, or structural change increases the nonconforming nature of the structure or creates a new nonconformity.

240-10.1C – Applicability

- (1) **LAWFUL STRUCTURES/USES NOT APPLICABLE** – Except as otherwise provided, this Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building permit or special permit issued before the first publication of notice of the public hearing to amend this Bylaw required by G.L. c. 40A, § 5.
- (2) **LAWFUL STRUCTURES/USES APPLICABLE** – However, this Bylaw shall apply to the following:
 - a. a change or substantial extension of the use referenced in (1) above, or
 - b. a building permit or special permit issued after the first notice, or
 - c. any reconstruction, extension, or structural change of such structure, or
 - d. any alteration of a structure begun after the first notice to provide for its use in a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent, except where alteration, reconstruction, extension, or a structural change to a one-family or two-family residential structure does not increase the nonconforming nature of the structure.
- (3) **EXTENSION OR ALTERATION OF PRE-EXISTING NONCONFORMING STRUCTURES/USES** – Pre-existing nonconforming structures or uses may be extended or altered, provided no extension or alteration shall be permitted unless there is a finding by the Board of Appeals that the extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use. It is the purpose of this Bylaw to discourage the perpetuity of nonconforming uses and structures when possible.
- (4) **CONFORMANCE WITH BYLAW AMENDMENTS** Construction or operations under a building permit or special permit shall conform to any subsequent amendments to this Bylaw unless the use or construction is commenced within a period of 12 months after the issuance of the permit and, in cases involving construction, unless that construction is continued through to completion continuously and expeditiously.
- (5) **TWO OR MORE RESIDENTIAL DWELLINGS ON A SINGLE LOT** – Anything to the contrary in this Bylaw notwithstanding, § 240-10.1C shall not apply to the residential use of 2 or more dwellings on a single lot, which shall be deemed a preexisting nonconforming use if commenced prior to May 19, 1959. This use may only be altered, extended, or modified by special permit provided the Board of Appeals finds, through a preponderance of credible evidence, that the use commenced prior to May 19, 1959, and has not been abandoned, or not used for a period of 2 continuous years

or more. In approving any alteration, extension, or modification the Board shall require that the number of dwelling units be limited to the same as in existence on May 19, 1959.

240-10.1D – Meaning to be Ascribed to “Nonconforming Nature” and “Substantially more Detrimental”

- (1) NOT INCREASING THE NONCONFORMING NATURE OF A STRUCTURE/USE – Wherever in this Bylaw reference is made to not increasing the nonconforming nature of a structure or use, or to any alteration, reconstruction, extension, or structural change thereof, there being no statutory definition or otherwise prescribed meaning that must be assigned thereto, that determination shall be understood to be governed by the express provisions of this Bylaw that specifies its meaning and application to particular structures or uses.
- (2) NOT SUBSTANTIALLY MORE DETRIMENTAL – Wherever this Bylaw makes reference to a determination that a structure or use, or to any alteration, reconstruction, extension, or structural change thereof, is not substantially more detrimental to the neighborhood, that determination shall be made, subsequent to the determination that there has been a change in use, only upon the permit granting authority or special permit granting authority making all of the following subsidiary findings of relevant facts specific to a particular structure or use:
- a. the nonconforming structure or use reflects the nature and purpose of the structure or use prevailing when the bylaw took effect;
 - b. the nonconforming structure or use is not different in quality, character, or degree from that prevailing when the bylaw took effect; and
 - c. the nonconforming structure or use is not different in kind in its effect on the neighborhood.

240 – 10.2 Nonconforming Structures

240-10.2A – Nonconforming Single-family or Two-family Dwelling

- (1) PERMITTED – Alteration, reconstruction, extension, or structural change to a single-family or two-family residential structure that does not increase the nonconforming nature of that structure shall be permitted.
- (2) FINDING REQUIRED – No alteration, reconstruction, extension, or structural change to a single-family or two-family residential structure that increases the nonconforming nature of that structure shall be permitted unless there is a finding by the Board of Appeals that the proposed alteration, reconstruction, extension, or structural change will not be substantially more detrimental to the neighborhood.
- (3) INCREASE IN NONCONFORMITY – Any alteration, reconstruction, extension, or structural change that results in a new nonconformity shall be deemed to be an increase in the nonconforming nature of the structure.

240-10.2B – Nonconforming Structures Other Than Single-family or Two-family Dwellings

- (1) VARIANCE REQUIRED – No alteration, reconstruction, extension, or structural change to any structure, other than a single-family or two-family residential structure governed by § 240-10.2A above, that increases the nonconforming nature of that structure shall be permitted except by variance.

- (2) **FINDING REQUIRED** – Alteration, reconstruction, extension, or structural change to any structure other than a single-family or two-family residential structure that does not increase the nonconforming nature of the structure may be allowed upon a finding by the Board of Appeals that it will not be substantially more detrimental to the neighborhood.
- (3) **NEW NONCONFORMITY** – Any alteration, reconstruction, extension, or structural change that results in a new nonconformity shall be deemed to be an increase in the nonconforming nature of the structure.

240 – 10.3 Existing Nonconforming Structures and Uses & Enforcement Limitations

240-10.3A – Conformance with G.L. c. 40A, § 7

The provisions of § 240-10.3 govern structures and uses in existence so as to conform to the provisions of G.L. c. 40A, § 7.

- (1) **STATUS AS A LAWFULLY NONCONFORMING STRUCTURE** – The following requirements shall be used to determine if a structure is a lawfully nonconforming structure:
- a. if real property has been improved by the erection or alteration of one or more structures, and
 - b. if the structures or alterations have been in existence for a period of at least 10 years, and
 - c. if no notice of an action, suit, or proceeding as to an alleged violation of G.L. c. 40A or of this Bylaw has been recorded within a period of 10 years from the date the structures were erected, then
 - d. the structures shall be deemed, for zoning purposes, to be lawfully nonconforming structures in accordance with G.L. c. 40A, § 6, and to the provisions of this Bylaw.
- (2) **LEGALLY NONCONFORMING USE** A nonconforming use may be extended or changed to another nonconforming use by special permit, provided the permit granting authority finds that the new use is not a substantially different use and not substantially more detrimental to the neighborhood than the existing use.

240-10.3B – Enforcement Limitations

- (1) **TEN-YEAR LIMIT TO FILE CIVIL OR CRIMINAL ACTION** – No criminal or civil action intended to compel the removal, alteration, or relocation of a structure by reason of an alleged violation of G.L. c. 40A or of this Bylaw, or of the conditions of a variance or special permit, shall be maintained unless the action, suit, or proceeding is commenced and notice is recorded within 10 years of the commencement of the alleged violation.

Up until 2016, protection under this § 7, did not confer lawful prior nonconforming status on a use or structure that violates local zoning. So, the conditional right generally available to lawful nonconforming uses and structures to be changed or extended had not until 2016 been available to unlawful noncompliant uses and structures, even though they may be insulated from enforcement actions by the city or town. In some respects, this was similar to the status enjoyed under a variance with respect to which the right to expand or extend are unavailable.

Under Chapter 184 of the Acts of 2016, the Legislature amended G.L. c. 40A, § 7, to confer prior nonconforming status on non-compliant structures if no notice of suit has been filed within 10 years.

- (2) **SIX-YEAR LIMIT IF IN CONFORMANCE WITH THE BUILDING PERMIT** – If real property has been improved and used in accordance with the terms of the original building permit, no criminal or civil action intended to compel the abandonment, limitation, or modification of the use allowed by the permit or the removal, alteration, or relocation of a structure erected in reliance upon the permit by reason of an alleged violation of G.L. c. 40A or of this Bylaw or the conditions of a variance or special permit, shall be maintained unless the action, suit, or proceeding is commenced and notice of the action, suit, or proceeding is recorded within 6 years of the commencement of the alleged violation.
- (3) **NOTICE** – Notice of any action, suit, or proceeding commenced, as referred to in § 240-10.3A, shall be understood to mean a notice recorded in the registry of deeds or, in the case of registered land, a notice filed in the registry district of the Land Court.

240 -10.4 Nonconforming Lots

240-10.4A – Lot Shape and Size

LOT CHANGE – Any lot, or open space on a lot, including yards and setbacks, shall not be reduced or changed in area or shape such that the lot, open space, yard, or setback is made nonconforming or more nonconforming unless a special permit has been granted under the provisions of this Bylaw. However, this section shall not apply in the case of a lot where a portion of the lot is taken for a public purpose.

240-10.4B – Miscellaneous Provisions

- (1) **APPLICABILITY** – The erection, extension, or moving of a structure or the creation or change in size or shape of a lot (except through a public taking) shall meet the minimum requirements set forth in ARTICLE 11, DIMENSIONAL REGULATIONS, unless otherwise expressly provided by this Bylaw or by GL c. 40A, § 6. The shape of 2 or more contiguous existing lawful building lots may be changed provided the area of each lot remains the same or meets the current minimum requirements in the zoning district and the total number of buildable lots is the same or less. No lot reconfigured under this § 240-10.4B shall lose its buildable status, and no lot shall be made nonconforming.
- (2) **LOT DIVISION** – Where a lot is formed from a part of a lot already occupied by a building, such separation shall be affected in a manner as not to impair any of the requirements of this Bylaw with respect to the existing building and all yards and other open spaces regarding the lot and no permit shall be issued for the erection of a new building on the new lot unless it complies with all provisions of this Bylaw.
- (3) **NONCONFORMING LOTS** – Any nonconforming lot having at least 20 feet of frontage on a street shall be eligible to apply for a building permit, if it conforms to the provisions of any of the following Subsections (3)(a) through (3)(g).
- a. Any increase in area or lot width requirements in the Bylaw shall not apply to a lot shown on a plan, or described in a deed duly recorded at the Registry of Deeds as of January 1, 1981, for single-family residential use which at the time of the Zoning Bylaw change:

- i. was not held in common ownership with any adjoining land;
 - ii. was not otherwise protected by GL c. 40A, § 6;
 - iii. conformed to the then existing requirements; and
 - iv. had at least 7,500 square feet of area and 50 feet of frontage.
 - b. Any lot not held in common ownership with any adjoining land as of January 1, 1981, not protected by § 240-10.4B(3)a., shall be eligible to apply for a building permit if the lot has at least:
 - i. 40,000 square feet of area in an AGAA/RAA District;
 - ii. 20,000 square feet of area in an AGA/RA/PU District;
 - iii. 10,000 square feet of area in an AGB/RB District; or
 - iv. 7,500 square feet of area in an RC/GR District for single-family construction only.
 - c. Any lot not held in common ownership with adjoining land as of January 1, 1981, not protected by §§ 240-10.4B(3)a. and (3)b., may apply to the Board of Appeals for a special permit to construct a single-family residence, if the lot has at least 7,200 square feet of area. If the petitioner's lot is located within a Water Resource Protection District, or within 300 feet of an estuary, hereinafter defined as a saltwater passage, wherein the tide meets a flow of freshwater, or within 300 feet of a tidal marsh, tidal pond, or tidal river as defined, the Board of Appeals shall require:
 - i. information on the location of public and private wells within 300 feet of the site;
 - ii. a nutrient analysis of the receiving waters, taken from the site or from adjacent, undersized lots;
 - iii. a projection of the cumulative impact on water quality with the increased density; and
 - iv. a determination that the majority of the lots within the neighborhood are already developed in addition to the criteria specified in § 240-12.1E.
- The Board of Appeals is encouraged to transmit the petition referred to in the §§ (3)(c)i.-iv. above to the Board of Health, the Board of Public Works, and the Planning Board, in accordance with § 240-12.1G. The responses of the Boards to which the petition is referred shall become a part of the decision record. The Board of Appeals may impose certain restrictions designed to protect or improve the water quality of the area, including, but not limited to:
- i. a requirement to keep the lot in its natural vegetative state;
 - ii. maximum floor/area ratio;
 - iii. limitations on other ordinarily permitted uses which would tend to degrade the water quality;
 - iv. seasonal uses; and
 - v. other health and environmental hazards.
- d. Any lot that was vacant as of January 1, 1981, and was held in common ownership with adjoining lots may be treated as not held in common ownership if, as of January 1, 1981, a dwelling was in existence on all the other commonly held, contiguous lots, or if subsequent to January 1, 1981, the lot was no longer held in common ownership and a dwelling was permitted by special permit on each of the adjoining lots.
 - e. Any lot not held in common ownership with any land as of January 1, 1981, not protected by Sections 240-10.4B(3)a. or (3)b., may be eligible to apply for a building permit, without the benefit of the special permit required under Section 240-10.4B(3)c., if either:

- i. the petitioner acquires another undersized vacant lot within the subdivision or immediate surrounding neighborhood and records a covenant at the Registry of Deeds running in favor of the Town prohibiting the erecting of any structure thereon; or
- ii. the petitioner acquires the development rights on another undersized vacant lot within the same subdivision and covenants a permanent development restriction against the development rights on the subject lot, such that the total of the area of the lot to be built upon plus the assignable area of the lot to be restricted equal the minimum size requirements of Section 240-10.4B(3)b.

More than one petitioner may participate in the acquisition of the undersized vacant lot or the entire lot, as long as the sum of the restricted development area assignable to each petitioner does not exceed the sum of the area of the restricted lot.

- f. Any lot held in common ownership with any adjoining land as of January 1, 1981, not protected by Section 240-10.4B(3)d, may apply to the Planning Board for a special permit to construct a single-family residence on the following 2 conditions:
 - i. that the lots are on roads which have been constructed as of April 1, 1982, in accordance with Chapter 305, the Subdivision Rules and Regulations of the Town of Falmouth, and
 - ii. that if the lots are re-subdivided so that the total area of the commonly held lots, when divided by the number of building permits to be requested, results in an area of land per single-family residence that equals at least 75% of the existing requirements for that zoning district.

The additional criteria specified in Section 240-10.4B(3)c shall also be considered. In addition, the Planning Board may set aside one of the created lots as an open space lot as allowed under G.L c. 41, § 81U.

- g. Any lot in an RB or AGB Zoning District, shown on a plan or described in a deed duly recorded at the Registry of Deeds before January 1, 1975, with an area of at least 20,000 square feet, shall be eligible for a building permit by right, as long as the lot width is 100 feet or greater and the frontage meets or exceeds the frontage requirement of the RB district as of January 1, 1975.
 - h. Any lot in a GR, RC, RB, RA, AGB or AGA Zoning District not held in common ownership with adjoining land as of January 1, 1994, shown on a plan filed at the Registry of Deeds before April 4, 1988, with an area of at least 45,000 square feet, lot width of at least 150 feet, and frontage of at least 100 feet, shall be eligible for a building permit by right. In addition, on any such lot otherwise ineligible for a building permit the number of bedrooms shall not exceed one bedroom per 13,500 square feet of lot area, unless additional bedrooms are allowed by special permit. The Board of Appeals shall impose conditions to preserve and protect existing and potential sources of drinking water, including required use of a sewage disposal system with enhanced nitrogen removal.
- (4) ONE DWELLING PER LOT – Not more than one dwelling shall be erected on a single lot, except for multifamily use as allowed within designated zoning districts. An existing, nonconforming use of 2 or more structures on a single lot, as of January 1, 1981, not previously used for year-round habitation, may not be altered, reconstructed, extended or changed structurally, except by special permit from the Board of Appeals. Year-round habitation is deemed to be an extension of use.

