

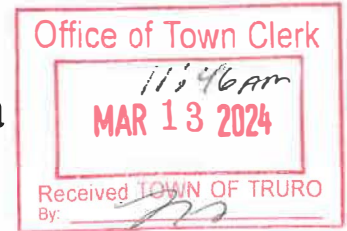


Truro Planning Board Agenda

Remote Zoom Public Hearing

Wednesday, March 20, 2024 – 5:00 pm

www.truro-ma.gov



Join the meeting from your computer, tablet or smartphone:

<https://us02web.zoom.us/j/83200675096>

Dial in: +1-646-931-3860 or +1-305-224-1968

Meeting ID: 832 0067 5096 Passcode: 143765

Open Meeting

This will be a remote public meeting. Citizens can view the meeting on Channel 8 in Truro and on the web on the "Truro TV Channel 8" 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 by entering the meeting link; clicking on the agenda's highlighted link; clicking on the meeting date in the Event Calendar; or by calling in toll free. 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 Liz Sturdy, Planning Department Assistant, at esturdy@truro-ma.gov.

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.

1. Planner Report
2. Chair Report
3. Minutes – None

Proposed Amendments to the Town of Truro Zoning Bylaw: Public hearing pursuant to G.L. c.40A, §5 regarding proposed amendments to the following sections of the Town of Truro Zoning Bylaws:

2023 Special Fall Town Meeting:

- ◆ Amend §40.1 Duplex Houses and Apartments and §30.2 Use Table; and
- ◆ Amend §30.8.B (Special Permits).

2024 Annual Town Meeting:

- ◆ Planning Board proposed articles for 2024 ATM zoning bylaw changes:
 - Amend Zoning Bylaw §10.4 Definitions;
 - Amend Zoning Bylaw §50.1 Area and Height Regulations;
 - Add Zoning Bylaw §40.8 Attainable Housing on Undersized Lots and Update §30.2 Use Table.

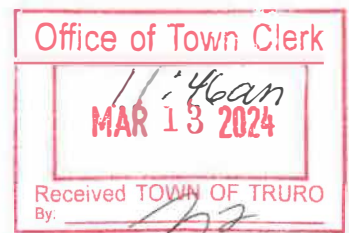
- ◆ ADU Bylaw Amendments (“Housekeeping”):
 - Amend Zoning Bylaw §40.2.C.3 by deleting language “This requirement may be reduced or waived at the discretion of the Planning Board” as approved at 2021 ATM;
 - Amend Zoning Bylaw §40.2.D.1 striking “Town Clerk” and inserting “Building Department” as approved at 2021 ATM;
 - Amend Zoning Bylaw §40.2.G inserting “Commissioner” as approved at 2021 ATM;
 - Amend Zoning Bylaws §50.2.B.1.c and §50.2.B.2.c striking “Planning Board” and inserting “Building Commissioner” and striking “1,000 sq. ft.” and inserting “900 sq. ft.” as approved at 2021 ATM;
 - Amend Zoning Bylaw §30.2 Use Table, Accessory Uses, Notes #9 striking “Planning Board” and inserting “Building Commissioner” and striking “Special”.

Board Discussion:

- ◆ Water Resources Protection Overlay District (WRPOD) – Appendix B [see attached map]

Next Meeting: Wednesday, April 10, 2024 at 5:00 pm – Public Hearing on Select Board Warrant Articles

Adjourn





United States Department of the Interior

NATIONAL PARK SERVICE
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

IN REPLY REFER TO:

CACO-2024-1.A.1.

March 19, 2024

Richard Roberts, Chair
Town of Truro Planning Board
P.O. Box 2030
Truro, MA 02666

Dear Mr. Roberts:

We are writing concerning the proposed Article XX which, among other things, proposes to amend Town of Truro Zoning Bylaw §40.2 Accessory Dwelling Unit, §50.2 Gross Floor Area, and §30.2 Use Table, Note 9. We continue to oppose the applicability of an Accessory Dwelling Unit (ADU) in Section 40.2 B.1. for a by-right building permit in any zoning district in the town as we believe that such an authorization within the Seashore District is inconsistent with federal law. The Seashore District is a single-family residential zone; despite the “accessory” dwelling language used, the bylaw allows a second separate single-family use on properties within the Seashore District; allowing kitchen facilities per Section C.1. qualifies an ADU as another residence.

