

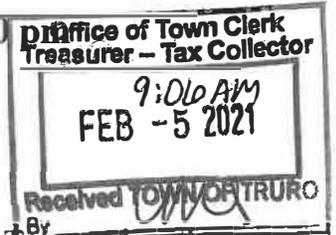


Truro Planning Board Agenda

Remote Public Meeting – Work Session

Wednesday, February 10, 2021 – 2:30

www.truro-ma.gov



Open Meeting

This will be a remote meeting. Citizens can view the meeting on Channel 18 in Truro and on the web on the "Truro TV Channel 18" button under "Helpful Links" on the homepage of the Town of Truro website (www.truro-ma.gov). Click on the green "Watch" button in the upper right corner of the page. Please note that there may be a slight delay (approx. 15-30 seconds) between the meeting and the television broadcast/live stream.

Citizens can join the meeting to listen and provide public comment via the link below, which can also be found on the calendar of the Board's webpage along with the meeting Agenda and Packet, or by calling in toll free at 1-877-309-2073 and entering the following access code when prompted: 547-328-093. Citizens will be muted upon entering the meeting until the public comment portion of the hearing. If you are joining the meeting while watching the television broadcast/live stream, please lower or mute the volume on your computer or television during public comment so that you may be heard clearly. Citizens may also provide written comment via postal mail or by emailing the Town Planner at planner1@truro-ma.gov.

Meeting link: <https://global.gotomeeting.com/join/547328093>

Public Comment Period

The Commonwealth's Open Meeting Law limits any discussion by members of the Board of an issue raised to whether that issue should be placed on a future agenda. Speakers are limited to no more than 5 minutes.

Work Session

- 2021 ATM Potential Warrant Articles and Reports [Warrant closes 2/26/2021]
 - ◆ Zoning Bylaw §40.6 – Growth Management (Bylaw §40 – Special Regulations attached)
 - ◆ Draft report on impact of Residential District House Size Bylaw
- Housing Initiative
 - ◆ Update from KP Law on impact of new legislation recently signed into law: Housing Choice Act and impact on potential Bylaw changes (attachments: KP memo and Summary of Bylaw and Potential Changes 2/4/21)
 - ◆ Maps
- Subdivision Regulations: Possible change from 50-year event to 100-year event

Adjourn

WORKING CONCEPT FOR WORK SESSION 2/10/21
The Truro Planning Board
Two Year Report to Town Meeting
IMPACT OF § 50.2 BUILDING GROSS FLOOR AREA FOR THE RESIDENTIAL DISTRICT
Annual Town Meeting – 2021

BYLAW BASIC INFORMATION

50.2: Total Gross Floor Area Allowed by Right:

- Total Gross Floor Area of the new or expanded structure(s) does not exceed 3,600 sq. ft. for a Residential District Minimum Lot Size of 33,750 sq. ft. (or .775 acre) and prorated to 3,668 sq. ft. for one acre of land:
- Plus 300 sq. ft. for each additional contiguous acre of land, or fraction thereof prorated.
- For lot size less than one acre, the square foot shall be reduced by 150 sq. ft. for each half acre or fraction thereof prorated.
- Plus, a Planning Board Approved Accessory Dwelling Unit of up to 1,000 sq. ft.
- Special Permit to exceed the Total Gross Floor Area limit: The Total Gross Floor Area limit for a dwelling and accessory buildings on a lot established in subsection 50.2.B.1 may be exceeded, up to a maximum of 1,000 sq.

IMPACT

It's unclear whether effective date is date of Town Meeting or Date Approved by AG office.

- *Once get definite date will use the appropriate data from Building Permits*
- *Today our goal is looking at whether this data (which ever date when end up using) is useful.*
- *So that we can look at actual numbers the data here is pre/post the Approval by the AG office. If it is correct to use Town Meeting date, we will use data based on that date.*
- *Today's questions:*
 - *Is this comparison of pre & post bylaw useful – does it provide us with comparison pre & post?*
 - *Are there pieces here that are not useful?*
 - *Are there other pieces of data that would be useful/more useful?*
 - *Are there other questions that would be good to answer?*
 - *Should Seashore District data be included at all since there is also a House Size Bylaw there & it confounds the data?*
 - *Is it possible to get an estimate of size by using cost – average? Range? Maybe just for SFR?*
- *FYI – building permits do not include square feet*

1) No Special Permits have been requested from ZBA for extra space.

2) Comparison of Pre/Post by looking at information on Building Permits

- # New Single-Family Homes
- # Additions/Alterations that involve living space, including but not limited to increasing square feet
- Estimated project cost as indicator of both cost and size of project
- Try to look at impact on Truro businesses by looking at permits pulled by Truro contractors and homeowners
 - Number and percentage of permits pulled by Truro businesses.
 - Estimated project cost of permits by Truro Business and percentage of total permits.

New Single-Family Residences (SFR)

NUMBER OF SFR	#		TRURO #		TRURO %	
	PRE	POST	PRE	POST	PRE	POST
Residential District	21	12	8	6	38%	50%
Not Residential District	2	3	2	2	38%	67%
Total New SFR	23	15	10	8	43%	53%

ESTIMATED COST	\$		TRURO \$		TRURO %	
	PRE	POST	PRE	POST	PRE	POST
Residential District	\$11,776,667	\$5,000,000	\$4,824,667	\$2,600,000	41%	52%
Not Residential District	\$935,000	\$4,385,000	\$585,000	\$2,085,000	63%	48%
Total New SFR	\$12,711,667	\$9,385,000	\$5,409,667	\$4,685,000	43%	50%

Additions/Alteration affecting living space

(i.e., not window, roof replacement, insulation alone etc.)

ADD/ALT	NUMBER		TRURO #		TRURO %	
	PRE	POST	PRE	POST	PRE	POST
Residential District	63	64	29	26	46%	41%
Not Residential District	17	26	0	14	46%	54%
Total New SFR	80	90	29	40	36%	44%

ESTIMATED COST	\$		TRURO \$		TRURO %	
	PRE	POST	PRE	POST	PRE	POST
Residential District	\$6,224,527	\$10,551,388	\$3,772,803	\$4,775,387	61%	60%
Not Residential District	\$2,089,758	\$4,984,540	\$2,043,458	\$1,247,055	98%	37%
Total New SFR	\$8,314,285	\$15,535,928	\$5,816,261	\$6,022,442	70%	55%

The Chilmark Planning Board/Zoning Board of Appeals

Biennial Report to Town Meeting

Residential Building Size Regulation Zoning Bylaw Impacts

Annual Town Meeting - April 23, 2018

The "Residential Building Size Regulations" zoning bylaw, limiting the amount of living area on a lot, was approved at the April 2013 Annual Town Meeting. On the floor of that Town Meeting, an amendment to the bylaw was approved which requires the Planning Board and the Zoning Board of Appeals (ZBA) to jointly meet, review the effects of the bylaw and to report to the Town biennially. Accordingly, the Planning Board and the Zoning Board of Appeals met on January 24, 2018 in order to prepare a report for the Annual Town Meeting on April 23, 2018.

In brief, both the ZBA and the Planning Board agree that the Residential Building Size Regulation bylaw appears to be working.

This report presents the construction and special permit activity for the years 2011-2017, the administrative effects of the Residential Building Size Regulation bylaw on the Zoning Board of Appeals and appropriate conclusions. The data in years 2011-2012, before the bylaw went into effect, are included for the purposes of comparison.

BUILDING PERMIT & SPECIAL PERMIT ACTIVITY:

Summary of Residential Building Permits Issued 2011-2017:

	2011	2012	2013	2014	2015	2016	2017
New SFR	12	18	8	12	17	16	16
Additions	18	20	11	19	17	15	21

Special Permit Activity related to the Residential Building Size Regulation Bylaw 2011-2017*:

	2011	2012	2013	2014	2015	2016	2017
New SFR	NA	NA	0	0	0	0	1
Additions	NA	NA	2	2	3	0	2
Guest House	NA	NA	0	1	0	0	0
Detached Bedroom	NA	NA	0	0	0	0	1

*All of the 2015-2017 special permit applications were approved by the ZBA (as were those in the prior 2 year period). Note, however, that there were zero (0) applications in 2016.

CONCLUSIONS

The Residential Building Size Regulation bylaw does not seem to have had a material effect on either the number of building permits or the number of special permit applications. During the years between 2013 and 2017 the total number of Residential Building Size Regulation bylaw special permit hearings was 12 and the total number of special permit hearings was 66.

The ZBA has reviewed 2 to 3 special permit applications per year under the Residential Building Size Regulation bylaw. Given their regular workload, the additional work posed by the new bylaw is not considered burdensome by the ZBA.

Special permits are reviewed by the ZBA according to a number of specific criteria (see below). Both the Planning Board and the ZBA feel that, even though not all of the 13 criteria have been relevant, it is still worth keeping them. Further, it is worth noting that agents for Special Permit applicants appear to understand the criteria and generally prepare their presentations having regard to them.

13 Criteria Used by the Zoning Board of Appeals when considering an application for a special permit under the Residential Building Size Regulation Bylaw, 6.11:

1. the project, when complete, would be visible, including during the winter, from public ways, water bodies, cemeteries and neighboring properties, and if so whether:
 - a. the impact of the project on the existing rural, scenic character of the site and the surroundings has been mitigated through building siting, building design and landscape design;
 - b. the project retains natural buffer areas or, where that is impracticable, provides sufficient landscape screening; and
 - c. the project minimizes the impact of exterior and interior lighting on the surrounding area and minimizes glare from windows or other reflecting materials incorporated in the project;
2. the project protects the natural features of the site and retains the natural landscape of the site after completion of construction;
3. the project avoids altering the natural landscape, minimizes the size of lawns and recreational facilities, uses native species for landscaping, and retains natural vegetation on slopes;
4. the project minimizes grading alterations and executes grading and excavation so that the contours of the land are the same following construction as those previously existing on the site and adjacent to it;
5. roads and other ways are designed to curve to fit the landscape and permit shared driveway entrances where possible;
6. the project maintains the visual integrity of ridge lines by keeping construction below the ridge line and at least 10' below the average height of the existing trees on wooded ridges and hilltops on the lot;
7. in open land, buildings are sited behind fields against the backdrop of adjoining woodlands;
8. the project preserves and protects natural features of the site such as scenic points, water courses, large trees, historic spots, traditional stone walls and similar community assets;
9. the project incorporates measures to reduce or mitigate excessive negative water quality impacts on ponds, wetlands and other water bodies both during construction and after completion;
10. the project is designed to minimize fossil fuel use such as by incorporating energy efficiency, conservation techniques, and using renewable energy sources.
11. in relation to its construction and possible eventual demolition, the project uses environmentally sound and sustainable design and building techniques.
12. the project avoids significant adverse impacts on habitat, including:
 - a. whether the project meets the requirements and/or recommendations of the Massachusetts Natural Heritage and Endangered Species Program (NHESP) if the project triggered its review; and
 - b. if the project involves the clearing of more than one acre of NHESP Core or Priority Habitat, whether the project minimizes habitat fragmentation and has a defined development envelope limiting the disturbed area to the smaller of 35% or 2 acres of the designated habitat; and
13. The project protects and preserves historical and archaeological resources.