240 – 10.5 Restoration, Abandonment, Non-use

240-10.5A – Restoration, Abandonment, Unsafe Structures

- (1) **DAMAGE & RESTORATION** – Reconstruction of a lawfully nonconforming structure damaged or destroyed by fire or other accidental or natural cause, other than flood damage sustained to structures within Zones A and V Floodplains shown on the Flood Insurance Rate Maps of Falmouth, shall be allowed by right if:
 - a. the reconstruction is substantially in the form it had at the time of damage or destruction;
 - b. the reconstruction is in any form if within applicable setback requirements and not larger than previously; and
 - c. if reconstruction is started within 24 months, and completed within 36 months, of the damage or destruction.

- (2) **USE ABANDONMENT** – A nonconforming use shall be considered abandoned when the premises have been converted to another use, whether conforming or nonconforming, or when the characteristic equipment and the furnishing of the nonconforming use has been removed from the premises, and has not been replaced by similar equipment and furnishings within 2 years, unless other facts show intention to resume the nonconforming use.

- (3) **ABANDONMENT & REESTABLISHMENT** – A nonconforming use or structure that has been abandoned, demolished without reconstruction, or not used for a period of 2 years, shall lose its protected status and be subject to this Bylaw; however, the Board of Appeals may grant a special permit for the reestablishment of a nonconforming use or structure where such reestablishment does not result in substantial detriment to the neighborhood. In determining if the proposed reestablished use or structure would be detrimental, the Board shall consider the following:
 - a. lot size;
 - b. existing building coverage;
 - c. available on-site parking;
 - d. traffic patterns;
 - e. access to public ways;
 - f. intended use of the site and/or structure; and
 - g. protection of public safety and convenience.

- (4) **UNSAFE STRUCTURE** – A nonconforming structure determined by the Building Commissioner to be unsafe may be restored to a safe condition, provided the work on that structure shall be completed within one year of the determination that the structure is unsafe and the restoration work shall not place the structure in greater nonconformity. The Board of Appeals may extend the 1- year time limit by the grant of a special permit.

240 – 10.6 Findings and Exemptions

240-10.6A – Standards Applicable to a Finding of “substantially more detrimental to a neighborhood”

- (1) **STANDARDS AND CRITERIA** – Recognizing the need to provide guidelines for determining actions that may be substantially more detrimental to the neighborhood and the Town, and recognizing there are basic and consistent principles of zoning which are broadly accepted, the following standards

shall apply to the granting of a special permit, or in making a finding that a structure or use is not substantially more detrimental:

- a. the factors enumerated in § 240-12.1E.;
- b. the change, alteration, extension, or reconstruction of the structure or the change, alteration, or extension of the use may be allowed as maintaining or lessening any nonconformity without having to meet existing dimensional requirements; however, the extension of a structure may be considered substantially more detrimental after the Board of Appeals considers whether the or alteration extends or creates a new dimensional nonconformity, impairs views or vistas, or does not reasonably conform to the average dimensions found in the neighborhood; and
- c. where the proposed use is regulated by other sections of this Bylaw, the applicable standards of those sections shall also be considered in determining whether the proposal is substantially more detrimental.

240-10.6B. Exemptions

- (1) ALTERATION – Alteration, reconstruction, extension, or structural change to a nonconforming single-family or two-family structure shall not be considered an increase in the nonconforming nature of the structure and shall be permitted by right under the following circumstances:
 - a. normal repairs or replacement of parts of any nonconforming structure, provided this repair or replacement does not constitute an extension of a nonconforming use of the structure;
 - b. alteration to a conforming structure where the alteration will also comply with all applicable sections of this Bylaw in effect at the time of application, if the existing structure is located on a lot which is nonconforming as the result of a zoning change;
 - c. alteration within the existing footprint of a nonconforming structure to comply with requirements of the Massachusetts Building Code;
 - d. alteration to a nonconforming structure where the alteration will comply with all applicable sections of the Zoning Bylaw in effect at the time of application and will not increase the habitable space;
 - e. alteration to a nonconforming structure on a lot of at least 20,000 square feet, where the alteration will comply with all applicable sections of the Zoning Bylaw in effect at the time of application, including, setback, yard, building coverage, and height requirements.
- (2) INTERIOR ALTERATION – Interior alteration of any otherwise conforming structure that does not change the nature of, nor increase the intensity of, a nonconforming use, and interior alterations of preexisting nonconforming structures for a use or uses that are otherwise allowed by zoning is exempt.
- (3) COMMERCIAL ACCOMMODATION STRUCTURE – Reconstruction of any permitted commercial accommodation structure or unit(s), if for the purpose of rehabilitation or upgrade, and if the commercial accommodation was licensed and operational for the 3 years prior to the rehabilitation upgrade is exempt. The reconstruction shall not allow rebuilding at a greater density, greater height, or at a different location than previously existed.
- (4) ACCESSORY USES & STRUCTURES – Accessory uses and structures are not exempted under § 240-10.6B.

ARTICLE 11 DIMENSIONAL REGULATIONS

240 – 11.1 Applicability

240 – 11.1A Standards

- (1) CHANGES TO A STRUCTURE OR LOT – The erection, extension, alteration, or moving of a structure or the creation or change in size or shape of a lot (except through a public taking), shall meet the minimum requirements set forth in ARTICLE 11, unless otherwise expressly provided for by ARTICLE 11 or by G.L. c. 40A, § 6.
- (2) CHANGES TO SHAPE OF ABUTTING LOTS – The shape of 2 or more contiguous existing lawful building lots may be changed provided the area of each lot remains the same or meets the current minimum requirements in the zoning district and the total number of buildable lots is the same or less. No lot reconfigured under § 240-11.1A(2) shall lose its buildable status, and no lot shall be made nonconforming.

240 – 11.2 Lot Requirements

240 – 11.2A Lot Regulations

- (1) NEW LOT CREATED FROM EXISTING LOT – Where a lot is formed from a part of a lot already occupied by a building, this separation shall be effected in a manner as not to impair any of the requirements of ARTICLE 11 with respect to the existing building and all yards and other open spaces in connection therewith. No permit shall be issued for the erection of a new building on the new lot thus created unless it complies with all provisions of this Bylaw.
- (2) ONE DWELLING PER LOT – Not more than one dwelling shall be erected on a single lot except for multifamily use and accessory dwelling units as allowed for within designated zoning districts. An existing, nonconforming use of 2 or more structures on a single lot, as of January 1, 1981, not previously used for year-round habitation, may not be altered, reconstructed, extended, or changed structurally, except by special permit from the Zoning Board of Appeals. Year-round habitation is deemed to be an extension of use.

240 – 11.2B Minimum Lot Dimensions

- (1) REQUIREMENTS

Table of Lot Area/Width/Frontage Requirements			
District	Minimum Lot Area (square feet)	Minimum Lot Width (linear feet)	Minimum Frontage (linear feet)
Single Residence AA	80,000	200	150 ⁴
Single Residence A	45,000 ⁴	150	100
Single Residence B ⁷	40,000 ⁴	125	100
Single Residence C ⁷	40,000 ⁴	100	100
General Residence	20,000 ⁴	125 ⁴	100

Table of Lot Area/Width/Frontage Requirements			
District	Minimum Lot Area (square feet)	Minimum Lot Width (linear feet)	Minimum Frontage⁵ (linear feet)
Senior Care Retirement	45,000	150	100
Public Use	45,000 ⁴	150	100
Agriculture AA	80,000	200	150 ⁴
Agricultural A	45,000 ⁴	150	100
Agriculture B	40,000 ^{4 8}	125	100 ⁴
Marine	20,000 ⁴	100	100
Business 1	n/a	n/a	n/a
Business 2 ²	40,000	200	200
Business 3	Note ¹	Note ¹	Note ¹
Business Redevelopment	20,000	125	100
Light Industrial A ³	40,000	150	150
Light Industrial B	80,000	200	100
Light Industrial C	40,000	200	150
Large Scale Ground Mounted Solar Overlay District	304,920 (7 acres)	Underlying zoning district requirement	Underlying zoning district requirement
Water Resource Overlay District	80,000	200	150
Wildlife Corridor Overlay District see § 240-7.6B(6)			

¹ Requirements are those of the nearest Single Residence, General Residence, or Agricultural Districts.

² No requirements for building on lots owned separately from abutting property on February 1, 1979.

³ No requirements for building on lots owned separately from abutting property and zoned Light Industrial A, as of January 1, 1981.

⁴ This shall not apply to any residential lot shown on a plan endorsed by the Planning Board as of April 2, 1984, if the lot conforms to the Bylaw requirements on that date. This shall also not apply for the purpose of special permit applications under § 240-10.5B(3)g, provided that the provisions of this sentence shall not apply to more than 3 adjoining lots in common ownership. This protection shall not restrict the Planning Board from considering alternatives to issuance of a special permit under § 240-10.5B(3)g.

⁵ Frontage for all lots along Route 151 extending from Route 28A to the Mashpee Town line and along Route 28 from the Bourne Town Line to the Mashpee Town line shall be a minimum of 500 linear feet for all zoning districts. This restriction shall not apply to lots endorsed by the Planning Board as of October 1, 1985.

⁶ This shall not apply to any residential lot shown on a preliminary or definitive subdivision plan submitted to the Planning Board between March 1, 1983, and April 2, 1984, and subsequently approved between April 2, 1984, and December 31, 1984.

⁷ This shall not apply to any lot shown on a plan endorsed by the Planning Board prior to April 1, 1993, or to any lot shown on a subdivision plan submitted for approval to the Planning Board prior to April 1, 1993, and subsequently endorsed after that date.

⁸ This shall not apply to any lot shown on a plan endorsed by the Planning board prior to April 1, 1993, and subsequently endorsed after that.

(2) LOT WIDTH – No part of any lot shall be narrower than 50 feet in any dimension except at the corners. This provision shall not apply to a lot shown on a plan or described in a deed duly recorded at the Registry of Deeds as of April 1, 1996, which, at the time of a Zoning Bylaw change, conformed to the then existing requirements for the zoning district in which it is located.

(3) LOTS FOR COMMERCIAL ACCOMMODATIONS

- a. Except in Business or Light Industrial Districts, lots for boarding and lodging houses, hotels, inns, and motels shall meet the following minimum requirements:
 - i. For commercial accommodations containing 5 or fewer guest units, the lot shall contain not less than the minimum area, in square feet, required for a single residence in the district where the building is to be located and shall otherwise conform to the regulations of the zoning district in which it is located.
 - ii. For commercial accommodations containing 6 to 15 guest units, inclusive, the lot shall contain not less than the minimum area, in square feet, required for a single residence in the district where the building is to be located, plus an additional 1/5 of the minimum area required for a single residence in the district for each guest unit over 5.
 - iii. For commercial accommodations containing more than 15 guest units, the lot must meet the requirements of § 240-11.2B(3)a.i.-iii. above, plus an additional 1/10 of the minimum area required for a single residence in the district of each guest unit over 15.
 - iv. For commercial accommodations lawfully in existence and operating as a commercial accommodation as of August 26, 1983, the lot shall contain not less than the minimum area in square feet required for a single-family residence in the district where the building is to be located, plus an additional one-tenth (1/10) of the minimum area required for a single residence in the district for each guest unit over 5 where the building is to be located, except where § 240-11.2B(3)c. below, would apply.
- b. In Business and Light Industrial Districts, the following requirements as to whether commercial accommodations are allowed or not, and how they are restricted, shall apply:
 - i. Industrial A and Industrial B Districts: not allowed.
 - ii. Business 1: not allowed.
 - iii. Business 2 and Business Redevelopment: allowed. The lot shall contain not less than 10,000 square feet of area plus an additional 1,000 square feet for each guest unit over 5. For commercial accommodations in existence and lawfully operating as a commercial accommodation as of January 20, 1984, additional guest units may be added under the provisions of § 240-9.4 provided that the lot contains not less than 1,000 square feet of area for each guest unit, either existing or proposed.
 - iv. Business 3: allowed. The lot shall contain not less than 15,000 square feet of area plus an additional 1,500 square feet of area for each guest unit over 5. For commercial accommodations in existence and lawfully operating as a commercial accommodation as of January 20, 1984, additional guest units may be added under the provisions of § 240-9.4 provided that the lot contains not less than 1,000 square feet of area for each guest unit, either existing or proposed.
- c. Waiver of lot size requirements – The minimum lot size requirements for a boarding or lodging house may be waived, by special permit, by the Board of Appeals if a structure had been issued a lodging house license for the calendar year 1976 or 1977.

(4) SPECIAL PERMIT FOR REDUCED LOT WIDTHS – The Planning Board may, by special permit, allow the creation of lots with less than the required lot width if topographic or other physical conditions

so warrant and if the special permit conditions found in § 240-12.1E are satisfied. The Planning Board may not create a lot under this section with less than 80% of the required lot width.

240 – 11.3 Lot Coverage

240 – 11.3A Maximum Lot Coverage

- (1) REQUIREMENTS – Lot Coverage shall not exceed the requirements in the Lot Coverage Table below. Excluded from lot coverage are materials considered pervious by the Building Commissioner, including pervious concrete, pavers, and similar material.

Table of Maximum Lot Coverage Percentage (%)		
District	Structures	Structures/Paving/Parking
Residence AA, A, B, C Agricultural AA, A, B	20	40
General Residence	20	50
Senior Care Retirement	20	40 ³
Business 1	70	90
Business 2 Light Industrial A	40 ^{1 2}	70
Business 3	35 ^{1 2}	65
Business Redevelopment	20	60
Light Industrial B	40 (see (2) below)	70
Light Industrial C	40	70
Marine	40 ²	70
Public Use	40 ²	70

¹ Except that the maximum lot coverage of structures banks, fast-food establishments, or motor fuel service stations shall be 12% coverage and shall be 18% for other restaurants.

² For lots where 30% or more of the lot area is covered by buildings lawfully in existence on April 2, 1979, additions may cover up to 40% of the remaining unbuilt-upon area.

³ In the Senior Care Retirement District, the 40% maximum coverage includes structures, paving, and parking.

- (2) LIGHT INDUSTRIAL B – In this district the portion of any lot which may be covered by any nonresidential building shall be as follows:
- lot area up to 8 acres: 25%
 - lot area from 8 to 15 acres: 30%
 - lot area from 15 to 25 acres: 40%
 - lot area over 25 acres: 50%
- (3) BUSINESS 2 & 3, INDUSTRIAL A & B, AND PUBLIC USE DISTRICTS – LOT COVERAGE & LANDSCAPING – In these Districts the difference between the maximum percentage of lot coverage by structures, paving, and parking and the gross total lot area shall not be used for any vehicular parking or storage. That area shall be maintained with landscaping, including shade and other trees, in landscaped areas of at least 4 feet in width. Trees and landscaped areas shall be located so as to provide visual relief, shade, and wind breaks within the site, and to assure a safe pattern of internal circulation. Landscaping and plantings shall conform in all respects to § 240-14.3.