Cape Cod National Seashore is federal park with enabling legislation that established a three-acre minimum for subdividing residential properties (enclosed). Properties in the Seashore District are single-family residential use unless pre-existing multi-family residential use prior to September 1, 1959 can be established. The 1962 federal Zoning Standards Regulation (enclosed) provides for accessory structures, such as garages, guest cottages (without kitchens), and barns; the regulation does not provide for more than one residential dwelling unit on a lot.

The Town of Truro adopted an ADU zoning bylaw in late 2017 that presents challenges with compatibility with park legislation and the park’s zoning standards federal regulation. Truro’s existing Accessory Dwelling Unit bylaw, Section 40.2, allows an accessory dwelling unit on any buildable lot in any zoning district, provided that the town Planning Board issues a permit. The national seashore had advocated that a Special Permit be required for an ADU within the Seashore District, which would place permitting responsibility within the Zoning Board of Appeals (ZBA). This new 2024 proposal replaces the Planning Board with the Building Commissioner, which is a lesser requirement.

It remains the National Park Service's contention that an ADU would be appropriate and legal in the Seashore District in a limited number of circumstances, so ZBA consideration of a Special Permit would be a more thorough vetting process than by-right permitting. We believe that ADUs (and habitable studios) should be a Special Permit use versus Permitted Use under zoning bylaws for the Seashore District so that due diligence can be conducted. We believe that there are only a few instances where an ADU could be approved by the Planning Board consistent with the federal regulation and statute (the Cape Cod National Seashore Zoning Standards Regulation, 36 Code of Federal Regulations Part 27, and the park legislation, Public Law 87-126, respectively), such as the following cases:

- 1) the property is a pre-existing non-conforming multi-family residential property, e.g., it contains two or more cottages that both had kitchens prior to September 1, 1959, or
- 2) the house has an integral living quarter that is "traditional to these seashore communities, are customarily incidental to the principal residential use and do not alter the essential character of the dwelling as a private residence." (36 CFR Part 27.3(e))

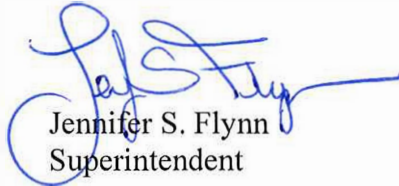
Research by the NPS is necessary to determine if a proposed ADU is appropriate within the Seashore District based on the two scenarios above; this could take place as a consultation between the park and the town during a ZBA Special Permit process. We could cooperatively determine if the ADU was permissible or if it would not be and would jeopardize ongoing eligibility for a Certificate of Suspension from Condemnation (CSC). These certificates ensure landowners, mortgage companies, realtors, and attorneys that the property cannot be taken by the government by eminent domain if they continue to meet zoning that is consistent with the Secretary of Interior's standards. We are concerned that bylaw changes could put homeowners in a situation where what a town authorizes will subject their property to potential federal acquisition by condemnation or loss of a CSC.

In 2017, the Massachusetts Attorney General's office declined to disapprove the existing zoning bylaw citing its "limited power of disapproval" and the need to cite an inconsistency with state Constitution or laws (see enclosed letter of October 16, 2017). The Attorney General referred the Town of Truro to Town Counsel as to the application of the bylaw, ensuring it is applied consistent with federal law. There has been no further discussion between the Town and the NPS.