SECTION 40
Special Regulations

§ 40.1 Duplex Houses and Apartments

- A. Purpose. For the purpose of promoting the more efficient use of land, in keeping with the protection of the quality of life and ecology, and at the same time giving relief to those with problems of obtaining adequate housing, the Board of Appeals may approve a special permit authorizing the new construction of duplex houses or the conversion of single family dwellings to apartments, consistent with the following conditions.
- B. New Construction. Lots of one acre or more are required for new construction; the duplex shall not exceed 3,000 sq. ft.; the requirements of paragraph D shall be met.
- C. Conversion. Conversion of single family dwellings in any zoning district except the Seashore District and the Water Resource Protection District may be approved by special permit from the Board of Appeals. Lots shall meet current minimum lot area requirements; no more than one apartment in addition to the primary dwelling unit may be created from any one single family dwelling; the floor area of the secondary dwelling unit shall not exceed 50% of that of the primary dwelling unit; the floor area of the secondary dwelling unit shall not exceed 600 sq. ft.
- D. Requirements. All new construction or conversions shall comply with the following.
 - 1. All applicable provisions of the building, health and safety codes, as determined by the Building Commissioner and Board of Health shall be met.
 - 2. One unit shall be owner occupied.
 - 3. The applicant shall demonstrate that the new construction or conversion is essential to provide needed housing.
 - 4. The new construction or conversion is compatible with and will not derogate from or be detrimental to the neighborhood.
 - 5. Section 50, Area and Height regulations of this bylaw.
 - 6. The use is in harmony with the general purpose and intent of the bylaw.

§ 40.2 Accessory Dwelling Unit

(04/17)

- A. The purposes of this bylaw are to:
 - 1. Increase the number of moderately priced, year-round rental dwelling units in Truro;
 - 2. Encourage a more economical and energy-efficient use of the Town's housing supply; and
 - 3. Provide homeowners with a means of obtaining rental income to defray housing costs.
- B. Requirements
 - 1. One Accessory Dwelling Unit (ADU) per buildable lot may be allowed in any zoning district by obtaining an ADU Permit from the Planning Board.
 - 2. An ADU may be established within or attached to a principal dwelling, principal structure, or accessory structure, or constructed as a detached unit, and must be located on the same lot as the primary dwelling.
 - 3. The ADU must be in conformity with the State Building Code, Title V of the State Sanitary Code and all applicable town health, building, zoning and other local laws and regulations.
 - 4. An ADU within or attached to a principal dwelling, principal structure or accessory structure that is a pre-existing nonconforming use or structure shall not increase any existing nonconformity or create a new nonconformity without first obtaining a Permit or Variance, respectively, from the Zoning Board of Appeals.

C. ADU Permit Criteria

1. The ADU shall be a complete, separate housekeeping unit containing both kitchen and sanitary facilities.
2. The ADU shall not contain more than one thousand (1,000) square feet nor less than four hundred (400) square feet of Gross Floor Area as that term is defined in Section II of this Zoning Bylaw. Once an ADU has been added to a dwelling, structure or lot, the ADU shall not be enlarged beyond the square footage specified in the permit granted pursuant to this section without first obtaining a subsequent permit from the Planning Board, and in no case shall an ADU be permitted to exceed the square footage allowed by this section.
3. At least two (2) off street parking spaces in addition to parking otherwise required for the property is required for an ADU.
4. An ADU shall be clearly subordinate in use, size and design to the principal dwelling or structure, considering the following: building architectural details, roof design, building spacing and orientation, building screening, door and window size and location, and building materials. When accessory to a principal dwelling, the intent is to retain the appearance of a single-family dwelling and the privacy of abutters.
5. The principal dwelling and ADU and lot on which they are located shall remain in common ownership, and shall not be severed in ownership, including that the lot, buildings or units thereon shall not be placed in a condominium form of ownership.
6. Either the ADU or the principal dwelling on a lot with an ADU must be leased for a term of at least twelve (12) months. Rental of said unit for a period of less than twelve (12) months (including, but not limited to, seasonal rental and rental through vacation rental services and websites) is prohibited. Proof of year-round rental shall be provided annually to the Building Commissioner by the owner in the form of a lease and a signed affidavit from both the owner and renter stating the unit is being rented accordingly and is used as a primary residence.
7. ADUs permitted under this section shall be inspected annually or as frequently as deemed necessary by the Health and Building Departments for compliance with public safety and public health codes. The owner of the property shall be responsible for scheduling such inspection and shall pay any applicable inspection fees.

D. Procedure

1. Each application for a Permit shall be filed by the Applicant with the Town Clerk consisting of:
 - a. An original and 14 copies of the Application for ADU Permit;
 - b. 15 copies of the required plans and other required information under §40.2;
 - c. Applicable filing fee;
 - d. List of abutters obtained from the Truro Assessing Department;
 - e. Site Plan or Site and Sewage Plan prepared by a registered professional engineer or registered sanitarian showing all property lines, existing and proposed structures on the parcel, and setbacks from roads and property lines for each structure. Building dimensions (height, stories, square footage) shall be shown on the plan.
 - f. Documentation of approval of the septic/wastewater treatment system from the Board of Health.
 - g. Building plans at a scale of no less than 1/8"= 1'-0", including floor plans and front, side and rear elevations of the ADU and principal dwelling or structure.
 - h. Affidavit declaring that the ADU and/or principal dwelling to which it is accessory will be rented on a twelve month basis.
 - i. Documentation of approval, if applicable, from the Conservation Commission.
 - j. Documentation of Special Permit or Variance, if applicable, from the Zoning Board of Appeals.

E. Public Hearing

1. Upon receipt of the application by the Truro Town Clerk, the Planning Board shall hold a duly noticed public hearing within 65 days of said filing. The Board shall:
 - a. Give notice by advertisement in a newspaper of general circulation in the Town of Truro, no less than ten (10) days before the day of such hearing; and
 - b. Give notice by posting such notice in a conspicuous place in the Town Hall for a period of not less than ten (10) days before the day of such hearing; and
 - c. Give notice by mailing a copy of such advertisement to abutters to the subject property, abutters to abutters within 300 feet of the subject property, and owners of properties across the street from the subject property.

F. Findings of the Planning Board

1. The Planning Board shall grant an ADU Permit if it finds that the proposal complies with the provisions of this bylaw, §40.2, as amended. The concurring vote of four members of the Planning Board shall approve an ADU permit as submitted or with reasonable conditions. The Board shall deny the permit only if:
 - a. The application is incomplete, and the applicant fails to complete the application within 21 days after written notice of the application's deficiencies, or
 - b. The imposition of reasonable conditions will not ensure that the ADU will conform to the standards and criteria described herein, or
 - c. The ADU does not comply with the requirements of the Zoning Bylaw.
2. The permit decision is not appealable.

G. Penalty

Failure of the applicant to comply with any provision of this section or the Permit is punishable by a fine established in Section 60.1 of the Truro Zoning Bylaws and shall entitle the Planning Board, after notice and public hearing, to revoke, modify or suspend the Permit. The Town shall be entitled to recover its litigation fees, including counsel fees, incurred in enforcement of this Bylaw.

H. Requirements for Tax Exemption

Qualifying ADUs permitted under this section are eligible to seek tax abatement pursuant to Chapter I, Section 10 of the Truro General Bylaws, Tax Exemption for Affordable Accessory Dwelling Units.

§ 40.3 Conversion of Cottage or Cabin Colony, Motor Court, Motel or Hotel

- A. Purpose. The Board of Appeals may grant a special permit for the conversion of a cottage colony, cabin colony, motor court, motel, or hotel to single family or multi-family use under any type of ownership, provided that the provisions of this section are met.
- B. Requirements.
 1. The converted premises shall comply with applicable provisions of the zoning, building, health and safety codes, as determined by the Building Commissioner and Board of Health.
 2. Each converted unit shall comply with the parking requirements for single family dwellings as established in § 30.9, Parking, except that, where pre-existing structures under this section are unable to meet the current parking standards on their existing lots, the parking requirement may be met on a contiguous lot or on a lot directly across the street provided the following conditions are met:
 - a. The two lots must be in and remain in common ownership and not be further divided.
 - b. The two lots shall not be used for the purpose of increasing the size or the use of the pre-existing structure or property.

- c. Other than parking, pre-existing structures, and septic systems allowed by the Truro Board of Health, the adjacent lot shall remain open space.
- d. All conditions must be recorded at the Barnstable Registry of Deeds.
- 3. The density of units permitted on a lot shall be one unit per 3,000 sq. ft., or one unit per 2,100 sq. ft. in the Beach Point Limited Business District; however, notwithstanding the restrictions of this section, no cottage colony, cabin colony, motor court, motel, or hotel which existed on January 1, 1987 shall be required to reduce its then existing number of units if or when it converts to multi-unit dwelling or non-dwelling use so long as it complies with all other requirements of this bylaw
- 4. Units rented to the transient public must remain licensed as parts of a cottage colony, cabin colony, motor court, motel or hotel. Owners of the management unit shall be responsible for meeting all the licensing requirements of the Town of Truro.
- 5. No application for conversion may be filed until the applicant has operated the facility as a cottage or cabin colony, motor court, motel or hotel, for at least three consecutive years.