- (4) RESIDENCE B & C, AND AGRICULTURAL B DISTRICTS LOT COVERAGE INCREASE – In these Districts a maximum 25% lot coverage for a structure may be allowed by special permit from the Board of Appeals. In issuing the special permit the Board shall take into consideration the following:
- a. size and height of the structure in relation to the average size and height of structures in the neighborhood;
 - b. the effects of shadow on adjacent properties;
 - c. the impact on views and vistas from public ways; and
 - d. the effect of nitrogen on coastal embayments.
- (5) LOT COVERAGE INCREASE BY PLANNING BOARD SPECIAL PERMIT – For uses other than a single-family detached dwelling, a semidetached dwelling, or a two-family dwelling, a percentage of lot coverage by structures and paving greater than provided in the Table in 240-11.3A(1) may be allowed by special permit from the Planning Board. The Board may approve a special permit based on calculations submitted and prepared by a professional engineer indicating the following:
- a. stormwater runoff from the site will not be increased following development by more than 10% in a ten-year storm;
 - b. the soil loss rate from the site will not be increased above the existing rate by more than 10% following development; and
 - c. the average summer daily trip generation will not exceed 4 trips per linear foot of lot frontage.

The Planning Board shall also determine that erosion control methods to be employed during construction will be adequate to prevent excessive soil loss and that all landscaping and screening requirements will be met.

- (6) LIGHT INDUSTRIAL C DISTRICT – In this District, total lot area disturbance shall not exceed 70%.

240 – 11.4 Setbacks

240 – 11.4A Requirements

- (1) SETBACK FROM STREET FRONTAGE – Minimum setbacks from the street frontage shall be 25 feet, with the following exceptions:
- a. Minimum setbacks (except in Business 1 Districts) for structures, other than listed in § 240-11.4A(1)b., shall be:
 - i. 35 feet from Routes 28 and 28A, and Sandwich Road from Route 28 to Joint Base Cape Cod;
 - ii. 50 feet from Thomas Landers Road from Route 28 east to the Hill and Plain line; or
 - iii. 75 feet from Route 151 from Route 28A to the Mashpee Town line.
 - b. Multifamily dwellings and commercial accommodations, if exceeding 2½ stories, shall have a minimum setback from the street frontage of 50 feet.
 - c. Certain required building lines, adopted by Town Meeting vote (not adopted into the Zoning Bylaw) and on file with the Town Clerk shall also be observed on portions of Main Street, East Main Street, Davis Straits, Elm Arch Way, and Robbins Road (See ATM 1929, Art. 85; STM 1949, Art. 1; STM June 1956, Arts. 15 and 16; ATM 1957, Art. 70.).

- d. In Business 1 Districts, no setback from the street frontage is required except as specified in § 240-11.4A(1)b. and c.
- e. For nonresidential uses in Light Industrial Districts, see § 240-11.4A(3).
- f. For lots in Business 2, Business 3, and Industrial A Districts where 30% or more of lot area is covered at the time of application by buildings lawfully in existence on April 2, 1979, no setback is required except as specified in § 240-11.4A(1)a., b., and c.
- g. In the Business Redevelopment District the front yard setback shall be 20 feet.
- h. No setback is required for structures located in the Public Use District that are used for municipal purposes and that are less than 3,000 square feet in size.
- i. The Zoning Board of Appeals, may issue a special permit for an accessory structure in a front yard, but the structure shall not be located closer to the street frontage than 50 feet.
- j. No setback is required for stonewalls, retaining walls, fences, gates, memorials, paved driveways, or other paved areas located in an Historic District created pursuant to c. 645 of the Acts of 1975, as amended, and that, in the opinion of the Building Commissioner, are visible from a public way.

(2) SETBACK FROM SIDE AND REAR LOT LINES – Side and rear setbacks shall meet the following:

- a. For residential structures, and appurtenant accessory structures larger than 100 square feet, except piers, floats, docks, and bulkheads, the minimum setback in all districts shall be 10 feet; for sheds of 100 square feet or less the minimum setback shall be 3 feet.
- b. For multifamily dwellings and commercial accommodations that exceed 2½ stories, the minimum side setback shall be the building height and the minimum rear setback shall be 100 feet.
- c. For principal structures other than dwellings in Residence, Agricultural, Business 2, Business 3, and Marine Districts, the minimum setback shall be 20 feet.
- d. For structures in Light Industrial Districts, see §240-11.4A(3).
- e. For structures in Public Use and Business 1 Districts, no required setback.
- f. A side or rear yard may contain an accessory structure not over 1½ stories high if not covering more than 30% of its area.
- g. No building shall be located within 25 feet of the boundary of a district in which its use is prohibited.
- h. For lots in Business 2, Business 3, and Industrial A Districts where 30% or more of lot area is covered at the time of application by buildings lawfully in existence on April 2, 1979, no side or rear setback is required except as specified in § 240-11.4A(2)a., b., and c.
- i. In the Business Redevelopment District the side/rear yard setbacks shall be 10 feet.
- j. No setback is required for stonewalls, retaining walls, fences, gates, memorials, and paved driveways or other paved areas located in an Historic District created pursuant to c. 645 of the Acts of 1975, as amended, and that, in the opinion of the Building Commissioner, are visible from a public way.
- k. visible from a public way.

(3) LIGHT INDUSTRIAL DISTRICTS – Setbacks in Light Industrial Districts A, B, and C shall meet the following:

- l. In Light Industrial District A, the setback of any nonresidential building or area used for storage of materials or equipment shall be at least 50 feet from a street line, and at least 35 feet from any lot line, except that in no event shall any such structure or area of use be within 50 feet of the boundary of a district in which the use is prohibited. The zone of setback, except as provided in § 240-14.1I(6), shall be free of parking areas or outdoor storage and shall be landscaped with a lawn or shrubs . It shall retain all native trees greater than 3 inches in

caliper at a height of 4 feet from the ground , providing the thickness of vegetation shall not block the view of oncoming traffic to constitute a hazard to vehicles exiting from access driveways. If few trees exist naturally, trees not less than 8 feet tall shall be planted and maintained at densities not less than one tree for every 400 square feet. In addition, one shrub per 400 square feet shall also be planted.

- m. In Light Industrial District B, the setback of any nonresidential building, fence, or enclosure from a street or other lot line shall be not less than 10% of the depth or width of the lot, but in no case closer to the street line than 100 feet or closer to any other lot line than 50 feet.
- n. In Light Industrial District C, the minimum front yard setback shall be 35 feet; side and rear yard minimum setbacks shall be 10 feet.

(4) SETBACKS FROM WATER BODIES – No principal structure except piers, floats, and docks located in the Marine District shall be erected less than 50 feet from the waters of Buzzards Bay, Great Harbor, Vineyard Sound, Nantucket Sound, or any tidal ponds, tidal rivers, or freshwater ponds and freshwater rivers. However, there shall be no minimum setback from:

- a. the waters of Great Harbor in Woods Hole;
- b. the Town Landing at Gosnold Road and Bar Neck Road southeasterly and easterly to the southern property line of the land of the Steamship Authority, (off Cowdry Road in Woods Hole); and
- c. the waters of Little Harbor in Woods Hole at land belonging to the United States Government known as the Coast Guard Station at Woods Hole.

240 – 11.5 Height Requirements

240 – 11.5A Maximum Height

Maximum Building Height and Stories		
District	Height (in feet)	Stories
Agricultural AA, A, B	1. 35 2. 50 for structures used for agricultural purposes ¹	2½
Residence AA, A, B, C	35	2½
General Residence	35	2½
Senior Care Retirement	35 ²	3
Business 1	35	2½
Business 2	35	2½
Business 3	35	2½
Business Redevelopment	35	2½
Light Industrial A	35	2½
Light Industrial B	40	3
Light Industrial C	40	3
Marine	35	3

Maximum Building Height and Stories		
District	Height (in feet)	Stories
Public Use	<ol style="list-style-type: none"> 1. 35 2. 50 for community service uses 3. No limit for municipal uses 	<ol style="list-style-type: none"> 1. 2½ 2. 3 for community service uses 3. No limit for municipal uses
Accident Prevention Overlay District	35 (includes accessory structures)	
Search and Rescue Overlay District	100 (includes accessory structures)	

¹ Measured from the base of the structure to its highest point.

² The Planning Board may increase the height to 45 feet, upon good cause shown by the applicant, provided that for every one-foot increase in height all minimum setbacks are increased by 2 feet.

240 – 11.5B Accessory Structures

- (1) MAXIMUM HEIGHT – Unless otherwise provided for in the Maximum Height Table above, the maximum height for accessory structures shall be 22 feet.
- (2) ZONING BOARD SPECIAL PERMIT – On lots of 2 acres or greater, the Zoning Board of Appeals may grant a special permit to allow an accessory structure to have a maximum height of 25 feet, subject to the following requirements:
 - a. the lot shall not be divided below the 2 acre minimum;
 - b. no accessory apartment shall be allowed; and
 - c. the suitability of the site is sufficient to allow an increase in height so that there will not be any adverse impact on neighborhood visual character or obstructions of views and vistas.

240 – 11.6 Density

240 – 11.6A Introduction

CAVEAT – There are 3 sections in the Zoning Bylaw that include specific language related to density (units per acre). That language is shown below. Note that for each of these categories, with one exception, the language is only an excerpt related specifically to density and does not include the entire language for that topic. For Affordable Housing Development see § 240-9.2. For Business Redevelopment see § 240-6.2.B. For Public or Nonprofit Housing for Seniors, the language shown below consists of all language related to that topic.

240 – 11.6B Affordable Housing Development

NUMBER OF AFFORDABLE UNITS – The number of units allowed above the “as-of-right” density shall be subject to negotiation and will be determined with due regard to the project approval requirements of § 240-9.2. The maximum density increase shall be no more than 25% of the density allowed by a standard subdivision.

240 – 11.6C Business Redevelopment District

- (1) MULTIFAMILY DWELLINGS – BOARD OF APPEALS SPECIAL PERMIT – The Board of Appeals may grant a special permit for multifamily units greater than 6 units per acre, not to exceed 8 units per acre.
- (2) FINDINGS – The Board shall make the following findings:
 - a. the public good will be served;
 - b. the Business Redevelopment District would not be adversely affected; and
 - c. the uses permitted in this District would not be noxious to the multifamily use.

240 – 11.6D Public or Nonprofit Housing for Seniors

- (1) REGULATIONS – The density for Public or Nonprofit Housing for Seniors shall be not greater than 6 units per acre.
- (2) WATER RESOURCE PROTECTION OVERLAY DISTRICT – Public or Nonprofit Housing for Seniors which is located within a Water Resource Protection Overlay District served by the municipal sewer system shall have a density not greater than 6 units per acre. Public or Nonprofit Housing for Seniors which is located within a Water Resource Protection Overlay District served by a septic system shall have a density not greater than that allowed for single-family detached dwellings in that District.

240 – 11.7 Fresh and Tidal Waters

240 – 11.7A Building Permits and Special Permits

- (1) BUILDING PERMIT – No building permit shall be issued for any principal structure erected on a lot fronting on fresh or tidal waters listed in the Table in § 240-11.7B(2) below until a plan certified by a registered land surveyor is furnished to the Building Commissioner. This plan shall clearly delineate the distance from the proposed structure to the water body.
- (2) SINGLE-FAMILY DWELLING SPECIAL PERMIT – Any lot shown on a plan or described in a deed duly recorded at the Registry of Deeds that has less than 125 feet depth from the measured water mark to the front, side, or rear lot line, whichever is greater, shall be eligible to apply to the Board of Appeals for a special permit to construct a single-family dwelling if, when all setbacks are taken into consideration, including the 50 foot setback required herein, the minimum average width of the remaining building envelope is less than 60 feet. In no case shall the Board of Appeals grant a special permit to construct a single-family residence less than 30 feet from the measured water's edge, as described above.

240 – 11.7B Watermark

- (1) BUZZARDS BAY AND TIDAL WATERS – The waters of Buzzards Bay, and tidal ponds and tidal rivers off Buzzards Bay, shall be determined by the contour line of the 4 foot elevation based on the National Geodetic Vertical Datum 1988. The tidal waters of Great Harbor, Vineyard Sound, and Nantucket Sound and all tidal ponds and tidal rivers off Vineyard Sound and Nantucket Sound shall be determined by the contour line of the 3 foot elevation based on the National Geodetic Vertical Datum 1988.

(2) FRESH PONDS¹ – The waters of fresh ponds shall be measured from the elevations as follow:

Fresh Pond	Elevation (feet)		Fresh Pond	Elevation (feet)
Ashumet Pond	205		Jones Pond	12
Bournes Pond	152		Little Pond	45.5
Calebs Pond	6		Long Pond	150
Cedar Pond	22		Mares Pond	28
Coonamessett Pond	158		Meadow Neck Pond	20
Crockers Pond	7		Mill Pond	10
Crooked Pond	34		Morse Pond	15
Dam Pond	8		Nyes Pond	6
Deep Pond	27		Oyster Pond	61
Deer Pond	10		Perch Pond	17
Eel Pond	12		Round Pond	11
Factory Pond	23		Round Pond near Coonamessett Pond	19
Flax Pond	23		Salt Pond	62
Fresh Pond	34		Shallow Pond	11
Flume Pond	12		Shiverick Pond	11
Great Pond	258		Siders Pond	36
Green Pond	128		Sol's Pond	4.5
Grews Pond	12		Spectacle Pond	19
Hamblin Pond	13		Wings Pond	20
Jenkins Pond	87			

The waters of any other fresh pond shall be determined by the contour of the highest observed elevation, established by measuring the existing elevation and adjusting that elevation by using the methods specified in the U.S.G.S. Open File Report 80-1008, as if the waters of the pond were the groundwater.

¹ The information in the Table of Fresh Ponds was provided by the Falmouth Town Engineer and is based on the North American Vertical Datum of 1988 (the most recent Datum).

ARTICLE 12 LAND USE PERMIT REQUIREMENTS

240 – 12.1 SPECIAL PERMIT

240 – 12.1A Special Permit Granting Authority

The special permit granting authority (SPGA) shall be the Zoning Board of Appeals, the Planning Board, and the Board of Selectmen as specifically designated in this Bylaw.

See ARTICLE 6, USE TABLES, for more information on uses that require a special permit.

240 – 12.1B Applicability and Fees

- (1) SPECIAL PERMITS – Specific types of uses, as described in this Bylaw, shall be permitted only in specified districts upon the issuance of a special permit. Whenever a special permit is required, the Building Commissioner may not issue a building permit until a special permit application has been approved by the special permit granting authority and the applicant has also obtained all other permits and licenses, whether state, county, or municipal, that are a prerequisite to carrying out the proposed use of the premises.
- (2) FEES – Each special permit granting authority may require fees, to be paid by the applicant, to cover the cost of advertising, notification by mail, and the reasonable cost to the town for processing the application. The fees shall be published in the rules and regulations of each special permit granting authority.

240 – 12.1C Filing of Application; Public Hearing

- (1) APPLICATION FILING – An application for a special permit shall be filed by the applicant with the Town Clerk and a copy of the application, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the applicant with the special permit granting authority. The effective date of filing is the date the application is concurrently filed with the special permit granting authority and the Town Clerk in accordance with G.L. c. 40A, § 9.
- (2) PUBLIC HEARING – Within 65 days from the date of filing the application, the special permit granting authority shall hold a public hearing, for which notice has been given as provided in G.L. c. 40A, § 11.