(4/10)

C. Term of Use Permitted

(4/18)

- 1. The applicant shall state in its application whether the units are to be used for seasonal or year-round use. The Building Commissioner and Board of Health shall accordingly determine and advise the Board of Appeals of the suitability of all infrastructure serving the converted premises based upon the proposed term of use of the converted premises.
- 2. Where the application proposes that the converted premises is to be limited to seasonal use, the owner of the converted premises shall execute a restrictive covenant in favor of the Town of Truro to be recorded at the Barnstable Registry of Deeds, covenanting that other than one management unit, no units shall be occupied or otherwise used during each calendar period commencing December 1 and ending February 28 of the following calendar year. Such covenant shall be in a form approved by town counsel, the cost of which shall be paid by the applicant, and require approval of the Board of Selectmen.
- 3. Where a special permit was previously issued for a converted premises for the purpose of seasonal use, the Board of Selectmen may authorize conversion of all or some of dwelling units thereon to year-round use, subject to the following requirements:
 - a. Conversion of the premises to year-round occupancy will comply with applicable provisions of the zoning, building, health and safety codes, as determined by the Building Commissioner and Board of Health.
 - b. The condominium or homeowners association consents to the application.
 - c. Where fewer than all of the units in a converted premises are proposed to be changed to year-round occupancy, the applicant must provide evidence that the applicant has the legal authority to perform any work necessary to ensure compliance with applicable provisions of the zoning, building, health and safety codes, as determined by the Building Commissioner and Board of Health.
 - d. The Board of Selectmen may impose reasonable conditions necessary to ensure that the proposed change to year-round use will comply with applicable zoning, building, health and safety codes, and will ensure the safety and welfare of occupants and the general public.

§ 40.4 Wind Generators

A. Purpose and Intent

It is the express purpose of this bylaw to regulate wind energy conversion facilities, including meteorological towers, ensuring that they are placed in appropriate locations, while minimizing any adverse visual, safety and environmental impacts of those facilities. This bylaw is intended to

be used by the Truro Planning Board and other relevant boards in conjunction with other regulations adopted by the town.

B. Basic Regulations

1. Use Regulations

The erection of a wind energy conversion facility or wind monitoring tower shall require a building permit. A permit shall be issued only as follows, whether the use is a principal or accessory use:

1.1 Wind Energy Conversion Facility

No wind energy conversion facility shall be constructed or emplaced (a) unless it complies with the wind generator sections of the zoning bylaws and (b) unless the Planning Board issues an enabling special permit which may, through the conditions of that special permit, excuse or mitigate full compliance with the zoning by-laws' wind generator requirements.

1.2 Wind Monitoring or Meteorological Towers

Before wind monitoring or meteorological towers are constructed or installed, the tower proponent must obtain a special permit from the Planning Board. The proponent, however, may request a pre-application hearing, which will be advertised, and, thereafter, the Planning Board may issue a decision that a special permit is not needed because the tower' height, location, duration, state or federal ownership, or other characteristics do not warrant review through a special permit process and because the tower is in harmony with the general purpose and intent of the zoning bylaws. References hereafter to "tower" shall mean "wind-monitoring or meteorological tower."

2. Site Control

The applicant shall possess control over the site, as required in Section G.5.1.d. and the applicant must furnish reasonable assurance that this control will endure though the term of the special permit. Control shall mean authority to install and use the proposed facility and to prevent the use of any structure within the setback or clear area for human habitation or other use permitting human occupancy.

3. Dimensional Requirements

3.1 Height

Wind energy conversion facilities shall be no higher than 100 feet above the natural grade. The Planning Board may allow this height to be exceeded as part of the special permit process if the project proponent can demonstrate that the additional height is needed and that the additional benefits of the higher tower outweigh any increased adverse impacts. Monopole towers are the preferred type of support for wind turbines.

3.2 Setback or Clear Area

Each wind energy conversion facility and its associated equipment shall comply with the building setback provisions of the zoning district in which the facility is located. In addition, the following setbacks shall be observed:

- a. In order to ensure public safety and to protect the interests of neighboring property owners, the minimum distance from the base of any wind turbine tower to any property line, dwelling, business or institutional use shall be equal to the total height of structure to the highest point plus an additional six feet. This setback is considered a "clear area".
- b. The setback or clear areas should be kept free of all habitable structures so long as the facility is in place; however, this area need not be cleared of trees or other vegetation. Setbacks shall be measured from the outside surface at the base of the turbine tower. The Planning Board may reduce the clear area as appropriate based on site specific considerations.

C. Special Permit Regulations

The Planning Board shall grant a special permit only if it finds that the proposal complies with the provisions of this bylaw and complies with the applicable criteria for granting special permits, as detailed in Section H below.

1. General

Proposed wind energy conversion facilities shall comply with all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety, environmental and communications requirements.

2. Design Standards

2.1 Visual Impact

The proponent shall demonstrate through project siting and proposed mitigation that the wind energy conversion facility minimizes any impact on the visual character of surrounding neighborhoods and the community. Relevant criteria may include, but not be limited to, information regarding site selection, turbine design, buffering, lighting and cable layout.

2.2 Color

Wind energy conversion facilities shall be painted a non-reflective color that blends with the sky, unless FAA regulations require a specific color.

2.3 Equipment Shelters

Equipment necessary for monitoring and operation of the wind energy conversion facilities should be contained within the turbine tower. If this is not feasible, ancillary equipment may be located outside the tower, provided this equipment is contained either within an underground vault, or enclosed within a separate structure or behind a year-round landscape or vegetated buffer.

2.4 Lighting and Signage

a. Wind turbines shall be lighted only to the extent required by the Federal Aviation Administration (FAA).

b. Lighting of equipment structures and any other facilities on site (except lighting required by the FAA) shall, at a minimum, comply with the Town's restrictions for exterior lighting.

c. Signs on the facility shall be limited to:

i) those needed to identify the property, and the owner and warn of any danger; and,

ii) educational signs providing information on the technology and renewable energy usage.

d. All signs shall comply with the requirements of the Town's sign code.

3. Environmental Standards

3.1 Wetlands

Wetland buffer areas may be used for the purposes of providing a clear area.

3.2 Land Clearing/Open Space/Avian and Protected Species

Wind energy conversion facilities shall be designed to minimize land clearing and fragmentation of open space areas and shall avoid permanently protected open space. Wind turbines should be sited to make use of previously developed areas wherever possible. Wind energy conversion facilities shall also be located in a manner that does not have significant negative impacts on avian and protected species in the vicinity.

3.3 Stormwater

Stormwater run-off and erosion control shall be managed in a manner consistent with all applicable state and local regulations.

3.4 Noise

The wind energy conversion facility and associated equipment shall conform with Massachusetts noise regulations (310 CMR 7.10).

3.5 Shadowing and Flicker

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

4. Safety Standards

No hazardous materials or waste shall be discharged on the site of any wind energy conversion facility. If any hazardous materials or wastes are to be used on site, there shall be provisions for full containment of such materials or waste. An enclosed containment area designed to contain at least 110 percent of the volume of the hazardous materials or waste stored or used on the site may be required to meet this requirement.

The wind energy conversion towers shall also be designed to prevent unauthorized access (for example, by construction of a fenced enclosure or locked access).

5. Use by Telecommunications Carriers

Wind energy conversion facilities may be used to locate telecommunications antennas, subject to applicable regulations governing such uses, and subject to the following additional requirements:

5.1 All ground-mounted telecommunications equipment shall be located in either a shelter, within the wind turbine tower or otherwise screened in all seasons from public view either through effective landscaping or existing natural vegetated buffers.

5.2 Antennas shall be flush-mounted to be in keeping with the design of the wind turbine tower.

5.3 All cabling associated with the wireless facility shall be contained within the tower structure or enclosed within a conduit painted to match the turbine mount.

D. Modifications

All modifications to a wind energy conversion facility made after issuance of the special permit shall require approval by the Planning Board in accordance with the existing process for modifications to special permits.

E. Monitoring and Maintenance

1. After the wind energy conversion facility is operational, the applicant shall submit to the town at annual intervals from the date of issuance of the special permit, a report detailing operating data for the facility, including, but not limited to, days of operation, energy production, and so forth.

2. The applicant shall maintain the wind energy conversion facility in good condition. Such maintenance shall include, but not be limited to, painting, structural integrity of the foundation and support structure and security barrier (if applicable), and maintenance of the buffer areas and landscaping if present.

3. The holder of a special permit shall promptly provide written notice to the Planning Board of any change in ownership of the facility.

F. Abandonment or Discontinuation of Use

1. At such time as the holder of a special permit issued under this section elects to abandon or discontinue the facility or tower, the holder shall notify the Planning Board by certified mail, return receipt requested, of the proposed date of abandonment or discontinuance. In the event that a holder fails to give such notice, the facility or tower shall be considered abandoned or discontinued if the facility or tower has not been operational for 180 days. In the case of a multi-turbine facility, the Planning Board shall determine in its decision what proportion of the facility has been inoperable for that period of time.

2. Upon abandonment or discontinuation of use, the owner shall physically remove the wind energy conversion facility or tower within 90 days from the date of abandonment or discontinuation of use. For good cause shown this period may be extended at the request of the holder of the special permit at the discretion of the Planning Board. “Physically remove” shall include, but not be limited to:
 - 2.1 Removal of the wind turbine and tower, all machinery, equipment, equipment shelters, security barriers and all appurtenant structures from the subject property,
 - 2.2 Proper disposal of all solid or hazardous materials and wastes from the site in accordance with local and state solid waste disposal regulations,
 - 2.3 Restoration of the location of the wind energy conversion facility to its natural condition, except that any landscaping, grading or below-grade foundation may remain, unless the Building Commissioner determines that this results in a hazardous situation.
3. If an applicant fails to remove a wind energy conversion facility or tower the Department of Public Works may enter upon the subject property and physically remove the facility or tower at the expense of the landowner.