240 – 12.1D Timeline; Constructive Grant

- (1) DECISION TIMELINE – The special permit granting authority (SPGA) shall take final action within 90 days following the close of a public hearing for which notice has been given in conformance with the requirements of G.L. c. 40A. The applicant or SPGA with the consent of the applicant, subject, may request, and the SPGA may grant, an extension to the 90-day limit, to the agreement being signed by the applicant and the SPGA and filed with the Town Clerk.
- (2) CONSTRUCTIVE GRANT – Failure by the special permit granting authority to take final action upon an application may be deemed to be a constructive approval of the special permit. The applicant who seeks constructive approval by reason of the failure of the special permit granting authority

to act within the time prescribed, shall notify the Town Clerk in writing within 14 days of the expiration of 90 days or extended time, if applicable, of the approval and that notice has been sent by the applicant to parties in interest.

The applicant shall send the notice to parties in interest by mail and the notice shall specify appeals, if any, shall be made pursuant to G.L. c. 40A, § 17, and shall be filed within 20 days after the date the Town Clerk received the written notice from the applicant that the special permit granting authority failed to act within the time prescribed. After the expiration of 20 days without notice of appeal to the Superior Court or Land Court, or if appeal has been taken, after receipt of certified records of the Superior Court or Land Court indicating that the approval has become final, the Town Clerk shall issue a certificate stating the date of approval, the fact that the special permit granting authority failed to take final action, and that the approval resulting from the failure has become final. The certificate shall be forwarded to the applicant.

240 – 12.1E Decision

- (1) **REVIEW CRITERIA** – In addition to any specific requirements elsewhere in this Bylaw, or where no specific restrictions are made applicable to a use allowed by special permit, the SPGA shall grant a special permit only upon its written determination that the proposed use will not have adverse effects that overbalance its beneficial effects on either the neighborhood or the Town, in view of the particular characteristics of the site. The provisions of § 240-12.1 shall not apply to, nor limit in any way, decisions issued under § 240-14.8. The determination shall indicate that the proposed use will be in harmony with the general purpose and intent of this Bylaw, and shall include consideration of each of the following:
- a. adequacy of the site in terms of size for the proposed use;
 - b. suitability of the site for the proposed use;
 - c. impact on traffic flow and safety;
 - d. impact on neighborhood visual character, including views and vistas;
 - e. adequacy of method of sewage disposal, source of water, and drainage;
 - f. adequacy of utilities and other public services;
 - g. the effect of the proposed project on the adequacy of the supply of affordable housing in the Town;
 - h. the decision of the Planning Board under § 240-12.2; and
 - i. compliance with all applicable sections of this Bylaw including, but not limited to, all performance requirements under §§ 240-13.1; 14.1; and 14.3.
- (2) **AFFORDABLE HOUSING** – For those special permits providing affordable housing, the SPGA shall require the following standards be met by conditioning the special permit accordingly:
- a. The applicant shall comply with the regulations found at 760 CMR 56.03(2), or successor regulations regarding unit inclusion on the state’s subsidized housing inventory.
 - b. All affordable homeownership units or affordable rental projects shall be governed by a use restriction, recorded with the Barnstable County Registry of Deeds, and shall comply with the provisions of 760 CMR 56.02, or successor regulations. The term of the restriction will be determined by the SPGA taking into consideration the following.
 - i. the type of unit being created;
 - ii. whether there will be new construction or rehabilitation;
 - iii. the level of affordability; and
 - iv. the requirements of any subsidy program or agency.

- c. The applicant or successor in interest shall be responsible for providing the following information to the SPGA or its designee, on an annual basis for affordable rental units, or upon sale of affordable homeownership units.
 - i. the bedroom size and the monthly rent, inclusive of utilities, or sales price;
 - ii. the household size and gross annual household income;
 - iii. documentation of ongoing compliance with affirmative fair marketing requirements;
 - iv. documentation shall be provided on an annual basis, for both homeownership and rental affordable units, that each unit is occupied by a qualified owner or renter, respectively, as a principal residence; and
 - v. ongoing proof of a current monitoring services agreement with an affordable housing specialist that meets with the special permit granting authority's approval.

240 – 12.1F Performance Guaranty

- (1) **GUARANTY OPTIONS** – As a condition of the granting of a special permit for any uses requiring 20 or more parking spaces, as determined by § 240-14.1E, the SPGA shall require that construction and site alteration permitted and specified by the special permit be secured by one, or in part by one and in part by the other, of the following methods, which method may be selected, and from time to time varied, by the applicant upon receiving prior written approval from the SPGA:
 - a. by a proper bond, deposit of money, or negotiable securities sufficient in the opinion of the SPGA to secure performance of the construction of buildings, parking areas, and appurtenances thereto, required for completion of the project as noted in the special permit and shown on any accompanying plans. The SPGA shall require that construction be completed within a specified period of time; or
 - b. by a covenant executed and duly recorded by the owner of record, running with the land, whereby construction will be completed before the buildings or appurtenances thereto may be eligible for an occupancy permit as required by § 240- 2.1C.
- (2) **GUARANTY RELEASE** – Performance bonds, deposits, or covenants may be released, in whole or in part, from time to when the work has been satisfactorily completed in the opinion of the SPGA . The SPGA shall then release the interest of the town in the bond, deposit, or covenant and return the bond or the deposit to the person who furnished it, or shall release the covenant by appropriate instrument duly acknowledged and which shall be recorded at the Barnstable County Registry of Deeds.
- (3) **GUARANTY RELEASE REQUEST** – Request for a release shall be by certified return receipt letter to the SPGA and shall outline that portion of the work to be released, and shall be accompanied by an engineer's or surveyor's certification that the work has been done in accordance with the requirements of the granted special permit.
- (4) **CERTIFICATE** – If the SPGA determines that construction or site alteration has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the Town Clerk, the details wherein construction or site alteration fails to comply with the special permit. Upon failure so to do within 45 days after the receipt by the Town Clerk of the request by the applicant, all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned, and any covenant shall become void. If the 45-day period expires without that specification, or without the release and return of the bond or return of the deposit or release of the covenant as aforesaid, the Town Clerk shall issue a certificate to that effect, duly acknowledged, which may be recorded.

240 – 12.1G Application Referral

- (1) REFERRAL TO TOWN BOARDS, COMMISSIONS, DEPARTMENTS – The Board of Appeals, Board of Selectmen, and Planning Board shall refer a special permit application to the Board of Health, Conservation Commission, Planning Board, Building Commissioner, Fire Department, and the Department of Public Works Water and Engineering Divisions for written comments and recommendations before taking final action on the special permit application. In addition to the above noted Boards, a special permit granting authority may refer a special permit application to any other town agency, board, or department for comments and recommendations if it so desires before taking final action on the special permit application.
- (2) RESPONSE DEADLINE – Any board or agency to which applications have been referred for comment shall make its recommendations, and send copies thereof, to the SPGA and the applicant within 35 days of receipt of the referral request by the board or agency or there shall be deemed no opposition or desire to comment. The SPGA shall not act upon the special permit until either comments from referred boards or agencies have been received, or 35 days have elapsed, whichever is sooner. Applications referred to more than one board or agency may be reviewed jointly by the boards or agencies.

240 – 12.1H Multiple Review

- (1) PLAN SUBMISSIONS – If the Building Commissioner determines that a structure or use requires multiple review under either § 240-12.1 or § 240-12.2 and any special permit review from any SPGA, the applicant shall submit materials to both boards according to their requirements within 7 days of each other.
- (2) SITE PLAN REVIEW – Under multiple review, the Planning Board shall schedule a public hearing for a plan requiring site plan review under § 240-12.2 within 30 days of receiving the application and shall file the findings of its review with the Building Commissioner within 60 days after the public hearing. Time requirements for multiple review under § 240-12.1H shall remain as before.
- (3) BUILDING PERMIT – Any structure or use that requires multiple review shall not receive a building permit until a special permit decision or a site plan review has been filed with the Building Commissioner under § 240-12.1 or §240-12.2.

240 – 12.1I Special Permit Lapse

Unless otherwise provided by this Bylaw a special permit granted under § 204-12.1 shall lapse 3years from the date it is granted if a substantial use thereof has not sooner commenced except for good cause shown, or in the case of a permit for construction, if the construction has not begun by that date, except for good cause shown. The determination of good cause shall be made by the SPGA.

240 – 12.1J Effective Date

No special permit, or any extension, modification, or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed or that if an appeal has been filed, that it has been dismissed or denied.

240 – 12.2 SITE PLAN REVIEW

240 – 12.2A Purpose

- (1) **PURPOSE** – A use for which a site plan review submission is required is a potentially significant addition to a developing or developed area of the town, and to a residential, commercial, or industrial neighborhood. The purpose of site plan review is to ensure that the design and layout of certain developments permitted as a matter of right or by special permit will constitute suitable development and will not result in a detriment to the neighborhood or the environment.
- (2) **PLAN COMPLIANCE** – The site plan for each use shall be prepared with due consideration for compliance with all applicable sections of this Bylaw including, but not limited to, all performance requirements under §§ 240-13.1; 14.1; and 14.3, and parking and loading standards as may otherwise be adopted by the Planning Board.

240 – 12.2B Applicability

- (1) **REQUIRED PLAN SUBMISSION** – A site plan review by the Planning Board shall be required in the following circumstances:
 - a. any new development, redevelopment or expansion in use, other than one single-family or one two-family residence on a lot would that add 500 square feet or more of gross floor area or roof area or which would, under the parking Table of Minimum Requirements of § 240-14.1E, require a total of 2 or more parking spaces based on the existing development, redevelopment, or new development, or require a change to the layout or location of 2 or more parking spaces, an increase in pavement of more than 300 square feet, or the alteration of any driveway; or
 - b. any change of use which would, under the parking Table of Minimum Requirements of § 240-14.1E, require 2 or more parking spaces based only on new development, or grading or clearing more than 10% of a lot, except for the following:
 - i. landscaping on a lot with an existing structure or a proposed single or two family dwelling;
 - ii. clearing necessary for percolation and other site tests; work incidental to agricultural activity; or
 - iii. work in conjunction with an approved subdivision plan.
 - c. An accessory apartment allowed as a matter of right or special permit shall be permitted only upon the approval of the Planning Board for site plan review.
- (2) **ADMINISTRATIVE APPROVAL FOR MINOR ALTERATION TO BUILDING EXTERIOR OR SITE** – The Town Planner may authorize work to proceed without site plan review for minor alterations provided the following criteria are satisfied:
 - a. The proposed alteration shall not violate any provision of this Bylaw.
 - b. The proposed alteration does not result in an expansion of the building footprint other than expansions required by the building code related to means of egress or accessibility.
 - c. The proposed alteration does not change the height or roof lines of any building.

d. The proposed alteration does not result in any substantial change in lot coverage.

- (3) **WAIVED REQUIREMENTS** – The Board may waive, by an affirmative majority vote, any of the § 240-12.2 requirements, if it believes that the strict compliance with these rules and regulations will, because of the size or special nature of the proposed development, create an undue hardship on the applicant and not be in the public interest. Any waiver(s) requested by the applicant shall be submitted in writing by the applicant with the submission of the site plan review application.

240 – 12.2C Procedure; Decision; Appeal

- (1) **FILING** – Applications for site plan review shall be filed with the Planning Board as specified in § 240-12.D of the Bylaw and § 300-10 of the Town Code of Falmouth.
- (2) **PUBLIC MEETING** – Before approval of a site plan review, the Planning Board shall solicit public comment at the public meeting where the plan is discussed. Notice that the Board will be accepting public comment shall be published in a local newspaper once at least one week prior to the date of the meeting and by notice to abutters within 100 feet of any part of the subject land of the application, by regular mail, at least one week prior to the date of the Board's meeting.
- (3) **DECISION** – The Planning Board shall act within 90 days of receiving a complete application for site plan review. Approval of the site plan review shall require a majority vote of the Board. Failure by the Planning Board to take final action upon an application shall be deemed approval of the plan.

240 – 12.2D Application Requirements

- (1) **SPECIFIC PLAN REQUIREMENTS** – Plans subject to site plan review shall be prepared by a registered architect, landscape architect, or professional engineer. The site plan shall be prepared at a scale not greater than one inch = 40 feet, and shall show all existing and proposed buildings, contour elevations, structures, parking spaces, driveway openings, driveways, service areas, facilities for sewage, refuse and other waste disposal, surface water drainage, and landscaping features such as fences, walls, trees, and planting areas, walks, and lighting.
- (2) **PLAN SUBMISSION REQUIREMENTS** – The site plan shall show all resource areas excluded from lot area calculations as described in the definition of Lot Area found in § 240-3.3, all FEMA V and A Zones, and surface water bodies. The applicant shall submit a plan showing only existing conditions when required by the Planning Board. The site plan shall show the relation of locus map at a scale not greater than one inch = 2,000 feet. The site plan shall also show all contiguous land owned by the applicant or by the owner of the property.
- (3) **ADDITIONAL INFORMATION** – The applicant shall submit information required by § 300-10, Article 11 of the Town Code, in addition to information on measures to prevent pollution of surface or ground water, soil erosion, increased runoff, changes in groundwater level, and flooding.
- (4) **DESIGN REQUIREMENTS** – The applicant shall submit information as required regarding design features intended to integrate the proposed new development into the existing landscape to enhance aesthetic assets and to screen objectionable features from neighbors. Design features shall include, but not be limited to: site planning, building placement, building size, design

compatibility, exterior appearance, construction materials and finishes, parking and roadways, landscaping and site grading, and building entrance and exit placement.

- (5) **TRAFFIC INFORMATION** – The applicant shall submit materials required regarding the projected traffic flow patterns into and upon the site for both vehicles and pedestrians and an estimate of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.

240 – 12.2.E Access & Circulation

- (1) **VEHICULAR MATTERS** – Provisions shall be made for vehicular access to the lot and circulation upon the lot in a manner as to safeguard against hazards to traffic and pedestrians in the street and in the lot, to avoid traffic congestion on any street, and to provide safe and convenient circulation in the street and in the lot.
- (2) **REQUIREMENTS** – The following access and circulation requirements shall apply:
- a. Where reasonable alternate access is available, the vehicular access to the lot shall be arranged to avoid traffic use of the local residential streets situated in or bordered by residential districts.
 - b. Where a lot has frontage on 2 or more streets, the Planning Board may require that the access to the lot be provided across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.
 - c. Where necessary to safeguard against hazards to traffic and pedestrians or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, driveways, and traffic controls within the streets.
 - d. Access driveways shall be of a design and have sufficient capacity to avoid queuing and entering vehicles on any street.
 - e. Driveways into the lot shall have grades and alignments, and transition grades and sight distances for safe, convenient, and efficient access, and shall meet the street right-of-way line and pavement in a manner as to conform to the standard cross section for the street as determined by the Director of the Department of Public Works and the Planning Board.
 - f. Where topographic and other conditions are reasonably practical, provision shall be made for circulation driveway connections to adjoining lots of similar existing or potential use.
 - g. For the purpose of facilitating fire protection services or enabling the public to travel between 2 existing or potential uses that are open to the public without the need to travel on a street, provision shall be made for drive aisle access between or among adjacent properties where feasible.
 - h. There shall be no more than one driveway connection from any lot to any street, except that separate entrance and exit driveways may be provided where necessary to safeguard against hazards and to avoid congestion. Additional driveway connections may be provided, particularly for, but not limited to, large tracts of land and uses of extensive scope, if traffic flow in the street will be facilitated by the additional connection.
 - i. Driveways shall not exceed 24 feet in width at the street line, or a lesser width as will be sufficient to accommodate the traffic to be generated unless a greater width is required by a Town bylaw or the Commonwealth of Massachusetts.

240 – 12.2.F Existing Streets

Where the lot has frontage on an existing street, provision shall be made for grading and improvement of shoulders and sidewalk areas within the right-of-way of the street and for provision of curbs and sidewalks.

240 – 12.2.G Effect of Other Laws

Section 12.2 is supplementary to other Bylaw sections affecting the access, circulation, design, and landscaping of parking areas. Where the application of § 240-12.2 imposes a greater restriction than is imposed by other Bylaw sections, the application of § 240-12.2 shall control.

240 – 12.2.H Lapse of Decision

- (1) **THREE-YEAR APPROVAL** – A site plan review decision shall lapse 3 years from the date it is granted if substantial use thereof has not sooner commenced except for good cause. The determination of good cause shall be made by the Planning Board.
- (2) **SIX-MONTH EXTENSION** – However, the Planning Board, upon written application of the applicant, may extend the time for those rights for a period not to exceed 6 months. The application for an extension beyond the original 2-year period shall be filed prior to the 2-year expiration. The Planning Board has 30 days in which to act on the request, and if it fails to do so, the rights may be reestablished only after notice and a new hearing pursuant to the provision of § 240-12.2C.

240 – 12.3 VARIANCE

240 – 12.3A Granting Variances

- (1) **VARIANCES** – The Board of Appeals shall have the power to grant a petition for a dimensional variance, with respect to land or structures, from the terms of the applicable zoning.
- (2) **FINDINGS** – The Board shall specifically make findings related to both of the following criteria:
 - a. owing to circumstances relating to the soil conditions, shape, or topography of land or structures, especially affecting the land or structure but not affecting generally the zoning district in which the land or structure is located, a literal enforcement of the provisions of G.L. c. 40A, § 10, and § 240-12.3 would involve substantial hardship, financial or otherwise, to the applicant or appellant; and
 - b. desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of G.L. c. 40A, § 10, and § 240-12.3.

240 – 12.3B Requests for Alteration, Modification, or Change to a Use Variance

- (1) **USE VARIANCE** – No use variance may be authorized in any zoning district. However, a properly granted use variance approved prior to the first adoption of Chapter 240 on April 2, 1979, may be extended, altered, or changed.
- (2) **PROCESS** – The owner of a lot where the use is governed by a properly granted use variance may apply to the Board of Appeals for an alteration, modification, or change of use. An alteration, modification, or change of use shall reflect changes in the neighborhood and important planning issues before the Town that have arisen subsequent to the date of the original variance and shall, in the opinion of the Board, not be more detrimental than the existing use permitted by variance in the neighborhood. Requests may only be made for modification, alteration, or change of use and not for an extension in physical area or an increase in the intensity of the proposed use from the use originally granted.

240 – 12.3C Conditions, Safeguards, and Limitations

The Zoning Board of Appeals may impose conditions, safeguards, or limitations, both of time and use, including the continued existence of any particular structures, but excluding any condition, safeguard, or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner, or any owner.

240 – 12.3D Lapse of Rights

Rights to a variance shall be exercised within 1 year of the date of the grant of the variance or the rights shall lapse. However, the Zoning Board of Appeals, upon written notice by the applicant, may extend the time for those rights for a period not to exceed 6 months. The application for an extension beyond the original 1-year period shall be filed prior to the 1-year expiration. The ZBA has 30 days in which to act on the request, and if it fails to do so, the rights may be reestablished only after notice and a new public hearing pursuant to the provisions of § 240-12.3.

240 – 12.3E Fees

An application for a variance shall be made to the Town Clerk with a copy of the application transmitted to the ZBA forthwith. The ZBA may require fees to be paid by the applicant to cover the cost of advertising, notification by mail, and reasonable costs to the Town in processing the application. Fees shall be published in the Rules and Regulations of the Zoning Board of Appeals.

240 – 12.3F Hearing; Notice

- (1) PUBLIC HEARING – The Zoning Board of Appeals shall hold a hearing on a variance application filed with the Town Clerk within 65 days from the date of the filing with the Town Clerk.
- (2) NOTICE – Public hearing notice shall be given by posting and publishing, and by mailing to all parties in interest as required by G.L. c. 40A, § 15.

240 – 12.3G Voting

The concurring vote of 4 members of the Board of Appeals shall be necessary to approve a variance application.

240 – 12.3H Decision; Time Limits

- (1) DECISION TIMELINE – The decision of the Board of Appeals shall be made within 100 days after the date of the filing of an application for a variance, or an extended period of time requested by the applicant or ZBA, agreed upon by both parties, and subject to a written agreement being filed with the Town Clerk. The Board has an additional 14 days subsequent deadline in which to file to the 100-day its decision.
- (2) CONSTRUCTIVE GRANT – Failure by the Board of Appeals to act within 100 days or an agreed upon extended time shall be deemed to be a constructive grant of the variance. The applicant who seeks approval by reason of the failure of the Board of Appeals to act within the time prescribed shall notify the Town Clerk in writing within 14 days from the expiration of the 100 days or extended time, if applicable, of such approval by failure of the Board to act and that notice has been sent by the applicant to parties of interest. The applicant shall send notice to parties in interest by mail. Each notice shall specify that appeals, if any, shall be made pursuant to G.L. c. 40A, § 17, and shall

be filed within 20 days after the date the Town Clerk received the written notice from the applicant that the Board of Appeals failed to act within the time prescribed.

After the expiration of 20 days without notice of appeal or, if an appeal has been taken, after receipt of certified records of the Superior or Land Court indicating that the approval has become final, the Town Clerk shall issue a certificate stating the date of approval, the fact that the Board of Appeals failed to take final action and that the approval resulting from failure of the appeal has become final, and the certificate shall be forwarded to the applicant.

The Town Clerk's certificate shall be recorded in the Registry of Deeds for Barnstable County and indexed in the grantor index under the name of the owner of record and noted on the owner's certificate of title.

240 – 12.3I Effective Date

No variance, or any extension, modification, or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed or that if an appeal has been filed, that it has been dismissed or denied.

240 – 12.4 ADMINISTRATIVE APPEAL

240 – 12.4A Administrative Appeal to Zoning Board of Appeals

- (1) **APPEAL** – An administrative appeal to the Zoning Board of Appeals may be taken by the following parties:
 - a. a person aggrieved by reason of inability to obtain a permit or enforcement action from an administrative officer under the provisions of this Bylaw or G.L. c. 40A, § 8;
 - b. a person, including an officer or board of the Town of Falmouth or of any abutting Town, aggrieved by an order or decision of the Building Commissioner or other administrative officer, in violation of provisions of this Bylaw or G.L. c. 40A; and
 - c. the Cape Cod Commission.
- (2) **TIMELINE** – An appeal shall be initiated within 30 days from the date of the order or decision being appealed, by filing a notice of appeal, specifying the grounds thereof, with the Town Clerk.
- (3) **PROCEDURE** – The procedure outlined in § 240–12.3F through § 240-12.3I shall be followed for action on appeals, all subject to the requirements of G. L. c. 40A.
- (4) **CONSTRUCTIVE GRANT** – The constructive grant process shall be in accordance with §240-12.3H(2).

240 – 12.5 JUDICIAL APPEAL

240 – 12.5A Court Appeal of Decisions on Appeals, Variances, Special Permits, and Site Plan Review.

- (1) **APPEALABLE DECISIONS** – A person or board aggrieved by a decision of the Zoning Board of Appeals on a variance or administrative appeal, by the special permit granting authority (Zoning Board of

Appeals, Planning Board, or Board of Selectmen, as specified) on a special permit, and by the Planning Board on a site plan review, whether or not previously a party to the proceeding, may appeal to the Superior Court or Land Court or other court as applicable in accordance with G.L. c. 40A, § 17.

- (2) **APPEAL PROCESS** – The appeal shall file a notice of appeal, specifying the grounds thereof, with the Town Clerk in accordance with the provisions of G.L. c. 40A, § 17. The appeal shall be filed within 20 days from the date that the Board’s decision is filed with the Town Clerk.

240 – 12.6 REPETITIVE PETITION

240 – 12.6A Procedure

- (1) **TWO YEAR REQUIREMENT** – An appeal or variance application (Zoning Board of Appeals), or special permit application (Zoning Board of Appeals, Planning Board, or Board of Selectmen) that has been denied by the board shall not be acted favorably upon by the respective board for a period of 2 years unless the following 2 conditions are met:
- a. all but 1 member of the entire Planning Board shall vote their consent to the refiling of the application for any appeal, variance, or special permit within the 2-year period; and
 - b. the Zoning Board of Appeals (acting as the permit granting authority or special permit granting authority), the Planning Board (acting as the special permit granting authority), or the Board of Selectmen (acting as the special permit granting authority) finds that there are specific and material changes in the conditions upon which the previous unfavorable action was based and describe those changes in its record of the meeting.
- (2) **PROCESS** – The actions of any of the boards involved in a repetitive petition process shall be taken in accordance with G.L. c. 40A § 16, and include notice to the parties in interest as to the time and place of the meetings.

ARTICLE 13 PERFORMANCE REQUIREMENTS

240 – 13.1 Specified Performance Standards

240 – 13.1A Nuisance

No use shall be permitted which would be offensive because of injurious or obnoxious noise, vibration, smoke, gas, fumes, odors, dust, or other objectionable features, or be hazardous to the community due to potential fire or explosion, or any other cause. No permit shall be granted for any use which would prove injurious to the safety or welfare of the neighborhood where it proposes to go, or destructive of property values, because of any excessive nuisance qualities.

240 – 13.1B Site Design

- (1) ACCESS – Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment.
- (2) DESIGN REQUIREMENTS – Site and buildings shall be so designed that for the given location and type and extent of land use, the design of building form, building location, accessways, driveways (including common driveways), egress points, grading, and other elements of the development shall meet the following site design standards:
 - a. improve pedestrian or vehicular safety and convenience within the site, and egress from the site, in relation to adjacent areas; provide better access to each structure for fire and service equipment;
 - b. reduce detrimental impacts on neighborhood visual character including views and vistas, intrusion of parking areas viewed from public ways and abutting premises, and glare from headlights or area lighting; improve landscaping and buffering;
 - c. reduce the extent of stormwater flow increase from the site and reduce the hazard and inconvenience to pedestrians from stormwater flow and ponding; increase protection of adjacent areas including wetlands from detrimental effects by providing adequate surface water drainage;
 - d. improve adequacy of water supply, sewage disposal, disposal of refuse and byproducts, lighting, and other public services;
 - e. reduce removal of trees with a 4-inch trunk diameter or larger;
 - f. reduce the area of wetland vegetation displaced;
 - g. reduce the volume of cut or fill;
 - h. reduce soil erosion; and
 - i. assure protection of environmental features on site and in adjacent areas.

240 – 13.1C Stormwater Management

- (1) INTENT – The intent of § 240-13.1C is to alleviate pollution problems caused by existing or proposed storm drain systems which discharge directly into the Town's streams, ponds, lakes, coastal waters, or other sensitive areas, through the prohibition of direct discharge from roadways, parking lots, driveways, or similar uses.
- (2) DESIGN REQUIREMENTS – The following requirements shall be met unless otherwise specified:

- a. No road or other surface shall be regraded, constructed, or maintained in such a manner as to divert or direct the flow of runoff into any wetland as defined in G.L. c. 131, § 40, and any other area protected by G.L. c. 131.
- b. Uncontaminated runoff should be directed in such a way as to recharge the groundwater within the lot where it originates, unless an alternative location is approved.
- c. Open detention and retention basins may not be located within velocity zones as depicted on FEMA FIRM maps of the Town.
- d. Cellar/basement drains and sump pumps may not directly discharge into wetlands or waterways.
- e. Percolation tests may be required.
- f. Oil capture separation and sedimentation devices may be required.
- g. Design calculations based on a 25-year storm are required.
- h. Installation and materials, unless otherwise specified, shall conform to the standards of the Massachusetts D.P.W. Standard Specifications, 1985, as amended.

240 – 13.1D Recharge Zone Special Permit

- (1) TRANSIENT RESIDENTIAL USE – The special permit granting authority (SPGA) may deny a special permit for the construction of any new structure or portion thereof intended for transient residential use that requires a special permit as defined by this Bylaw that is located on a lot or lots located within a zoned water recharge area (see § 240-13.1D(2)), if, after weighing all the pertinent facts and evidence, the SPGA finds that:
 - a. the existing condition of the receiving waters is at or above critical eutrophic levels (see § 240-13.1D(3)d.), or, in the case of well recharge areas, nitrate-nitrogen concentrations in the groundwater exceed 5 parts per million; and
 - b. the nutrient contribution from the proposed development, when added to the existing and potential nutrient level of developments within the specific recharge area, will generate, on a pounds-per-acre basis, nutrient levels that exceed the receiving waters critical eutrophic level or, in the case of well recharge areas, nitrate-nitrogen concentrations in the groundwater in excess of 5 parts per million.
- (2) REDUCTION MEASURES FOR NUTRIENT LOADING – The SPGA shall not deny a special permit for a transient residential use if the applicant provides measures for the reduction of the nutrient loading rate, on a pounds-per-acre basis, to a rate below that which would produce critical eutrophic levels in the water body or, if in a well recharge area, nitrate-nitrogen concentrations less than 5 parts per million. It shall be the responsibility of the applicant to demonstrate to the SPGA that the proposed mitigating measures will work as designed, and the SPGA may require the applicant to demonstrate on an annual basis that the mitigating measures are operating satisfactorily.
- (3) RECHARGE AREAS – Recharge areas for freshwater ponds, coastal ponds, and existing or proposed public (municipal) water supply wells, as shown on the Zoning Map, shall be considered superimposed over any other districts established in this Bylaw.
- (4) ANALYSIS OF DEVELOPMENT IMPACT – The applicant shall provide an analysis of development impacts which at a minimum includes the following:
 - a. the existing condition of the water body or water supply, including physical characteristics and water chemistry;

- b. the expected change in the condition of the water body or water supply as a result of the proposed development;
 - c. the comparison, on a per-acre basis, of the total nutrient loading from the proposed development with:
 - i. the existing and potential loading from all other developments and acreage within the recharge area of the water supply or water body; and
 - ii. the loading rate which would be expected to produce critical eutrophic levels in a water body or in the case of water supply, the loading rate which would produce nitrate-nitrogen levels in excess of five parts per million in the groundwater.
 - d. in determining the impact of nutrient loading from a development, the following standards shall be used unless the applicant demonstrates to the SPGA that, given the nature of the proposed project or receiving waters, other standards are appropriate:
 - i. loading per person: 5 pounds of nitrogen per person per year; twenty-five hundredths (.25) pounds of phosphorous per person per year for sewage disposal systems within 300 feet of the shoreline;
 - ii. loading from lawn fertilizers: 3 pounds of nitrogen per 1,000 square feet per year;
 - iii. loading from road runoff: nineteen hundredths (.19) pounds of nitrogen per curb mile per day; fifteen hundredths (.15) pounds of phosphorous per curb mile per day; and
 - iv. critical eutrophic levels: freshwater concentration, total phosphorous = two hundredths (.02) mg./liter; saltwater concentration, total nitrogen = see §240-7.2, Coastal Pond Overlay District.
- (5) EXEMPTIONS – The SPGA may exempt an application from the requirements of § 240-13.1D(1) provided that the applicant can demonstrate that:
- a. nutrients from the development will not in fact be recharged to a designated water body or public water supply well; or
 - b. the development will not result in any increase in loading of the relevant nutrient.
- (6) RELATION TO OTHER REQUIREMENTS OF THE ZONING BYLAW – Approval of a special permit as noted in § 240-13.1D(1) shall not substitute for compliance with any other requirements of G.L. c. 40A, or this Bylaw.