G. Application Procedures

1. Pre-Application Conference

Prior to the submission of an application for a special permit under this bylaw, the applicant is strongly encouraged to meet with the Planning Board at a scheduled public meeting to discuss the proposed wind energy conversion facility or tower in general terms and to clarify the filing requirements. The Planning Board shall meet with an applicant under this regulation within 21 days following a written request submitted to the Planning Board with a copy to the Town Clerk. If the Planning Board fails to meet with an applicant who has requested such a meeting within 21 days of said request and said meeting has not been postponed due to mutual agreement, the applicant may proceed with a special permit application under this regulation without need for a pre-application conference.
2. Pre-Application Filing Requirements

The purpose of the conference is to inform the Planning Board about the characteristics and scope, however preliminary, of the proposed wind energy conversion facility or tower. As such, no formal filings are required for the pre-application conference; however, the applicant must prepare sufficient preliminary architectural and/or engineering drawings to inform the Planning Board of the location of the proposed facility, as well as its scale and overall design.
3. Professional Fees

If the nature of the applicant’s project is such that it cannot be adequately reviewed without expertise unavailable to the Planning Board, the Board may retain experts and consultants, and the applicant’s payment of their fees and charges shall be a prerequisite of the special permit.
4. Additional Requirements

Within 30 days of holding the pre-application conference, or, if no conference is held, within 21 days of filing an application for a special permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the town at least 14 days, but not more than 21 days prior to the test. In addition, within such time period written notice shall be provided to the Planning Board and the Historic Commission by certified mail, return receipt requested, and an identical courtesy notice shall be sent to the Town Clerks of Provincetown and Wellfleet and the Superintendent of the Cape Cod National Seashore.
5. Application Filing Requirements
 - 5.1 The following plans and data shall be included with an application for a special permit for each wind energy conversion facility:

- a. Name, address, telephone number and original signature (photo-reproductions of signatures will not be accepted) of applicant and any co-applicants. Co-applicants may include the landowner of the subject property or the operator of the wind energy conversion facility. If telecommunications antenna are proposed, a telecommunications carrier should be a co-applicant.
- b. If the applicant or co-applicant files a written authorization, bearing an original signature and providing the name, address, and telephone number of each agent, the applicant or co-applicant may be represented by that agent or agents.
- c. The name and affiliation of the electrical engineers or electricians who will design the connection to the grid or load.
- d. Documentation of the right to install and use the proposed facility and proof of control over the clear area, per Section B.2. of these regulations.
- e. Proposed schedule for the meteorological data acquisition and analysis. Proposed schedule for erection and commissioning of the generator.
- f. Identification of the subject property including the name of the nearest road or roads, and street address, if any
- g. Assessor's map and parcel number of subject property.
- h. Relevant zoning map with subject parcel identified.
- i. A scaled elevation of the proposed tower.
- j. A vicinity plan drawn at a scale of one-inch-equals-40 feet, signed and sealed by a Registered Professional Engineer or Licensed Surveyor showing the following:
 - i) Property lines for the subject property and all properties adjacent to the subject property within 300 feet.
 - ii) Outline of all existing buildings, including description of existing use, if known (e.g., residence, garage, accessory structure and so forth) located on the on subject property and on all adjacent properties located within 300 feet of the proposed wind energy facility or tower. Distances, at grade, from the proposed wind energy conversion facility or tower to each structure shown on the vicinity plan shall be shown.
 - iii) Proposed location of wind energy conversion facility or tower, including all turbines, fencing, associated ground equipment, transmission infrastructure and access roads. Including:
 - Location of all roads, public and private, on the subject property and on all adjacent properties within 300 feet including driveways proposed to serve the wind energy conversion facility,
 - All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways,
 - Representations, dimensioned and to scale, of the proposed facility, including cable locations, parking areas and any other construction or development attendant to the wind energy conversion facility.
 - iv) Tree cover and average height of trees on the subject property and adjacent properties within 300 feet.
 - v) Contours at each two feet AMSL (Above Mean Sea Level) for the subject property and adjacent properties within 300 feet.
 - vi) Representation of location of viewpoint for the sight-line diagram referenced below.
- k. A map or plan, as required, showing the connection to the grid or load, as applicable.
- l. A map or plan of the route to be used to deliver the components of the equipment to the site.

5.2 Sight lines and photographs as described below:

- a. Sight-line representation. A sight-line representation shall be drawn from representative locations that show the lowest point of the turbine tower visible from each location. Each sight line shall be depicted in profile, drawn at a scale of one inch equals 40 feet. The profiles shall show all intervening trees and buildings. There shall be at least two sight line representations illustrating the visibility of the facility from surrounding areas such as the closest habitable structures or nearby public roads or areas.
 - b. Existing (before condition) photographs. A color photograph of the current view shall be submitted from at least two locations to show the existing situation.
 - c. Proposed (after condition). Each of the existing-condition photographs shall have the proposed wind energy conversion facility or tower superimposed on it to accurately simulate the proposed wind energy conversion facility when built and illustrate its total height, width and breadth.
- 5.3 Siting elevations, or views at-grade from the north, south, east and west for a 50-foot radius around the proposed wind energy conversion facility or tower, showing the following:
- a. Wind energy conversion facility or tower and, if applicable, the security barrier and associated equipment, with total elevation dimensions for all parts of the facility or tower.
 - b. Security barrier. If the security barrier will block views of the wind energy conversion facility or tower, the barrier drawing shall be cut away to show the view behind the barrier.
 - c. Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations shown.
 - d. Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two-foot contours AMSL.
- 5.4 Specifications
- a. Specifications for any proposed wind energy conversion facility or tower shall be provided for all equipment and attendant facilities.
 - b. Materials for any proposed wind energy conversion facility or tower specified by type and specific treatment. This information shall be provided for the wind turbine tower and all other proposed equipment/facilities.
 - c. Colors of the proposed wind energy conversion facility represented by a color board showing actual colors proposed.
- 5.5 Landscape plan
A landscape plan including existing trees and shrubs and those proposed to be added or removed, identified by size of specimen at installation and species.
- 5.6 Lighting Plan
The applicant shall provide the Planning Board with a copy of the FAA's determination as to the required markings and/or lights for the structure. If lighting of the site (other than FAA lights) is proposed, the applicant shall submit a manufacturer's computer-generated point-to-point printout, indicating the horizontal foot-candle levels at grade, within the property to be developed and 25 feet beyond the property lines. The printout shall indicate the locations and types of luminaries proposed.
- 5.7 Environmental Requirements
The applicant shall provide a statement listing the existing noise levels and the maximum future projected noise levels from the proposed wind energy conversion facility. Such statement shall be certified and signed by a qualified sound engineer, and state that noise projections are accurate and meet applicable state requirements.
- 5.8 Removal

The applicant shall submit a fully inclusive estimate of the costs associated with removal and prepared by a qualified engineer. This cost estimate shall include cost inflation of the removal projected throughout the term of the special permit.

H. Review Guidelines

The Planning Board shall evaluate the information submitted by the applicant based upon the following review criteria and design guidelines:

1. Thoroughness of the application.
2. Compliance with Sections C 2 (Design Standards), C 3 (Environmental Standards) and C 4 (Safety Standards) of this Bylaw.

I. Findings of the Planning Board

The Planning Board may permit, permit with conditions, or refuse to permit a wind energy facility.

1. The Planning Board shall have the authority to permit a facility when all the following conditions are met:
 - a. The application has been submitted in accordance with the regulations and procedures as outlined in this section, and substantially meets the requirements of §40.4 H, Review Guidelines.
 - b. The application complies with all current bylaw requirements of the Town.
2. The Planning Board shall conditionally endorse an application for a special permit for a wind energy conversion facility or tower when the following conditions are met:
 - a. The application has been submitted in accordance with the regulations and procedures as outlined in this section, and substantially complies with §40.4 H, Review Criteria.
 - b. The project conforms to all requirements of the Zoning Bylaw, with deviations permissible only by a special permit or a variance.
 - c. The application needs further approvals from any other Town Board, Department or Commission, or requires approvals by any state, and/or federal agency.
3. The Planning Board may deny the application for a special permit for any lawful reason, including:
 - a. The application does not include all the materials or information required in this section, or has failed to adhere to the procedures for Special Permit Application as outlined in this section.
 - b. The application as presented is not in compliance with one or more Town Bylaws.
 - c. The application does not substantially comply with the Review Guidelines.
 - d. The plan has been drawn incorrectly or in such form that the Planning Board is unable to determine whether sufficient information is being presented for review.
 - e. The applicant has failed to incorporate and adhere to any condition(s) for endorsement imposed by any other Town Board, Department or Commission, or the requirements of any state or federal agency, which has proper authority to place conditions on a matter before the Planning Board.
4. The Planning Board may require the applicant to provide a form of surety (i.e. post a bond, letter of credit or establish an escrow account or other) at the Planning Board's option at the time of construction to cover projected costs of the removal of a facility or tower in the event the town must remove the same. The amount of such surety shall be equal to 150 percent of the cost of compliance with this section.
5. The Planning Board shall render a decision within ninety (90) days of the conclusion of the public hearing, and shall file its written decision with the Town Clerk's office and other appropriate parties in accordance with the provisions of M.G.L. Chapter 40A.

- J. Term of Special Permit for Wind Energy Conversion Facility
No special permit for a wind energy conversion facility shall be valid for more than twenty-five (25) years, unless it is extended or renewed. At the expiration of the special permit the wind energy conversion facility shall be removed by the applicant.
- K. Term of Special Permit for a Wind-Monitoring or Meteorological Tower
A special permit for a wind-monitoring or meteorological tower shall be valid for two years, and is subject to renewal for good cause shown. (4/05)

§ 40.5 Communication Structures, Buildings and Appurtenances

- A. Purpose. The purpose of § 40.5 of this bylaw is to accommodate the communication needs of residents and businesses while protecting the public health, safety and general welfare of the community; to establish guidelines, standards and procedures to regulate the permitting and installation of communication structures, buildings and appurtenances in order to:
 1. Facilitate the provision of wireless telecommunications services to the residents and businesses of the town;
 2. Minimize adverse visual effects of towers through careful design and siting standards;
 3. Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements, and,
 4. Maximize the use of existing and approved towers and buildings to accommodate new wireless telecommunication antennas in order to reduce the number of towers needed to serve the community.
- B. Requirements:
 1. All building permits for a communications structure, building or appurtenance shall require a special permit from the Planning Board.
 2. The minimum distance from the perimeter of the communications structure to any property line shall be the height of the structure including any antennas or appurtenances, plus ten (10) feet. The minimum distance from any guy wire, anchor or brace to any property line shall be the length of the guy wire or brace plus ten (10) feet. The setbacks for a communications building shall comply with the setback requirements of the zoning district.
 3. The communications structure, building or appurtenance shall be installed, maintained and operated in accordance with all applicable federal, state, county and local codes, standards and regulations and shall be designed to withstand sustained winds and gusts of a category 5 hurricane. If Federal Aviation Administration (FAA) or Federal Communications Commission (FCC) regulations are changed, then the owner or operator shall bring the structure, building and appurtenances into compliance with the new regulations within six (6) months of the effective date of such regulations or earlier if a more stringent compliance schedule is included in the regulation. Failure to comply with any new regulations shall be grounds for the removal of non-complying structures, buildings and appurtenances at the owner's expense.
 4. The height of the communications structure (tower) shall be no greater than one hundred and fifty (150 feet) above ground level.
 5. Communication antennas shall be located on pre-existing structures unless the applicant demonstrates that there are no feasible pre-existing structures. The installation shall preserve the character of such pre-existing structures.
 6. If the applicant has demonstrated that there are no feasible pre-existing structures to support antennas and appurtenances for the intended use, then any communications structure, building or appurtenance may be sited on public land.
 7. To the extent lawful and feasible, all service providers shall co-locate on a single tower. Towers shall be designed to structurally accommodate the maximum number of foreseeable

users (within a ten-year period) technically practicable. The applicant is required to document all co-location tenants and provide a tower design indicating types and location of all facilities.

8. New facilities or structures shall be considered only upon a finding by the Planning Board that existing or approved facilities or structures cannot accommodate the wireless communications equipment planned for the proposed tower.
9. The installation of a communications structure, building or appurtenance shall be designed to minimize visual impact; the maximum amount of natural vegetation shall be preserved; details of construction and finish shall blend with the surroundings; additional vegetative screening shall be employed where practical and particularly to screen abutting residential property whether developed or not. A detailed landscape plan will be required with the application.
10. Location and siting of facilities and structures shall be consistent with any regional location and siting criteria established by the Cape Cod Commission.
11. Under normal operating conditions, noise emanating from the communications structure, building or appurtenance shall not be greater at the boundary of the lot on which it is sited than would otherwise exist in the absence of these facilities.
12. No hazardous waste shall be discharged on the site. Any storage of fuel shall be in compliance with the Board of Health regulations. Documentation shall be provided for the contents of all communications buildings and/or cabinets.
13. All run-off of storm water from communications structures, buildings, and appurtenances, driveways and parking areas shall be contained on site; the amount of impervious surface on the site shall be minimized.
14. Lighting, when required and permitted by the FAA or the Planning Board, shall be directed inward so as not to project onto surrounding properties.
15. All structures, buildings or appurtenances must be secured to control access. Fencing materials shall be consistent with the character of abutting properties, with a locked gate and proper warning signals. A sign must be displayed indicating the name of the owner(s) and a 24 hour contact number. Only signs limited to safety will be allowed. Fencing is not required for antennas or other appurtenances mounted on a pre-existing structure.
16. As a condition of approval of the application the applicant shall agree, by execution of a covenant, to remove within six months any communications structure and building which has not operated for four consecutive months unless the cause is major damage which prohibits operation. In the event that major damage has rendered the facility inoperative, repair or removal of the facility shall begin within six months and be completed within an additional six months. Failure to comply with the conditions of the covenant shall be grounds for the removal of structures, buildings and appurtenances. Complete restoration of the site shall be at the owner(s) expense, secured by a bond from a recognized financial institution. The covenant shall include, also at the owner(s) expense, provision for liability insurance for any damage to any abutting property whether developed or not.
17. At least forty-five (45) days before submitting an application for a special permit for the installation of a communications structure, building or appurtenance the applicant shall consult with the Planning Board. The purpose of the consultation is to facilitate the permitting process by the exchange of information between the applicant and the Planning Board, and for the applicant to obtain a detailed description of the information and documentation required, in writing, by the Planning Board, in order to clarify and resolve concerns of the Board and minimize potential problems with the application.
18. The Planning Board shall hold a public hearing within sixty-five (65) days of the filing of an application and shall issue a decision within ninety (90) days following the date of the public hearing.
19. The applicant shall submit the following written information to the Planning Board:

- a. A survey of all sites for the installation of communications structures, buildings or appurtenances which are feasible for providing the intended services. The survey shall include a rationale for the selection of a prime and at least one alternative site. All sites in Truro shall be located on the appropriate sheet(s) of the Truro Assessor's Atlas;
 - b. A survey of all pre-existing structures which are capable of supporting the equipment necessary to provide the intended service and a technical report which demonstrates why any such structure cannot be used by the applicant;
 - c. The radiation pattern of all proposed antennas showing the frequency and intensity of radiation at ground level and at 30 feet above ground level. At the expense of the applicant, Electro Magnetic Field (EMF) readings shall be provided to the Board of Health yearly and immediately after any addition to the facility;
 - d. The sound level in decibels at ground level, at 30 feet above ground level and at the top of the facility and 10, 50, 100 and 500 feet from the communications structure, building or appurtenances for wind velocities between calm and 100 miles per hour with all equipment operating at normal levels, including before condition measured, after condition prediction and cumulative condition (with co-location) prediction;
 - e. A delineation of the Assessor's Atlas of all areas in Truro which will not be served by the proposed installation for the prime and an alternative site;
 - f. A statement of the services to be supported by the proposed communications structure, building or appurtenance;
 - g. Plans of special design features and materials, including landscaping, to minimize the visual impact of proposed communications structures, buildings and appurtenances. Site plans, elevations and fall zone should be included;
 - h. A certification that the applicant has complied with all federal (including FAA), state and regional requirements to provide the proposed service and demonstration of compliance with the FCC guidelines for EMF's under National Environmental Policy Act (NEPA), including copies of the FCC Form 600, plus Environmental Assessment/Environmental Impact Statements as applicable;
 - i. Within thirty (30) days after the application filing, the applicant shall arrange to fly a three-foot-diameter balloon at the primary and an alternate site at the maximum height of the proposed installation. The date and location of the flights shall be advertised at least 14 days, but not more than 21 days before the flights, in a newspaper with a general circulation in Truro. Photos shall be provided from all strategic viewing points, per agreement with the Planning Board prior to flight.
20. If a communications structure, building or appurtenance is to be installed on a pre-existing private structure or on land or a structure owned, prior to the effective date of the bylaw, by the Commonwealth of Massachusetts, or on land or a structure owned by the Town of Truro, the applicant shall submit the following written information to the Planning Board:
- a. A draft contract, including requirements for removal of all structures and for complete site restoration in the case of discontinued use, between the applicant and the owner (if different from the applicant).
 - b. A description of the proposed facility at the proposed prime and alternate sites including:
 - i) Height of the facility and its associated equipment and antennas;
 - ii) Access roads and power supplies;
 - iii) Type, size and number of transmitters;
 - iv) A list of all fuels to be used on the site and a detailed description of how each shall be contained.
 - c. A site plan (scale not less than 1 inch=40 feet), showing the proposed facility, fall zones, existing and proposed contour elevations, 100-year flood zones, water resources, Zones of Contribution, waterways, wetlands and all associated equipment and structures on

- the site, including elevations of all equipment and structures with sufficient detail to delineate the external finish of all structures and equipment; and
- d. A landscape plan showing the proposed site before and after development, including topography and screening proposed to protect abutters.
21. For all applications other than those set forth in § 40.5 B.20 above, the applicant shall submit the following written information to the Planning Board:
- a. A statement of the purpose for which the application is made.
 - b. The exact legal name of each person seeking a special permit and the address and telephone number or principal place of business of each such person.
 - c. The name, title, address and telephone number of the attorney or other person to whom correspondence or communications in regard to the application are to be addressed. Notice, orders, and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant;
 - d. A statement of the need for the proposed facility with as much specific information as is practicable to demonstrate the need, including description of the proposed system and how the proposed facility would eliminate or alleviate any existing deficiency or limitation, including all co-location facilities;
 - e. A statement of the benefits expected from the proposed facility with as much information as is practicable;
 - f. A description of the proposed facility at the proposed prime and alternate sites including:
 - i) Height of the facility and its associated equipment and antennas;
 - ii) Access roads and power supplies;
 - iii) Special design features and materials, including landscape plans;
 - iv) Type, size and number of transmitters and receivers, as well as the signal frequency, power output, and power density at the tower base, site boundary, and building where people might be exposed to the maximum power densities from the facility;
 - v) A map showing any fixed facilities with which the proposed facility would interact;
 - vi) The coverage signal strength, and integration of the proposed facility with any adjacent fixed facility, to be accompanied by a network plan showing interfaces with any adjacent service areas;
 - vii) A forecast of when maximum capability would be reached for the proposed facility and for facilities that would be integrated with the proposed facility;
 - viii) Documentation of contents of communications buildings and/or cabinets.
 - g. A description of the proposed prime and alternative site, including:
 - i) The most recent U.S.G.S. topographic quadrangle map (scale 1 inch = 2,000 feet) marked to show the site of the facility and any significant changes within a one-mile-radius of the site;
 - ii) A map (scale not less than 1 inch = 200 feet) of the lot or tract on which the facility is proposed to be located, showing the acreage and dimensions of such site, the name and location of adjacent public and private roads or the nearest public road, and the names of abutting owners and portions of their lands abutting the site;
 - iii) A site plan (scale not less than 1 inch = 40 feet), showing the proposed facility, fall zones, existing and proposed contour elevations, 100-year flood zones, water resources, Zones of Contribution, waterways, wetlands and all associated equipment and structures on the site, including elevations of all equipment and structures with sufficient detail to delineate the external finish of all structures and equipment;