240 – 13.1E Transportation and Traffic Management

- (1) LEVEL OF SERVICE – Development and redevelopment subject to site plan review shall not degrade existing Level of Service (LOS) of surrounding roads and intersections based on summer peak hour traffic volumes. Level of Service shall be measured using performance indicators such as reserve capacity, delay at intersections, and volume-to-capacity ratio as defined in the Highway Capacity Manual, Transportation Research Board, Washington, D.C., latest edition.
- (2) MITIGATION – Development and redevelopment subject to site plan review shall mitigate any traffic impacts that would be created by the development. The mitigation strategies shall include both structural and non-structural improvements with special emphasis on alternatives to automobile transportation. Necessary improvements shall occur concurrently with any development, or a contribution of funds towards the necessary improvement shall be provided.
- (3) TRANSPORTATION ALTERNATIVES – Development and redevelopment subject to site plan review shall make provision for alternative transportation modes to reduce the projected increase in

traffic volumes. Acceptable alternatives include carpool programs, shuttle bus service, employee housing on-site, and related programs. In lieu of providing these services in-kind, the developer may make a contribution to the Cape Cod Regional Transit Authority or a private transit company approved by the Town in order to provide public transportation. Development and redevelopment shall incorporate provisions for bicyclists and pedestrians so as to minimize automobile trips.

240 – 13.2 Restaurant Performance Indicators

240 – 13.2A Restaurant Classification Calculation

Restaurant classification is determined by calculating all of the performance indicators that apply in each row of the Table of Performance Indicators below, then summing in the manner found in the Indicator Summation Table that follows. Based on the total score of that result, reference the restaurant classifications located in § 240-13.2C for a determination of the classification for a particular restaurant.

240 – 13.2B Performance Indicators & Summation

Performance Indicators						
Indicator	Column A	Points	Column B	Points	Column C	Points
Advertising size	Cape/local	10	Regional	25	National	40
Consumption	On premise	10	On & off premise	25	Off premise	40
Hours of operation	AM	10	PM	25	Both AM & PM	40
Seats	25 or less	10	26-50	25	51 or more	40
Takeout sales	0 – 25.9%	10	26-50.9%	25	51% or more	40
Timing of payment	After eating	10	Before and after eating	25	Before eating	40
Type of container	Reusable	10	Reusable & disposable	25	Disposable	40
Type of service	Table	10	Cafeteria & Counter	25	Drive-thru	40

Indicator Summation			
Indicator	Column selection (from Performance Indicators Table above)	Maximum score	Your score
Advertising size	Choose one: A, B, or C	40	
Consumption	Choose one: A, B, or C	40	
Hour of operation	Choose one: A, B, or C	40	
Seats	Choose one: A, B, or C	40	
Takeout sales	Choose one: A, B, or C	40	
Timing of payment	Choose one: A, B, or C	40	
Type of container	Choose one: A, B, or C	40	
Type of service	Choose A, B, and/or C, as applicable	75	
		Your total score =	

240 – 13.2C Restaurant Classification

Using the total score calculated in the Indicator Summation Table above, determine the restaurant classification based on the list below.

- (1) Restaurant Class I – Any establishment which has a rating of 199 or less.
- (2) Restaurant Class II – Any establishment which has a rating of 200 to 265.
- (3) Restaurant Class III – Any establishment which has a rating of 266 to 299.;
- (4) Restaurant Class IV – Any establishment which has a rating of 300 or more.

240 – 13.2D Restaurants – Use Tables

- (1) For more information regarding restaurants, including zoning districts where a restaurant is allowed and the land use permit process required, see the following sections of ARTICLE 6, USE TABLES.
 - a. 240-6.2B – Business Districts
 - b. 240-6.3B – Industrial Districts
 - c. 240-6.4B – Marine District
 - d. 240-6.7B – Senior Care Retirement District

ARTICLE 14 GENERAL REGULATIONS

240 – 14.1 Parking

240-14.1A Applicability

All provisions of § 240-14.1 shall apply in all zoning districts, except as provided in § 240-14.1B.

240-14.1B Business District 1 Parking Waiver

(1) BUSINESS DISTRICT 1 – Business District 1 on Main Street is unique, having a large amount of public parking spaces available. In order to enhance the economic vitality of downtown Main Street, some expansion of retail activity balanced with residential development is desired and possible. Parking requirements shall be waived for the following:

- a. all lots in which the ground floor of existing or proposed structures are devoted solely to the uses located in the Business Districts Use Table § 240-6.2B, (retail sales, personal and household services, and restaurants, except fast-food restaurants) in which the existing or proposed structure does not exceed 60% coverage of the lot, or does not exceed a floor space to lot-area ratio (FAR) of more than six-tenths (0.6), whichever is less; and
- b. residential units as permitted in the Business Districts Use Table § 240-6.2B, specifically both the conversion of a dwelling in existence as of January 1, 1980, into 4 or fewer units, and a multifamily use, may be added over and above the FAR restriction of § 240- 14.1B(1)a., only when:
 - i. the units are located above the ground floor;
 - ii. the total FAR of the building does not exceed 1.0;
 - iii. the lot coverage of the buildings does not exceed 60%; and
 - iv. the building conforms to required height limitations.

(2) SPECIAL PERMIT REQUIRED – Any expansion, new construction, or reconstruction using the above waivers shall require a special permit from the Zoning Board of Appeals under § 240-12.1, regardless of the number of parking spaces that may otherwise be required.

240-14.1C Performance Requirement

Off-street parking shall be provided to service the net increase in parking demand created by new construction, additions, or change of use. Buildings, structures, and land uses in existence prior to April 2, 1979, are not subject to these requirements so long as they are not enlarged or changed to increase parking needs.

240-14.1D Parking Space Calculation Standards

Any change of use or a new building addition that requires parking in addition to that which already exists on the site shall meet the parking standards in accordance with § 240-14.1E below. Parking requirements are added for mixed uses (e.g., if a motel includes a restaurant, sufficient parking in accordance with § 240-14.1E shall be provided for both uses).

240-14.1E Minimum Parking Requirements

Minimum Parking Requirements	
Residential	
Dwelling unit having 2 or more bedrooms	2 spaces per unit
Dwelling unit having fewer than 2 bedrooms	1½ spaces per unit
Guesthouse, lodging house, other group accommodation	1 space per rentable room
Hotel or motel guest unit	1 1/10 space per rentable room
Multifamily development	1.5 spaces per dwelling unit having fewer than 2 bedrooms
Nursing home	1 space per 3 beds
Non-Residential	
Bank	1 space per 300 square feet of leasable floor area
Bowling alley	3 spaces per alley
Business or professional office	1 space per 250 square feet of leasable floor area
Hospital	3 spaces per bed
Industrial, wholesale, bulk retail	1 space per 1.3 employees, but capable of expansion to not fewer than 1 space per 300 square feet of leasable floor area
Laundromat	1 space per 2 machines
Light Industrial B District	In this District, 600 square feet of off-street parking shall be provided for each 1,000 square feet of floor area of any building erected on a lot
Marina	1 space per 1 berth (1 space per boat capacity)
Place of public assembly	1 space per 3 person capacity based on the State Building Code
Post office	1 space per 300 square feet of leasable floor area
Restaurant, bar	1 space per 2 seats
Restaurant, fast food, or with take-out	1 space per seat but no fewer than 10 spaces
Retail sales and service	1 space per 200 square feet of leasable floor area, but no fewer than 3 spaces per separate enterprise
Shopping center of at least 50,000 square feet	1 space per 250 square feet of leasable floor area
Sports/health club	1 space per 200 square feet of building area
Theatre	1 space per 2 seats
Other uses	Parking spaces adequate to accommodate all normal demand, as determined by the Building Inspector

240-14.1F Parking Reduction

- (1) REDUCTION BY RIGHT – The off-street parking required to service retail, business, or professional use(s) on a lot may be reduced according to the Parking Reduction Table below.
- (2) The area preserved by the that reduction shall be landscaped and shall not be included in the setback areas as required under § 240-11.4A .

Parking Reduction	
Number of Spaces Required	Reduction
0-20	No reduction
21-30	10% reduction
31-40	15% reduction
41-50	20% reduction
50 +	25% reduction

(3) PARKING MODIFICATIONS BY SPECIAL PERMIT

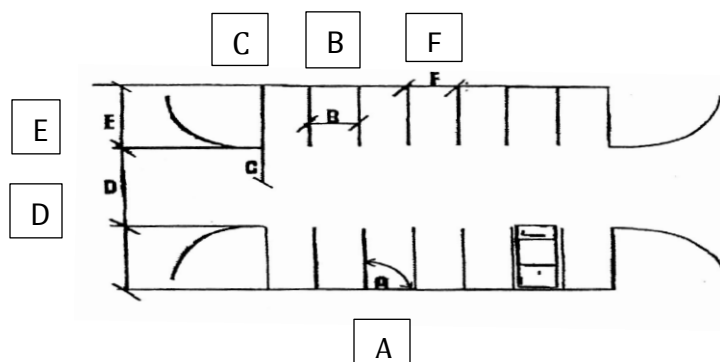
- a. The required number of spaces may be further reduced by a special permit from the Board of Appeals upon the Board's determination that special circumstances, such as shared use of a parking lot by activities having different peak demand times, render a lesser provision adequate for all parking needs.
- b. For uses allowed only by a special permit, the special permit granting authority may similarly require a larger number of parking spaces to be provided if necessary to service anticipated demand.

240-14.1G Off-street Parking Standards

(1) MINIMUM REQUIREMENTS – Whenever off-street parking for 5 or more automobiles is required under § 240-14.1, the following minimum requirements shall apply:

Off-street Parking Standards					
A. Parking Angle (degrees)	B. Stall Width (feet)	C. Aisle Width (one-way)	D. Aisle Width (two-way)	E. Parking Stall Length (feet)	F. Curb Length (feet)
90	9	16	24	18	9.4
60	9	13	24	18	10.4
45	9	12	(*)	19	12.7
0	9	12	24	23	23.0

(*) One-way traffic only



Click here for a larger image [\[Parking Standard Image\]](#)

(2) HANDICAPPED PARKING – Handicapped parking shall be provided in accordance with the requirements of the Massachusetts Building Code or the Architectural Access Board, whichever is greater.

240-14.1H Off-street Loading Requirements

- (1) **WHEN REQUIRED** – For every building or structure that receives, ships, loads, or distributes materials or merchandise, there shall be provided and maintained on the lot adequate space for standing, loading, and unloading to avoid interference with public ways.
- (2) **SPACE SIZE** – All spaces shall be at least 14 feet wide by 45 feet long with sufficient area to allow vehicles entering and leaving the lot to do so without backing onto a public way.
- (3) **NUMBER OF LOADING SPACES** – Spaces shall be provided as below:

Minimum Loading Requirements	
Gross Floor Area (square feet)	Number of Loading Spaces
0 – 1,400	None
1,401 -20,000	1
20,001 – 50,000	2
More than 50,000	2 spaces plus 1 space for each 20,000 square feet in excess of 50,000 square feet

240-14.1I Parking Area Design and Location

- (1) **LOCATION** – Required parking shall be either on the same premises as the activity it serves or located within 300 feet of the building entrance on a separate parcel. Parking shall not be separated by a street having right-of-way width of 60 feet or more. Parking shall be located in the same zoning district allowing the activity it serves. In a Business 1 District there shall be no parking or vehicular use access within any front or side yard.
- (2) **SURFACE** – All required parking areas, except those serving single-family residences, shall be paved, unless exempted by a special permit from the Board of Appeals for cases such as seasonal or periodic use where an alternative surface will prevent dust, erosion, water accumulation, or unsightly conditions. All driveway or parking areas shall be designed or constructed so as to prevent stormwater drainage to flow onto any roadway or abutting property.
- (3) **BACKING ONTO PUBLIC WAY** – Parking areas with 5 or more spaces shall be designed and located so that their use does not involve vehicles backing onto a public way.
- (4) **INGRESS/EGRESS** – The following ingress and egress standards shall be met:
- a. There shall not be more than 2 driveway openings onto any street from any single parcel unless each opening center line is separated from the center line of all other driveways serving 20 or more parking spaces, whether on or off the premises, by 200 feet (measured at the street line) in a Business District or by 300 feet if in any other District.
 - b. No opening shall exceed 24 feet in width at the street line unless necessity of a greater width is demonstrated by the applicant, and the opening is designed consistent with MassDOT Highway Division regulations § 11A-9.
 - c. No driveway side line shall be located within 20 feet of the street line of an intersecting way.
 - d. All driveways serving 5 or more parking spaces shall be constructed with a minimum edge radius of 5 feet on both sides.

- e. All driveways serving 40 or more parking spaces shall have not less than 250 feet visibility in each travel lane entering a state-numbered or maintained highway and not less than 150 feet visibility on other streets.

(5) PARKING AREAS RESTRICTIONS – The following restrictions shall apply.

- a. No part of any private parking area having 5 or more spaces shall be located within a front yard as defined in ARTICLE 3, DEFINITIONS, nor shall any private parking area be located within 5 feet of a property line.
- b. The Planning Board may, by special permit, allow parking in front yards or within 5 feet of a property line.
- c. Parking areas for marine and business uses shall be at least 15 feet from the property line of any residential district or use.
- d. No part of a private parking area for a nonresidential use shall be located in, or interfere with, any area utilized for off-street loading or unloading of materials or merchandise, including gasoline dispensing or storage facilities, loading docks, and stacking areas for drive-thru windows

(6) LIGHT INDUSTRIAL DISTRICTS – In LI Districts, parking lots shall meet the following standards:

- a. In all Light Industrial Districts, no parking area shall be closer than 40 feet to the street line nor closer than 25 feet to any other lot line, except that in Light Industrial Districts A and C only, a parking area may be within 15 feet of any other lot line if that adjacent lot is also zoned for light industrial uses or for business uses.
- b. In the Light Industrial B District, no single parking area shall extend for more than 150 feet in width; adjacent parking areas may be connected by a common access driveway, but each parking area shall be separated from an adjacent parking area by not less than 10 feet in width of natural or planted areas.

(7) BICYCLE RACKS – For parking areas of 40 or more spaces, locking bicycle racks shall be provided to accommodate one bicycle per 20 parking spaces required or fraction thereof.

(8) DRIVE-THRU ESTABLISHMENTS – Site standards for drive-thru establishments include the following:

- a. Setbacks for stacking areas: motor vehicle stacking areas shall be set back a minimum 10 feet from all property lines.
- b. Dimensional requirements for stacking spaces: each stacking space shall be a minimum of 10 feet wide and 20 feet long and shall not include the use of any parking space, street, sidewalk, or parking aisle area. Stacking areas shall be separated from other internal driveways. All stacking areas serving a drive-thru window shall have an inside radius of no less than 25 feet.
- c. Stacking area requirements: vehicle stacking areas shall be provided according to the following for drive-thru establishments:
 - i. fast-food restaurant: 7 stacking spaces for the first drive-thru window, plus 2 stacking spaces for each additional window;
 - ii. other uses with drive-thru windows: 3 stacking spaces per window.
- d. Curb cuts: all curb cuts serving a drive-thru establishment shall have a minimum center line offset distance of 300 feet from any other curb cut serving a drive-thru establishment. All curb cuts must conform to the latest edition of the MassDOT Highway Division regulations concerning geometry and traffic circulation.