- iv) Where relevant, a terrain profile showing the proposed facility and access road and existing and proposed grades; and
- v) The most recent aerial photograph (scale not less than 1 inch = 1,000 feet) showing the proposed site, access roads and all abutting properties.
- h. A statement explaining mitigation measures for the proposed facility including:
 - i) Construction techniques designed specifically to minimize adverse effects on natural areas and sensitive areas;
 - ii) Special design features made specifically to avoid or minimize adverse effects on natural areas and sensitive areas;
 - iii) Establishment of vegetation proposed near residential, recreation, and scenic areas;
 - iv) Special design features made specifically so that the proposed structures, buildings and appurtenances shall blend with pre-existing structures and buildings;
 - v) Methods for preservation of vegetation for wildlife habitat and screening;
 - vi) A list of all fuels to be used on the site and a detailed description of how each shall be contained; and
 - vii) A statement describing any hazardous materials or wastes (including quantities) to be used or generated on the site.
- i. A description of the existing and planned land uses of the proposed prime and alternative sites and surrounding areas;
- j. A description of the scenic, natural, historic, and recreational characteristics of the proposed prime and alternative sites and surrounding areas;
- k. Sight-line graphs to the proposed prime and alternative sites from visually impacted areas (a site from which the facility can be seen) such as residential developments, recreational areas, and historic sites;
- l. A list describing the type and height of all existing and proposed communication structures, buildings and appurtenances within a ten-mile radius within the search area, or within any other area from which use of the proposed prime or alternative structure might be feasible from a location standpoint for purposes of the application;
- m. A description of efforts to share existing and proposed structures, or consolidate telecommunications antennas of public and private services onto the proposed facility;
- n. A description of the technical alternatives and a statement containing justification for the proposed facility;
- o. A description of rejected sites with a U.S.G.S. topographic quadrangle map (scale 1 inch = 2,000 feet) marked to show the location of rejected sites;
- p. A detailed description and justification for the site selected, including a description of siting criteria and the process by which other possible sites were considered and eliminated including but not limited to, environmental effects, cost differential, coverages lost or gained, potential interference with other facilities, and signal loss due to topographical features compared to the proposed prime and alternate sites;
- q. A statement describing hazards to human health, if any, with supporting data and references to regulatory standards;
- r. A statement of the estimated costs for site acquisition and construction of a facility at the prime and alternative sites;
- s. A schedule showing the proposed program of site acquisition, construction, completion, operation and relocation or removal of the existing facilities for the prime and alternative sites;
- t. A copy of any filing or application that the applicant has been required to make together with any decision with regard to such filing or application;
- u. A landscape plan showing the proposed site and location before and after development, including topography screening proposed to protect abutters;
- v. Plans which show location and siting at a prime and at an alternate site; and

- w. A technical report which demonstrates that the maximum height of the installation is the minimum feasible to provide the intended service.
- 22. All written information submitted in accordance with the requirements listed in any previous section of this bylaw shall be certified by an appropriate licensed professional.
- 23. The Planning Board may also refer applications to the Board of Health, the Zoning Board of Appeals, and the Conservation Commission for review.
- 24. The Planning Board shall not approve any application that does not comply with all the requirements of this bylaw. The Board does, however, have the right to waive any part of this bylaw, when in its opinion, such a waiver would not be detrimental to the public interest, cause the Town any expense, or be inconsistent with the intent and purpose of this bylaw.
- 25. Any permit issued by the Planning Board for a communications facility shall be valid for the applicant only; it may not be reassigned, leased or sold.
- 26. Municipal and private, non-commercial uses are exempted from this bylaw.
- 27. The Planning Board shall act in accordance with the standards and requirements set forth herein and in accordance with the Massachusetts General Laws.
- 28. The invalidity of any section of this bylaw shall not invalidate any other section.

§ 40.6 Growth Management

- A. Purpose. The purpose of § 40.6 of the bylaw is to provide adequate time for the Town to plan and prepare for the effects of future residential growth, and ensure that the pace of growth does not diminish the Town's rural character, impair natural resources or overwhelm town services or infrastructure. The gradual pace of development afforded by the bylaw will provide opportunities for the Town to: 1) purchase and protect open spaces, thereby reducing the Town's ultimate density and preserving, as much as possible, the Town's rural character; 2) undertake comprehensive planning to identify a community land use vision to guide the regulation of land use and development; 3) assess the impacts of anticipated growth on town infrastructure, roads, drinking water supply and fresh and marine wetlands and water bodies, and plan appropriate measures to protect the integrity of those resources; and 4) develop a financially sustainable plan for the provision of town services and infrastructure necessary to support the community's land use vision. This section, 40.6, shall expire on December 31, 2021. (4/16)
- B. Residential Development Limitation.
 - 1. There shall be no more than forty (40) building permits for new single family dwelling units authorized within any calendar year, beginning January 1 and ending December 31. Permits not issued within the calendar year may be carried over and added to the next calendar year's quantity. This bylaw shall be effective as of March 3, 2006.
 - 2. The Building Commissioner shall issue building permits in accordance with the following:
 - a. For the purposes of this section, an application shall be accepted for review only if it conforms to all applicable building and zoning requirements, and has received all necessary approvals from pertinent Town boards, including the Board of Health, Planning Board, Board of Appeals, Conservation Commission, and so forth.
 - b. Applications for building permits for single family dwelling units certified complete by the Building Commissioner shall be dated and time-stamped upon determination of completeness. Building permits shall be issued on a first-come/first-served basis.
 - c. Within any calendar month, no more than six (6) permits for single family dwelling units may be issued. Permits not issued during one month may be carried forward and issued the next month, assuming it is within the same calendar year.
 - d. No applicant may have more than one (1) application processed for a single family dwelling unit in any given month.
 - e. No more than four (4) building permits for single family dwelling units shall be issued to any one applicant within a single calendar year unless 1) there are available permits

within the yearly limit and 2) no other applicant has applied for them before the fifteenth day of December.

C. Exemptions.

1. Construction of affordable housing units provided such housing units have deed restrictions to ensure they remain affordable for the maximum period permitted under Massachusetts law. Occupancy permits for such affordable units are not to be issued until the restricted deed has been recorded or registered.
2. A presently existing structure which is otherwise subject to this bylaw but which is destroyed by fire or other calamity. Such a structure may be rebuilt outside of these limitations as long as: 1) the structure is not expanded beyond one additional bedroom; 2) it complies with all other provisions of these bylaws; and 3) so long as application for a building permits is submitted within two (2) years of the destruction.
3. A presently existing structure which, following demolition, is being rebuilt to no more than one hundred twenty-five percent (125%) of its current footprint. Such a structure may be rebuilt so long as: 1) the structure is not expanded beyond one additional bedroom; 2) it complies with all other provisions of these bylaws; and 3) the application for a building permit is submitted within two (2) years of the existing structure's demolition. (4/06)

§ 40.7 Large-Scale Ground-Mounted Photovoltaic Arrays (4/11)

- A. Purpose and Intent. The purpose of this bylaw is to promote the creation of new Large-Scale Ground-Mounted Solar Photovoltaic Installations (250kW or larger and covering at least one acres in size) by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations to address public safety, minimize impacts on scenic, natural and historic resources, and provide adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, and/or repair of Large-Scale Ground-Mounted Solar Photovoltaic Installations.

This section shall apply to Large-Scale Ground-Mounted Solar Photovoltaic Installations proposed for construction after the effective date of this section. This section shall also pertain to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

B. Definitions

1. 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 may be subject to Large Scale Solar Review to determine conformance with local zoning ordinances or bylaws. Projects subject to Large Scale Solar Review cannot be prohibited, but can be reasonably regulated by the building commissioner or local inspector.
2. Designated Location: The location[s] designated by the Zoning Bylaw, in accordance with Massachusetts General Laws Chapter 40A, section 5, where Large-Scale Ground-Mounted Solar Photovoltaic Installations may be sited As-of Right. Said location(s) are shown on the Zoning Map of Truro pursuant to Massachusetts General Laws Chapter 40A Section 4. This map is hereby made a part of this section and is on file in the Office of the Town Clerk.
3. Large-Scale Ground-Mounted Solar Photovoltaic Installation: A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC. All Large-Scale Ground-Mounted Solar Photovoltaic Installation shall be owned and operated by either the Town of Truro or under agreements with the Town of Truro.

4. Large Scale Solar Review: A review by the Planning Board to determine conformance with local zoning ordinances or bylaws.
 5. On-Site Solar Photovoltaic Installation: A solar photovoltaic installation that is constructed at a location where other uses occur at the underlying property.
 6. Nameplate Capacity: The maximum rated output of the electric power production of the photovoltaic system in Direct Current (DC).
 7. Solar Photovoltaic Array: an arrangement of solar photovoltaic panels.
- C. Large Scale Solar Review. Prior to construction, installation or modification, Large-Scale Ground Mounted Solar Photovoltaic Installations with 250 kW or larger nameplate capacity shall undergo Large Scale Solar Review by the Planning Board as provided below. In accordance with Section 22(c) of the Massachusetts Green Communities Act, Large Scale Solar Review shall be expedited and no decision shall be rendered more than one (1) year after the date of the application.
1. Compliance with Laws, Ordinances and Regulations.
The construction and operation of all Large-Scale Ground-Mounted 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 the installation shall be constructed in accordance with the State Building Code. No Large-Scale Ground-Mounted Solar Photovoltaic Installation shall be constructed, installed or modified without first obtaining a building permit.
 2. Large Scale Solar Review Application and Plan Requirements.
 - 2.1 Two (2) copies of a properly executed application for Large Scale Solar Review shall be filed with the Planning Board, along with a filing fee of \$50.00.
 - 2.2 Twelve (12) copies of site plan(s), prepared by a Registered Land Surveyor licensed in the Commonwealth of Massachusetts, at a scale of one inch equals forty feet (1" = 40') shall be filed with the Planning Board, including:
 - a. North arrow and locus map;
 - b. Property boundaries;
 - c. Name/Description of project;
 - d. Topography, both existing and proposed, including proposed drainage;
 - e. Zoning designation;
 - f. Location of proposed structures, drives, etc., including setbacks;
 - g. Sign(s) location(s);
 - h. Landscaping, both existing and proposed;
 - i. Lighting, including locations, type and wattage.
 - 2.3 Twelve (12) copies of plans or drawings of the Large-Scale Ground-Mounted Solar Photovoltaic Installation prepared by a Registered Professional Engineer licensed in the Commonwealth of Massachusetts, showing the proposed layout of the system and any potential shading from nearby structures.
 - 2.4 Twelve (12) copies of the one or three line electrical diagram detailing the Large-Scale Ground-Mounted Solar Photovoltaic Installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices.
 - 2.5 Twelve (12) copies of the documentation of the major system components to be used, including the PV panels, mounting system, and inverter(s);
 - 2.6 Twelve (12) copies of the documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed installation.
 - 2.7 Twelve (12) copies of an operation and maintenance plan (see also Section 40.7 (D)).
 - 2.8 Twelve (12) copies of proof of liability insurance.

- 2.9 Twelve (12) copies of the description of financial surety that satisfies Section 40.7 (N)(3).
3. Waiver of Requirements: Upon written request submitted as part of the application, the Planning Board may waive any requirements.
- D. For Large-Scale Ground-Mounted Solar Photovoltaic Installations that require a Special Permit, the Planning Board shall serve as the Special Permit Granting Authority. The Planning Board shall grant a special permit only if it finds that the proposal complies with the provisions of this section and section 30.8.
- E. Operation & Maintenance Plan. The project proponent shall submit a plan for the operation and maintenance of the Large-Scale Ground-Mounted Solar Photovoltaic Installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.
- F. No Large-Scale Ground –Mounted Solar Photovoltaic Installation shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the installation owner or operator’s intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- G. Dimension and Density Requirements.
1. Setbacks. Setbacks from all boundary lines shall be a minimum of fifty feet (50’).
 2. Lot Size. Within the Solar Farm Overlay District and all other all other zoning districts where the use is permitted the minimum lots size shall be two (2) acres.
 3. Appurtenant Structures. All appurtenant structures to Large-Scale Ground-Mounted Solar Photovoltaic Installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.
- H. Design Standards.
1. Lighting. Lighting of Large-Scale Ground-Mounted Solar Photovoltaic Installations 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 Large-Scale Ground-Mounted Solar Photovoltaic Installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.
 2. Signage. Signs on Large-Scale Ground-Mounted Solar Photovoltaic Installations shall comply with a Truro Sign Code. A sign that identifies the owner and provides a 24-hour emergency contact phone number shall be required.
Large-Scale Ground-Mounted Solar Photovoltaic Installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the installation.
 3. Utility Connections.
Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections for the Large-Scale Ground-Mounted 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.

I. Safety and Environmental Standards.

1. Emergency Services. The Large-Scale Ground-Mounted Solar Photovoltaic Installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Truro Fire Chief. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
2. Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the Large-Scale Ground-Mounted Solar Photovoltaic Installation or otherwise prescribed by applicable laws, regulations, and bylaws.

J. Monitoring and Maintenance.

1. Large-Scale Ground-Mounted Solar Photovoltaic Installation Conditions. The Large-Scale Ground-Mounted Solar Photovoltaic Installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Truro Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the installation and any access road(s), unless accepted as a public way.
2. Modifications. All material modifications to a Large-Scale Ground-Mounted Solar Photovoltaic Installation made after issuance of the required building permit shall require approval by the Planning Board.

K. Abandonment and Decommissioning.

1. Removal Requirements. Any Large-Scale Ground-Mounted Solar Photovoltaic Installation which has reached the end of its useful life or has been abandoned consistent with Section 40.7(J)(2) shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Large Scale Solar Review Authority by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:
 - 1.1 Physical removal of all Large-Scale Ground-Mounted Solar Photovoltaic Installations, structures, equipment, security barriers and transmission lines from the site.
 - 1.2 Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
 - 1.3 Stabilization or re-vegetation of the site as necessary to minimize erosion. The Large Scale Solar Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
2. Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the Large-Scale Ground-Mounted Solar Photovoltaic Installation shall be considered abandoned when it fails to operate for more than one (1) year without the written consent of the Planning Board. If the owner or operator of the large-Scale Ground-Mounted Solar Photovoltaic Installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

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

Housing Choice Act of 2020 Update

February 1, 2021

On January 14, 2021, Governor Charlie Baker signed into law House Bill 5250 – “An Act Enabling Partnerships of Growth”, the so-called “Housing Choice Law”. The stated purpose of this legislation is to: “finance improvements to the commonwealth’s economic infrastructure and promote economic opportunity.” To that end, the legislation includes more than \$682,000,000 in capital authorizations. However, the Act also makes a number of substantial changes to housing and development statutes, including G.L. c.40R (Smart Growth Districts), G.L. c.40V (Housing Development Initiative Programs) and G.L. c.40A (the Zoning Act). The purpose of this Memorandum is to alert you to several important amendments to G.L. c.40A that took effect immediately upon the signing of the bill into law. Future updates will address other important provisions of the new legislation.

Among the important changes to the Zoning Act are: (1) amendments to Section 5 reducing from 2/3 to simple majority the quantum of vote required for the legislative body to approve specified categories of local zoning; (2) amendments to Section 9 reducing the quantum of vote required for issuance of specified categories of special permits; (3) the addition of a new Section 3A that mandates “as of right” multi-family housing districts in communities serviced by public transportation; and (4) the insertion in Section 1A of several new definitions. We have addressed these changes below, in turn.

As you will see, there may be value in reviewing existing zoning bylaws or ordinances to determine whether amendments will need to be made to address these revisions to state law.

Quantum of Vote Requirements Lowered for Certain Zoning Amendments

As of January 14, 2021, only a majority vote of the legislative body is required to enact the following types of local zoning:

1. A by-law or ordinance to allow any of the following as of right:
 - a. Multifamily housing or mixed-use development in an eligible location;
 - b. Accessory dwelling units, whether within the principal dwelling or a detached structure on the same lot; or
 - c. Open-space residential developments.
2. A by-law or ordinance to allow by special permit:
 - a. Multi-family housing or mixed-use development in an eligible location;
 - b. An increase in the permissible density of population or intensity of a particular use in a proposed multi-family or mixed use development;

- c. Accessory dwelling units in a detached structure on the same lot; or
 - d. A diminution in the amount of parking required for residential or mixed-use development.
3. A by-law or ordinance that:
- a. Provides for Transfer of Development Rights (TDR) zoning or natural resource protection zoning where adoption of such zoning promotes concentration of development in areas the municipality deems “most appropriate” for such development but which will not result in a diminution in the maximum number of housing units that could be developed within the municipality; or
 - b. Modifies zoning regulations beyond what would otherwise be permitted under the existing zoning with respect to bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements to allow for additional housing units.
4. The adoption of a “smart growth” or “starter home” zoning district in accordance with G.L. c.40R, §3, subject to specific requirements.

For cities and towns with councils of fewer than 25 members, the new law creates a process to increase the quantum of vote to 2/3. If the owners of 80% or more of the land area included in the zoning change, extending 300 feet therefrom, file a written protest prior to final action, then a 2/3 vote will be required to enact that particular change.

Finally, as will be addressed in more detail below, the Act amends G.L. c.40A, §1A to define the categories of zoning amendments requiring only a majority vote, including: “accessory dwelling unit”; “as of right”; “open space development”; “multi-family housing”; “mixed-use development”; “eligible location”; and “lot”.

Quantum of Vote Reduced for Certain Special Permits

Also immediately effective are amendments to the special permit provisions of G.L. c.40A, § 9, reducing the quantum of vote required for the grant of specified types of special permits. Specifically, instead of requiring approval by a supermajority vote of all of the members of the special permit granting authority, only a simple majority vote is now required to grant a special permit allowing any of the following:

1. Multifamily housing located within 1/2 mile of a commuter rail station, subway station, ferry terminal or bus station; provided, that not less than 10 per cent of the housing shall be affordable to and occupied by households whose annual income is less than 80% of the area-wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction;
2. Mixed-use development in centers of commercial activity within a municipality, including town and city centers, other commercial districts in cities and towns and rural village districts; provided, that not less than 10% of the housing shall be affordable to and occupied by households whose annual income is less than 80% of the area-wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction; or

3. A reduced parking space to residential unit ratio requirement; provided, that a reduction in the parking requirement will result in the production of additional housing units.

As noted above, the terms “multifamily housing” and “mixed-use development” are now defined terms in G.L. c.40A, §1A.

New Zoning Requirements for “MBTA Communities”

The new Housing Choice Law amends the Zoning Act, G.L. c.40A, by inserting a new section 3A. Chapter 40A, §3A requires each “MBTA Community” to “have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right” An MBTA Community is now broadly defined in G.L. c.40A, §1A. A preliminary list of the MBTA Communities subject to the application of this law appears at the end of this document.

General Laws c.40A, § 3A mandates that a multi-family housing zoning district must exist in each MBTA Community and that (1) such zoning district shall not be subject to age restrictions and must be suitable for families with children; (2) such zoning district shall have a minimum gross density of at least 15 units per acre; and (3), if applicable, that such district be located not more than ½ mile from a commuter rail station, subway station, ferry terminal, or bus station.

Section 3A also creates a penalty for failure to ensure the existence or creation of such a district. MBTA Communities that fail to create a zoning district in which multi-family housing is permitted as of right will be ineligible for funds from the Housing Choice Initiative Program, the Local Capital Projects Fund, and the MassWorks Infrastructure Program. The Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation are charged with promulgating guidelines to determine if an MBTA Community is in compliance with this new section. When additional information is available concerning these regulations, we will update you.

Certain Zoning Terms Expressly Defined

Several of the amendments to G.L. c.40A introduced by this new legislation employ terms that were previously undefined. Now, the following 10 terms are specifically defined in G.L. c.40A, §1A:

- Accessory dwelling unit;
- As of right;
- Eligible locations;
- Gross density;
- Lot;
- MBTA community;
- Mixed-use development;
- Multi-family housing;
- Natural resource protection zoning; and
- Open space residential development.

Also of note, the new legislation replaces the definition of “Transfer of development rights” in G.L. c.40A, §1A, and substitutes the term “open space residential” for the word “cluster” in G.L. c.40A, § 9.

Conclusion

The above summary is intended to highlight the changes to the Zoning Act that have the most immediate and consequential impacts on the Commonwealth’s cities and towns. Notably, many of the terms now defined in G.L. c.40A, §1A have long been used and variously defined in local zoning by-laws and ordinances. While amendments to municipal zoning definitions may not be necessary immediately, municipalities should anticipate that differences between the new definitions in G.L. c.40A and those already employed in municipal zoning by-laws and ordinances may eventually lead to problems. This may be particularly important when determining the applicable quantum of vote requirements for certain zoning changes and special permits. For that reason, it will be useful to review the municipality’s current zoning bylaw or ordinance to determine if any immediate revisions are needed. In many towns, there may still be time to address these issues at the Annual or Special Town Meeting.