(9) LANDSCAPING – See §§ 240-14.3D(7) & (8) for parking lot landscaping requirements.

240 – 14.2 Signs

240-14.2A – Signs

See Chapter 184 of the Town of Falmouth Code.

240 – 14.3 Landscaping

240 – 14.3A Purposes and Intent

(1) PURPOSES – The purposes of the landscape regulations are to:

- a. protect the general health, safety, and welfare of the residents of Falmouth;
- b. assist in reducing incompatibility between abutting uses;
- c. provide barriers and relief from traffic, noise, heat, glare, fumes, dust, and debris;
- d. preserve and enhance the character of the community;
- e. prevent soil erosion and silting of drainage structures and water bodies;
- f. retain existing significant trees;
- g. protect rare and endangered plant species and wildlife; and
- h. provide shade and windbreaks.

(2) INTENT – It is the intent of the Town that streets, sidewalks, and parking spaces be shaded by trees; that parking, service, and outdoor storage areas be screened from view of the street and neighboring properties; that residences be buffered from commercial activities; and that impervious surfaces and ground without vegetative cover be minimized.

240 – 14.3B Landscape Plan Required

(1) WHEN REQUIRED – All development projects, other than single- or two-family dwellings, that require a special permit or a site plan review under §§ 240-12.1 and 12.2 shall submit a landscape plan as part of the required application.

(2) FILING REQUIREMENTS – The landscape plan shall be drawn at a scale of not greater than one inch = 20 feet. When required by the permitting board, the plan shall be prepared by a landscape architect, arborist, or horticulturalist registered with the Commonwealth of Massachusetts. Each sheet shall be signed, sealed, and numbered as a part of the submission.

(3) PLAN CONTENTS – The landscape plan shall show the location of existing trees of greater than 4 inches in caliper measurement at a height of 4 feet 6 inches, vegetation to remain undisturbed after development, vegetation to be planted, landscape objects and structures, vehicle and pedestrian ways, and finished topography. Individual specimens of trees and shrubs shall be represented on the plan. Herbaceous perennials, annuals, bulbs, and ground covers may be represented as planting areas. A list shall be on the plan containing plant names (genus, species, variety, or cultivar), quantities, size when planted, and height at maturity. A list of approved street trees and buffer species is available in the Planning office.

240 – 14.3C Definitions

For definitions of landscape terms, see ARTICLE 3 DEFINITIONS, “Landscape Related Terms”.

240 – 14.3D Landscape Performance Standards

- (1) INTRODUCTION – For the purposes stated above, the standards in §§ 240-14.3D(2)-(10) shall apply. Alternative methods to those described below may be substituted if the applicant demonstrates to the satisfaction of the reviewing agency or special permit granting authority that the intent of § 240-14.3 is better served.
- (2) XERISCAPE – To aid in conserving the Town of Falmouth's drinking water supply, xeriscape is required for all applicable development projects unless one of the following criteria is met:
 - a. the applicant provides water for the landscape from a private well; or
 - b. the applicant installs an irrigation system (which may use town water) but only those that drip or mist. Spray or sprinkle irrigation using town water is prohibited.
- (3) PLANTING MEDIUM – To reduce the need for watering and fertilizing and to help maintain healthy plants in formal and naturalized landscapes, soil shall be not more than 25% sand, not more than 10% clay, and not less than 65% silt. Decayed organic matter in an amount equal to 25% of the soil by volume shall be added. This is required to the following depths:
 - a. where trees are planted, to a minimum of 4 feet within a 4-foot radius of the trunk;
 - b. where shrubs are planted, to a minimum of 2 feet within a 2-foot radius of the trunk; and
 - c. where ground covers, herbaceous perennials, annuals, or bulbs are planted, to a minimum of one foot within the planting area.
- (4) MULCH – To prevent soil erosion and weed growth and to help retain moisture and insulate young plants, wherever soil is not covered by vegetation, mulch is required in formal and naturalized landscapes in the following manner:
 - a. mulch shall be applied on the soil surface in a layer 2 to 4 inches deep;
 - b. mulch shall be used as a temporary cover during the first 3 growing seasons until vegetation grows so as to completely cover the ground;
 - c. mulch shall not be used as a permanent substitute for ground covers;
 - d. ground or shredded bark, peat moss, pine needles, tree leaves, straw, or hay may be used as a mulch; and
 - e. gravel or stone chips may be used in areas of high pedestrian traffic, but shall not exceed 10% of the landscaped area.
- (5) STREET TREES – To reduce heat and glare on streets and sidewalks, street trees from the approved list are required in accordance with the following specifications.
 - a. Except in B1 Districts, street trees shall be planted no greater than 30 feet apart on a line 5 feet behind the street frontage. Where an access driveway interrupts this pattern, street trees shall be planted on either side of the driveway, 5 feet from the edge of pavement and behind the sight triangle at the intersection; existing vegetation meeting the intent of § 240-14.3 may be substituted for these requirements;
 - b. When planted, street trees shall have a trunk caliper of at least 3 inches at a height of 4 feet and shall be free of limbs below 7 feet.

- c. Street trees shall be maintained so as to reach a height of at least 45 feet at maturity.
- (6) FRONT YARDS – With the exception of certain Overlay Zoning Districts as noted in § 240-14.3D(6)a. and (6)b. below, front yards may be formal, naturalized, or undisturbed so long as all surface areas that are not parts of walkways or driveways are completely covered by vegetation within 3 years.
- a. Front yards in Water Resource Protection Overlay District (§ 240-7.5) or in Coastal Pond Overlay District (§ 240-7.2) shall be naturalized or undisturbed.
- b. Front yards in the Wildlife Corridor Overlay District (§ 240-7.6) shall be undisturbed.
- (7) PARKING LOT SCREENING – Between the front yard and the parking, screening is required to prevent the view of vehicles from the street. This may be achieved using any combination of the following:
- a. a row of evergreen and deciduous trees at least 6 feet high, with no more than 50% being deciduous, from the approved list of buffer species, and planted at intervals recommended on the approved list;
- b. a hedge at least 3 feet high, to grow to a minimum of 4 feet high at maturity;
- c. a berm at least 4 feet high with no slope greater than three to one (3:1) mulched and planted so as to be completely covered by vegetation in 3 years; or
- d. a solid fence or wall at least 4 feet high, the faces of which shall be planted with shrubs at an interval of not less than one every 20 feet with the intervening faces planted with herbaceous perennials, annuals, or bulbs in an area not less than 2 feet wide.
- (8) PARKING LOT INTERIORS – Vegetated islands are required within paved areas behind the street setback according to the following specifications:
- a. 40 square feet of vegetated island shall be provided per parking stall within the paved area;
- b. the minimum dimension of each vegetated island shall be 4 feet in width, except at corners, and the minimum area shall be 162 square feet;
- c. no fewer than one street tree as described in § 240-14.3D(5)a. shall be planted for each 162 square feet of vegetated island;
- d. the remainder of the parking area not used for stalls or driveways shall be planted with any combination of trees, shrubs, ground cover, herbaceous perennials, annuals, or bulbs so that the ground is completely covered after 3 growing seasons;
- e. plants within the required sight triangles shall be no greater than 2 feet in height; and
- f. vegetated islands are required to separate rows of parking stalls and interior driveways.
- (9) SERVICE AREA SCREENS – Where service areas exist, they shall be screened from view of the street, parking, and adjacent properties. This may be achieved using any combination of the following:
- a. a row of evergreen and deciduous trees, at least 6 feet high, with no more than 30% being deciduous, from the approved list of buffer species, and planted at intervals recommended on the approved list; or
- b. a solid fence or wall at least 6 feet high.
- (10) RESIDENTIAL BUFFERS – A buffer is required between business or industrial uses and residences, nursing homes, hospitals, or similar uses. The buffer shall protect abutting properties from glare, noise, dust, fumes, heat, and traffic. This may be achieved using any of the following:
- a. two rows of evergreen trees, from the approved list of buffer species, at least 6 feet high,

planted at intervals recommended on the approved list, and faced with a row of shrubs at least 3 feet high; or

- b. one row of evergreen trees, from the approved list of buffer species, at least 6 feet high, planted at intervals recommended on the approved list, and faced with a row of shrubs at least 3 feet high, and backed with a solid fence or wall at least 6 feet high or
- c. a berm a minimum of 5 feet high, with no slope greater than 3:1, planted with trees and shrubs so that the ground is completely covered with vegetation.

240 – 14.3E Maintenance and Performance Guaranty

- (1) PLANTING AND MAINTENANCE – Landscaping shall be installed upon completion of the project and onset of the first appropriate planting season for each species. Plant materials shall be maintained in a healthy condition. Any plants that die or are damaged shall be replaced within 1 year.
- (2) PERFORMANCE – Failure to meet the performance standards of § 240-14.3 may result in the forfeiture of any performance guaranties held by the Town of Falmouth in association with the project, the denial of occupancy permits, or the imposition of fines as authorized in § 240-2.4B.

240 – 14.4 Agricultural Regulations

240 – 14.4A Purpose

The purpose of § 240-14.4 is to provide local farms an opportunity to engage in farm related businesses such as agricultural tourism, farm vacations, active and passive recreational opportunities, and similar activities, in order to promote agriculture, the preservation of open space, and the continuation of farming as a viable component of the local economy.

240 – 14.4B Conformity to Rules and Regulations

All agricultural activities shall conform to the rules, regulations, and determinations of the Board of Health and other bylaws of the Town of Falmouth.

240 – 14.4C Keeping of Livestock

Livestock shall be properly fenced and adequate shelter shall be provided.

240 – 14.4D Definitions

See ARTICLE 3 DEFINITIONS, § 240-3.3, AGRICULTURE AND FARM RELATED TERMS, for definitions associated with agriculture.

240 – 14.4E Use Regulations

- (1) USE REGULATIONS – In order to achieve the purposes of § 240-14.4, the following uses are allowed as a matter of right on farm parcels:
 - a. farmer's market for the retail sale of locally grown products, including processed products of
 - b. the farm parcel such as pies or jams, etc.;
 - c. harvest festival or similar social events provided that the use shall not exceed 2 days in any calendar week;

- d. recreation including picnic facilities, fee-fishing ponds, cross-country skiing, horseback riding trails, and canoe rentals;
- e. craft sales associated with locally grown products that are produced on the farm parcel; and
- f. farm implement repair, sale of small or light garden supplies, equipment, and tools customary and incidental to the sale of garden plants and nursery stock, subject to the following:
 - i. no more than 40% of the farm parcel up to 5 acres shall be devoted to such use including areas used for structures, parking, storage, or display; in no case shall the remaining land devoted exclusively to agricultural use be less than 5 acres;
 - ii. the owner or occupant of the farm must be engaged in the farm-related business;
 - iii. the use must be conducted within a completely enclosed building or screened from view by landscaping or fencing; and
 - iv. a side and rear yard setback of 100 feet must be maintained from a single-family residence lot or district.

(2) **SITE PLAN** – For any event not associated with an exempt agricultural activity, a site plan of proposed parking must be reviewed by the Planning Board.

(3) **SPECIAL PERMIT USES** – A veterinary clinic or animal hospital may be allowed by special permit by the Zoning Board of Appeals.

240 – 14.5 Earthmoving Regulations

240 – 14.5A Definitions

Board – shall mean the Zoning Board of Appeals

Earth – shall include but not be limited to soil, sand, clay, gravel, and rock

Earthmoving – shall mean mining, stripping, quarrying, filling, digging, or blasting of earth and its transportation on or off the site

240 – 14.5B Special Permit Required

(1) **CRITERIA** – For all land not subject to the wetland (§ 240-14.8) or floodplain (§ 240-7.3) regulations of this Bylaw and not in public use, except where such activity is clearly incidental to the development of a site for a building, street, or active cranberry bog, no earth shall be moved from any area where the amount of earth moved is 1,000 cubic yards or more within any 3-year period unless authorized by a special permit by the Board.

(2) **STANDARD** – In no case shall the Board issue a special permit for moving a greater amount of earth than the Board deems necessary for the purpose stated in the special permit application.

240 – 14.5C Procedures: Plan Information

(1) **PROCEDURES** – Each application for a special permit for earthmoving shall be subject to the applicable procedures outlined in § 240-12.1.

(2) **PLAN REQUIREMENTS** – Each application for a special permit for earthmoving shall be accompanied by a plan drawn to a 20-foot or 40-foot scale showing the premises in sufficient detail to describe the proposed operation and including the following:

- a. property and street lines, names and addresses of applicants, property owners, abutters, and,

- if less than all of the applicant's land is shown, then the entire parcel as an inset drawn to the 200-foot scale;
- b. existing topography of the site in 2-foot contours showing all man-made features, property lines, vegetative cover, and the topography by 5-foot contours 100 feet beyond the limits of the property where the excavation is to take place;
 - c. proposed topography of the site in 2-foot contours;
 - d. elevation of the seasonal high groundwater table;
 - e. location and manner in which all cover material is to be stored;
 - f. estimated quantity of material to be removed, topsoil to be replaced, and method to be used verified by a registered Massachusetts land surveyor or professional civil engineer; and
 - g. reclamation plan, showing the following information:
 - i. final grades and elevations;
 - ii. location, types, and amounts of vegetation to be planted;
 - iii. drainage plans, swales, and berms as may be applicable;
 - iv. location of any structures that are to remain;
 - v. form of performance guaranty to be used, the name and address of the guarantor; and
 - vi. specific details as to where debris, including tree stumps, shall be disposed.
 - h. a road map indicating the routes to be used to transport the earth removed, including any driveways along that route. Not more than one entrance and one exit from a way, public or private, shall be provided to any area of operation; access points shall be located so as to avoid routing of vehicles over developed residential streets; and
 - i. a compliance plan for those items found in § 240-14.5E.

240 – 14.5D Special Permit Limitations

- (1) TIME PERIOD – No special permit for earthmoving shall be issued for a period of more than 3 years.
- (2) SPECIAL PERMIT PHASING FOR A SPECIFIC SECTION OF A PROPERTY – A special permit for earthmoving may be granted for a contiguous area not to exceed 5 acres within a larger parcel. Approval of additional areas shall be contingent upon the satisfactory completion and reclamation of each previous section except on such abutting portions as the Board deems necessary for continuity of the earthmoving operation. Work of any sort connected with earthmoving shall not be performed on more than one phase area at a time.

240 – 14.5E Regulations and Restrictions

- (1) PERMIT REQUIREMENTS – Each special permit shall be subject to the following requirements where applicable:
 - a. All vegetation and soil suitable for cover material shall be stockpiled or windrowed and retained for future use in the reclamation of the affected area.
 - b. For earthmoving operations, border buffer strips where natural vegetation and soil are undisturbed shall be a width of at least 100 feet from the side line of any road open to public use, except for designated access to the earthmoving operation and for a width of at least 200 feet from abutting property lines unless written consent of the abutting property owner has been received by the Board. Each special permit application shall also be subject to § 240-7.6.
 - c. The preservation of trees, bushes, and other vegetation, and the installation of a 6-foot high landscaped berm or fencing may be required within 200 feet of a property line to muffle objectionable noise or vibration and to be a visual screen from adjacent properties or ways.