Should you have any questions regarding these changes or any other aspects of the new legislation, please contact your KP Law Attorney.

Preliminary List

MBTA COMMUNITIES (G.L. c. 40A, § 3A)

Abington	Acton	Amesbury	Andover	Arlington	Ashburnham
Ashby	Ashland	Attleboro	Auburn	Ayer	Bedford
Bellingham	Belmont	Berkley	Beverly	Billerica	Boston
Boxford	Boxborough	Braintree	Bridgewater	Brockton	Brookline
Burlington	Cambridge	Canton	Carlisle	Carver	Chelmsford
Chelsea	Cohasset	Concord	Danvers	Dedham	Dover
Dracut	Duxbury	East Bridgewater	Easton	Essex	Everett
Fitchburg	Foxborough	Framingham	Franklin	Freetown	Georgetown
Gloucester	Grafton	Groton	Groveland	Halifax	Hamilton
Hanover	Hanson	Harvard	Haverhill	Hingham	Holbrook
Holden	Holliston	Hopkinton	Hull	Ipswich	Kingston
Lakeville	Lancaster	Lawrence	Leicester	Leominster	Lexington
Lincoln	Littleton	Lowell	Lunenburg	Lynn	Lynnfield
Malden	Manchester-by-the-Sea	Mansfield	Marblehead	Marlborough	Marshfield
Maynard	Medfield	Medford	Medway	Melrose	Merrimac
Methuen	Middleborough	Millbury	Middleton	Millis	Milton
Nahant	Natick	Needham	Newbury	Newburyport	Newton
Norfolk	North Andover	North Attleborough	North Reading	Northborough	Northbridge
Norton	Norwell	Norwood	Paxton	Peabody	Pembroke
Plymouth	Plympton	Princeton	Quincy	Randolph	Raynham
Reading	Rehoboth	Revere	Rochester	Rockland	Rockport
Rowley	Salem	Salisbury	Saugus	Scituate	Seekonk
Sharon	Sherborn	Shirley	Shrewsbury	Somerville	Southborough
Sterling	Stoneham	Stoughton	Stow	Sudbury	Sutton
Swampscott	Taunton	Tewksbury	Topsfield	Townsend	Tyngsborough
Upton	Wakefield	Walpole	Waltham	Wareham	Watertown
Wayland	Wellesley	Wenham	West Boylston	West Bridgewater	West Newbury
Westborough	Westford	Westminster	Weston	Westwood	Weymouth
Whitman	Wilmington	Winchester	Winthrop	Woburn	Worcester
Wrentham					

**Please note that this list is preliminary, and not exhaustive. Communities may be subject to MBTA Community requirements as a result of special legislation.*

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SUMMARY FROM BARBARA’S MEMO 9/29/2020
Truro Zoning and Housing

ALLOWED UNDER EXISTING BYLAWS

Under the Use Table of Section 30.2, Principle Uses, the only as-of-right, year-round residential use in Truro is “single family dwelling,” permitted in all Zoning Districts. By special permit, several other residential uses of greater density are allowed:

1. An Accessory Dwelling Unit is permitted as an accessory use on any buildable lot by special permit from the Planning Board
2. “Duplex Houses and Apartments” are allowed by special permit from the ZBA Under Section 40.1,
 - a. ZBA may approve new construction of a duplex on a lot of one acre or more in any district; and
 - b. may approve conversion of a single-family dwelling to two dwelling units on a lot meeting minimum lot area requirements, excluding the Seashore District and Water Resource Protection District. In either case, one of the two units must be owner-occupied; common ownership is retained.
3. A cottage or cabin colony, motor court, motel or hotel may be converted to single-family or multi-family use by special permit from the Board of Appeals. Under Section 40.3, the density permitted is one unit per 3,000 square feet (2,100 in Beach Point), with an exemption for pre-1987 facilities meeting all other requirements. Seasonal condominium use is permitted.
4. Affordable Rental Housing Overlay District, by special permit from ZBA, affordable *rental* housing units only may constructed in a cluster development (on no more than 25% of the parcel area) of up to sixteen units; no single family units allowed. Under Section 30.6, all units must be affordable and up to 70% must be reserved for Truro residents.
 - * *16 units is trigger for public water supply*
 - * *Under 16 can provide water within footprint of lot*

NOT ALLOWED UNDER EXISTING BYLAWS

1. Multi-family housing (three or more units), either ownership or rental, cannot be constructed as of right in any zoning district
2. Where multifamily housing is allowed, by special permit in the Overlay District, it must be affordable housing (every unit); it cannot be market rate housing or a mixed-income development
3. Two-family housing, either ownership or rental, cannot be constructed as of right in any zoning district
4. Where the new construction of two dwelling units is allowed, by special permit under Section 40.1, the units cannot be conveyed to separate owners (condominiums).
5. Single-family dwellings may not be constructed lots smaller than 33,750 square feet (3 acres in Seashore District), except as protected under G.L. c. 40A, s. 6 (minimum 5000 square feet/50 feet frontage)
6. In addition, trailers may not serve as year-round dwelling units.

Rationale - The above limitations on density are related to the Town's desire to:

- retain rural character, an unquestionably valid concern and priority for the Town.
- Title 5 and Truro septic system regulations also limit density (as do state regulations protecting drinking water supply),

but zoning remains the key to determining housing density as the Town considers its land use patterns and shapes future development.

POTENTIAL REVISIONS TO INCREASE HOUSING PRODUCTION

1) Inclusionary zoning. Common tool adopted by municipalities; requires the creation of affordable unit(s) in proportion to market rate units produced. A threshold of 6 units is typical; some include an opt-out with a cash payment to an affordable housing fund.

- Where residential development at this scale (i.e., development of six or more residential lots at once) may not be a reliable or predictable pattern, the opportunities presented through inclusionary zoning alone may be minimal.
- An alternative might be to combine inclusionary zoning with relief on lot dimensions as an incentive – for example, allowing six units, one of which would be affordable, on smaller lots or in a cluster-type development. But this would require an acceptance of an increased density of market rate housing. By comparison, increased density is permitted in the Affordable Rental Housing Overlay District only if *all* units are affordable (and if all are rental).

2) Two-unit condominium ownership. Section 40.1.B allows for the construction of two units on one acre totaling 3,000 square feet, but the units must remain in common ownership and one unit must be owner-occupied. The Bylaw could be amended to allow for the units to be in condominium form without restriction as to occupancy. This would incentivize the construction of market rate duplexes – again requiring an acceptance of increased density of market rate housing.

3) Overlay District – Increased Density. The Town could rezone a designated area in which increased density is permitted through reduced lot area requirements, or through cluster-type development and (unlike the existing Overlay District) allowing for ownership or rental dwelling units.

- A percentage of these units could be required to be affordable – in effect, inclusionary zoning – or not, depending upon the Town’s goals.
- This could be a reworking of the existing Affordable Rental Housing Overlay District, or a new Bylaw.
- Again, this turns on whether the Town’s goal is exclusively affordable housing construction.

4) Rezoning – As of Right Uses. rezone areas to allow for two- family or multi-family use as of right;

- Title 5 and the Town’s septic regulations would determine the density at which property could be developed.
- The zoning could include an affordability requirement, or not, depending on the Town’s goals.

5) Rezoning – “Waivers” for affordable units. The Bylaw could provide for approval of an affordable unit (rental or ownership) on a lot not meeting area, frontage, or setback requirements, by special permit or other discretionary permit.

6) Revision of Section 40.3 – Conversion of Cottage or Cabin Colony, etc. exploration of how this Bylaw might be leveraged or adapted to provide for year-round units.

7) Over-shop housing/mixed use.

- potential for housing units to be added to existing commercial structures, or to be created as a component of a new development.
- could provide for this use by special permit, and
- could include an affordability requirement or not, depending upon the Town’s goals.

**APPENDIX 2
TABLE 1**

Recommended Geometric Design Standards for Subdivisions

DESIGN ELEMENTS	Type A	Type B	Type C	Type D & E
Roadway layout				
Minimum right-of-way width	40 feet	40 feet	40 feet	40 feet
Minimum Roadway width – not including berms	14 feet	18 feet	20 feet	22 feet
Shoulder width (each side of roadway)	4 feet	4 feet	4 feet	4 feet
Horizontal Alignment				
Minimum radius at street centerline	125 feet	125 feet	290 feet	290 feet
Vertical Alignment				
Clear sight distance from 4'-6" to 4" above pavement	200 feet	200 feet	350 feet	350 feet
Minimum vertical curve	100 Feet	150 feet	200 feet	200 feet
Grade(1)				
Maximum grade	8%	8%	8%	8%
Minimum grade	1%	1%	1%	1%
Maximum grade, within 30' from intersection	2%	2%	2%	2%
Intersection Standards				
Minimum intersection angle	60°	60°	60°	85°
Minimum centerline offset	125 feet	125 feet	200 feet	200 feet
Minimum curb (or edge of roadway) radius	20 feet	20 feet	30 feet	30 feet
Dead-end Street				
Maximum length	1,000 feet	1,000 feet	1,000 feet	Not allowable
Minimum radius of circular turnaround, to curb or to edge of pavement	40 feet	40 feet	40 feet	n/a
Pavement and Storm Frequency Standards				
Unpaved(2)	6" T-Base 3" crushed Stone	n/a	n/a	n/a
Pavement, compacted thickness	3" total 1½" binder 1½" finish	3" total 1½" binder 1½" finish	4½" total 2½" binder 2" finish	4½" total 2½" binder 2" finish
Base, compacted thickness	8" total 4" sub-base 4" base	8" total 4" sub-base 4" base	12" total 6" sub-base 6" base	12" total 6" sub-base 6" base
Storm frequency for drainage calculations	50 years	50 years	50 years	50 years
Storm frequency for cross culverts sizing	50 years	50 years	50 years	50 years

n/a - Not applicable. (1) The maximum grade for all roads shall be a maximum of 8%. The "Maximum Grade" may be waived, but cannot exceed 10%, for a distance of one hundred (100) feet. (2) Although unpaved roads may be accepted as access under these regulations, they will not be considered for acceptance as a town road unless reconstructed.