- d. The depth of any excavation shall be limited to a plane that is at least 10 feet above the seasonal high groundwater level for that location, unless the purpose is to create a pond or active cranberry bog.
- e. Provisions shall be maintained during operations for the control of noise, dust, or erosion caused by wind or water that could affect the adjacent properties or traffic along a roadway.
- f. No processing of loam, and no operation involving earth materials other than that authorized by the special permit, shall take place on the subject premises during the period of time of the special permit unless specifically permitted by law.
- g. No earth or other materials foreign to the subject premises, including boulders, asphalt, cement, road construction debris, demolition debris, or tree stumps shall be brought onto and deposited on the subject premises during the period of the special permit except topsoil and living plant material for reclamation use, unless specifically allowed by a condition of the special permit.
- h. The special permit grantee shall, to the satisfaction of the Board, stake or mark all phase areas where work and restoration have been completed, the phase area currently being worked, and any phase areas for which subsequent work is planned. These boundary markers shall be maintained at all times during the time period of original and any renewed special permits.
- i. Records showing the amount of earth removed shall be provided to the Board on each 1-year anniversary date of the granting of the special permit by a registered Massachusetts professional engineer or civil engineer on a certified as-built plan.
- j. No earthmoving or related operations shall take place except between 7:00 a.m. and 5:00 p.m. Monday through Friday and 8:00 a.m. and 12:00 noon on Saturdays and in no case on a legal federal holiday or Sunday. Included among related operations are the starting of engines either for vehicles or machinery, loading and unloading of trucks, and preparations for commencing work that are plainly audible at a distance of 150 feet from the property from which the noise originates.
- k. The subject property shall be kept free of any debris including tree stumps. No debris generated on site shall be buried or otherwise disposed of without the prior written consent of the Board of Health or its agent. In this connection, debris is not included in the definition of "earth" in § 240-14.5A above.
- l. By acceptance of the special permit the applicant and property owner agree to allow the Board or its representative(s) free access to the site to conduct inspections to determine compliance with the conditions of the special permit at any time without prior notice unless otherwise provided for, or precluded by, state statute.
- m. The applicant shall reimburse the Town of Falmouth for actual costs incurred in evaluation services to monitor operations on site should these services become necessary as determined by the Board.
- n. The Board shall be notified of any transfer of ownership or legal interest or change in contractual interest in the subject property, including the earthmoving operator deriving income resulting from work on the property, within 10 days of the transfer or change. Failure to do so will render the special permit null and void.
- o. The reclamation plan of the altered land shall be performed in the following manner:
 - i. The slope of the finished banks shall not exceed 1 foot in depth for every 3 feet of horizontal distance.
 - ii. At least 4 inches of topsoil shall be placed or remain over the subsoil.
 - iii. The area shall be graded and seeded or planted to prevent erosion and to conceal the scars of earth removal.
 - iv. Seeding, planting, fertilizing, and watering shall be done to the best professional standards.

- v. The Board may allow a portion of a specific phase to be reclaimed at a later specific date for purposes of starting work in an adjacent phase or for purposes of interior roadways, and those areas shall be shown on the submitted site plans.

240 – 14.5F Security

- (1) SUBMISSION OF SECURITY – To ensure compliance with the conditions of the special permit the applicant shall be required to post a cash deposit or surety bond in a form acceptable to the Town Treasurer, in amount sufficient to meet 115% of the estimated cost of the required reclamation work. Within 6 months of the completion of the operation, or following the expiration or withdrawal of the special permit, the land shall be reclaimed in accordance with the conditions of the special permit. Failure to comply with this section and the conditions of the special permit may result in forfeiture of the security to the Town of Falmouth.
- (2) RELEASE OF SECURITY – The deposit or bond shall not be released until all conditions of the special permit and ground cover vegetation is established in the opinion of the Board.

240 – 14.5G Denial of Permit

- (1) SPECIAL PERMIT CRITERIA – No special permit for earthmoving shall be issued if:
 - a. the removal will endanger public health or safety or constitute a nuisance or result in detriment to the normal use of adjacent property by reason of noise, dust, or vibration;
 - b. the work extends within 100 feet of a way open to public use, whether public or private;
 - c. there is no plan showing a vegetative barrier to remain on the property, or to be planted upon completion of the project, that would prevent view of the project from a street; and
 - d. any work is located within a Water Resource Protection District as established by § 240-7.5.

240 – 14.6 Subdivision Phasing

240 – 14.6A Purpose

The purpose of § 240-14.6 is to encourage a constant pace of residential development, provide long-term support to the local building industry, stabilize property values, and facilitate adequate provision of public services to individual developments and the Town in general.

240 – 14.6B Applicability

Section 240-14.6 shall apply to all divisions of land into more than 20 lots in any 12-month period. Subdivisions created by way of a special permit for Planned Residential Developments (§ 240-9.70) shall also be subject to these regulations. This shall also apply to all division of land within the Town of Falmouth even if approval under the Subdivision Control Law (G.L. c. 41, §§ 81K-FF) is not required.

240 – 14.6C Compliance with Subdivision Regulations

Whenever a new lot or lots are formed from a part of any other lot or lots, the assembly or division shall not impair any of the requirements of § 240-14.6 and shall be in accordance with Chapter 305, the Subdivision Regulations of the Town of Falmouth.

240 – 14.6D Land Division Limitations

- (1) LAND DIVISION CONSTRAINTS – The division of a parcel or combined adjacent parcels of land in any zoning district or districts shall not exceed 20 lots in any 12-month period if 2 or more of the following apply:
- a. the properties were in the same ownership as of September 10, 1984;
 - b. the properties were contiguous as of September 10, 1984;
 - c. the properties to be divided will create lots that have frontage on the same existing roads; or
 - d. the properties to be divided will create lots with common access roads.

240 – 14.6E Exceptions.

- (1) TWENTY OR MORE LOTS – Division of land in excess of 20 lots as defined in § 240-14.6D, above may be allowed if either of the following requirements of (1)a., or (1)b., are met:
- a. the owner of the land covenants with the Planning Board that:
 - i. not more than 20 lots will be built upon in any 12-month period;
 - ii. the 12-month period shall commence on the date of endorsement by the Planning Board;
 - iii. the covenant shall identify the lots that may be built upon in each 12-month period;
 - iv. the covenant shall be recorded with all other pertinent documents with the definitive plan;
 - v. in the case of a Planned Residential Development, the covenant shall identify as buildable lots within each 12-month period the number of lots that will accommodate no more than 20 dwelling units;
 - b. the owner of the land applies for and receives a special permit from the Planning Board in accordance with G.L. c. 40A, §§ 9 and 11, to divide more than 20 lots in any 12-month period; the Planning Board shall grant a special permit for such division only if the Board determines that the benefits to the Town outweigh the adverse effects, based on the review criteria in §240-14.6E(2) below, resulting from granting the special permit.
- (2) IMPACTS – In reviewing a special permit application under § 240-14.6E(1)b., the Planning Board shall consider the impact upon schools, other public facilities, traffic and pedestrian travel, availability and quality preservation of drinking water, adequacy of recreational facilities, open spaces, and agricultural resources, preservation of unique natural features, housing for senior citizens and people of low and moderate income, as well as the Local Comprehensive Plan or growth management plans prepared by the Planning Board in accordance with G.L. c. 41, § 81D.
- (3) CHAPTER 40A AND ZONING BYLAW – All the provisions of G.L. c. 40A, §§ 9 and 11, and of § 240-12.1, relating to the granting or denial of special permits shall, so far as apt, be applicable to a special permit application under § 240-14.6E(1)b.

240 – 14.6F Zoning Change Protection

Lots whose development have been subject to the covenant as provided in § 240-6E(1)a. shall be governed by the applicable provisions of this Bylaw in effect at the time of the plan's endorsement by the Planning Board and for a period equivalent to that provided for by G.L. c 40A, § 6. except, however, the statutory protection afforded by G.L. c. 40A, § 6, shall not commence until the lot or lots qualify for construction according to the terms of the covenant noted in § 240--14.6E(1)b.

240 – 14.6G Exemptions

- (1) EXEMPTION PROVISIONS – The provisions of § 240-14.6 shall not apply to, nor limit in any way, the granting of building or occupancy permits required for:
- a. enlargement, restoration, or reconstruction of dwellings existing on lots as of October 17, 1984;
 - b. permits protected under § 240-10.1C(4).

240 – 14.7 Transfer of Development Rights**240 – 14.7A Eligibility**

- (1) SPECIAL PERMIT REQUIREMENTS – Any lot or lots shown on a plan endorsed by the Planning Board or duly recorded at the Registry of Deeds as of April 1, 1995, shall be eligible to apply for a special permit to transfer a portion or all of the development rights on the lot or lots in certain zoning districts (hereinafter called "donor lots" and "donor districts") to a different location and different zoning district (hereinafter called "receiving lots" and "receiving districts") to be included as part of a subdivision requiring approval under G.L. c. 41, §§ 81K-FF of the Subdivision Control Law, provided that the following requirements are met:
- a. each donor lot or portion thereof complies, in all respects, with the minimum requirements for obtaining a building permit by right or, if in the opinion of the Planning Board, the lot or portion thereof is a potentially subdividable lot of land given minimum zoning requirements, subdivision regulations, and other pertinent regulations;
 - b. the locus of the receiving district contains at least 2 acres in a B2, B3, BR, or LIA zone, 5 acres in a RA, RB, RC, AGA or AGB zone, or 10 acres in an AGAA or RAA zone; and
 - c. the owner or owners of the donor lot(s) record at the Registry of Deeds a covenant running in favor of the Town of Falmouth prohibiting the construction or placement of any structure on the donor lot(s).
- (2) TOWN OWNED LAND – Town-owned land approved for this purpose by a 2/3 vote of Town Meeting shall be available as a donor or receiving district.

240 – 14.7B Donor Districts

- (1) CHAPTER 61A LAND – Any existing building lot shown on a plan recorded at the Registry of Deeds, or any contiguous parcel of land of at least 5 acres which qualifies for or is currently assessed by the Town of Falmouth or the Commonwealth of Massachusetts under the provisions of G.L. c. 61A.
- (2) OVERLAY DISTRICT LANDS – All land within the Water Resource Protection Overlay District (§ 240-7.5.), and all land within the Coastal Pond Overlay District (§ 240-7.2.)

240 – 14.7C Receiving Districts

- (1) SPECIFIED RECEIVING ZONING DISTRICTS – Receiving districts shall consist of all land currently zoned AGAA, AGA, AGB, B2, B3, LIA, RAA, RA, RB, or RC, except that receiving districts shall not be considered to include any land within a mapped Water Resource Protection Overlay District as established by § 240-7.5., any land within a mapped water recharge area as referred to in § 240-13.1D(2), or any land referred to in § 240-14.7B.

- (2) RECEIVING DISTRICTS REQUIREMENTS – Receiving districts shall be eligible to "accept" donor lots according to the schedule of § 240-14.7D(1) provided that the locus of the receiving district is the subject of a subdivision plan requiring Planning Board approval under the requirements of G.L. c. 41, § 81U and a special permit under the requirements of § 240-12.1, except that § 240-9.7E(1) & (2) shall not apply to plans filed under § 240-14.7. No transfer of development rights shall be approved by the Planning Board into a receiving district locus not requiring subdivision approval.
- (3) DIMENSIONAL REDUCTIONS – In transferring development rights to a receiving district, the Planning Board may allow the minimum frontage, width, and area standards of the total subdivision, including transferable lot rights, to be reduced according to criteria specified in § 240-9.7B.

240 – 14.7D Credits

- (1) TRANSFER CREDITS – Lots within donor districts shall be eligible to transfer their development rights to receiving districts only in compliance with the following table:

Transfer Credits		
Donor Districts	Receiving Districts	Assignable Credit
RC	RB, AGB	1.4
RC	RA, AGA	1.3
RC	RAA, AGAA	1.2
RB, AGB	RB, AGB	1.3
RB, AGB	RA, AGA	1.3
RB, AGB	RAA, AGAA	1.2
RA, AGA	RA, AGA	1.3
RA, AGA	RAA, AGAA	1.2
RAA, AGAA	RAA, AGAA	1.2

- (2) TRANSFER CALCULATION EXAMPLE – Ten lots within an RC Donor District are transferred to an RB parcel within a Receiving District. The RB parcel has suitable acreage under the provisions of § 240-14.6, for 20 lots. The transfer of 10 lots in the RC District to the RB District entitles the RB landowner to a 4-lot bonus [10 (RC) x 1.4 (assignable credit, § 240-14.7D) = 14]. Thus, the total number of lots possible in the RB Receiving District under this section is 34: (10 x 1.4 = 14 from RC Donor District + 20 from RB District = 34 potential lots)
- (3) LOT FRACTIONS – Fractions of lots shall not be counted.
- (4) BUSINESS OR INDUSTRIAL DISTRICTS – Business or industrial zoned land may be a Receiving District where the total number of attached dwellings will be equal to the number allowed by § 240-14.7D and the number of units permitted by zoning in the Donor District.

240 – 14.7E Special Permit Granting Authority

The special permit granting authority for a transfer of development rights special permit shall be the Planning Board. The provisions of § 240-12.1 and G.L. c. 40A, §§ 9 and 11 shall apply to all special permits issued under § 240-14.7.

240 – 14.8 Wetlands

240 – 14.8A Purpose and Applicability

- (1) PURPOSE – The purpose of § 240-14.8 is to provide for the reasonable protection and conservation of certain irreplaceable wetlands, their resources and amenities, for the benefit and welfare of the present or future inhabitants of the Town.
- (2) APPLICABILITY/SPECIAL PERMIT – Any person wishing to perform, or cause to be performed, any of the following acts or operations shall first obtain a special permit from the Board of Selectmen:
 - a. obstructing, filling, dredging, excavating, or changing the course of any stream or tidal water;
or
 - b. filling, excavating, diking, bulkheading, or riprapping within any part of any swamp marsh or tidal marsh, or in or along the shore of any pond, bay, harbor, or tidal river, so as to alter the shoreline of the swamp, marsh, or body of water, or separate any section of the swamp, marsh or body of water from the main part.

240 – 14.8B Special Permit

- (1) SPECIAL PERMIT DECISION – Following the public hearing and with due regard to the effect on the immediate area and the general welfare of the Town, the Board of Selectmen shall grant or deny a special permit for any of the acts or operations identified in § 240-14.8A(2). In granting a special permit the Board may impose reasonable restrictions and time limitations on the work to be done. In doing so, it shall be guided by what, in its judgment, is desirable to protect and conserve shellfish and other aquatic resources of the Town.
- (2) PERFORMANCE SECURITY – The Board of Selectmen shall require that the applicant post a cash deposit or surety bond in a form acceptable to the Town Treasurer in an amount determined by the Board sufficient to ensure satisfactory compliance with the special permit and any specific restrictions and limitations thereof, or to restore any area of unfinished work to its original condition.
- (3) AREA OF CRITICAL ENVIRONMENTAL CONCERN (ACEC) – No special permit shall be issued in the Area of Critical Environmental Concern unless all available means of mitigating or reducing environmental damage have been implemented and any remaining environmental damage is minor or insignificant enough to not irreparably affect the ACEC or its resources.