The changes proposed in Article XX to the ADU bylaw are even more inconsistent with the federal zoning standards and the federal government is not able to consent to it as written. We note that Congress suspended condemnation authority with respect to *all* relevant improved property within a town only so long as there is in force a valid zoning bylaw approved by the Secretary of the Interior. *See* Pub. L. 87-126 (Aug. 7, 1961). We are concerned that changes to the Truro Zoning Bylaw impacting the Seashore District

that are not in conformance with applicable federal zoning standards and not consistent with the Secretary's prior approval could jeopardize the general availability of suspension of condemnation authority within the Town. In order to avoid such a circumstance, which we believe would cause considerable uncertainty for landowners, we request you reconsider the current and proposed ADU bylaw and that we work together to develop a more conforming bylaw that can be applied to the Seashore District consistent with federal law.

Sincerely,



Jennifer S. Flynn
Superintendent

Enclosures

cc:

Darin Tangeman, Town Administrator

Barbara Carboni, Truro Town Planner/Land Use Counsel

APPENDIX A: LEGISLATION AND THE TRANSFER OF FORMER STATE AND TOWN LANDS

UNITED STATES CODE, TITLE 16 — CONSERVATION

§459b. Cape Cod National Seashore; description of area

(a) The area comprising that portion of the land and waters located in the towns of Provincetown, Truro, Wellfleet, Eastham, Orleans, and Chatham in the Commonwealth of Massachusetts, and described in subsection (b) of this section, is designated for establishment as Cape Cod National Seashore (hereinafter referred to as "the seashore").

(b) The area referred to in subsection (a) of this section is described as follows:

Beginning at a point in the Atlantic Ocean one-quarter of a mile due west of the mean low-water line of the Atlantic Ocean on Cape Cod at the westernmost extremity of Race Point, Provincetown, Massachusetts:

thence from the point of beginning along a line a quarter of a mile offshore of and parallel to the mean low-water line of the Atlantic Ocean, Cape Cod Bay, and Provincetown Harbor in generally southerly, easterly, and northerly directions rounding Long Point and then southwesterly to a point a quarter of a mile offshore of the mean low-water line on the harbor side of the dike depicted on the United States Geological Survey Provincetown quadrangle sheet (1949) crossing an arm of the Provincetown Harbor;

thence northerly, along a line a quarter of a mile offshore of and parallel to the low-water line at the dike to a point easterly of the point of intersection of the said dike with the boundary of the Province Lands Reservation as depicted on the said Provincetown quadrangle sheet:

thence westerly to the said point of intersection of the dike and the Province Lands Reservation boundary,

thence along the boundaries of the Province Lands Reservation northwesterly, northeasterly, northerly, and easterly to the easternmost corner of the reservation being near United States Route 6;

thence leaving the said easternmost corner along an extension of the southerly reservation boundary line easterly to the northerly right-of-way line of United States Route 6;

thence along the northerly right-of-way line of United States Route 6 in a general easterly direction crossing the Truro-Provincetown line and continuing in the town of Truro in a generally southeasterly direction to a point four-tenths of a mile southeasterly of the southerly right-of-way line of Highland Road:

thence easterly five-tenths of a mile to a point;

thence turning and running in a southeasterly direction paralleling the general alignment of United States Route 6 and generally distant therefrom five-tenths of a mile to a point approximately 700 feet northwesterly of Long Nook Road:

thence southwesterly along a ridge generally paralleling the alignment of Long Nook Road and distant approximately 700 feet therefrom to a point two-tenths of a mile northeasterly of the northerly right-of-way line of United States Route 6;

thence southeasterly paralleling the general alignment of United States Route 6 and generally distant two-tenths of a mile northeasterly thereof to a point 300 feet south of the southerly right-of-way line of Higgins Hollow Road;

thence in a general easterly direction paralleling the southerly alignment of Higgins Hollow Road and 300 feet distant southerly therefrom to a point five-tenths of a mile east of the easterly right-of-way line of said Route 6;

thence turning and running in a southeasterly and southerly direction paralleling the general alignment of United States Route 6 and distant five-tenths of a mile easterly therefrom to a point 300 feet north of the northerly right-of-way line of North Pamet Road;

thence in a generally southwesterly direction paralleling the general alignment of North Pamet Road and generally distant 300 feet northerly therefrom to a point approximately two-tenths of a mile east of the easterly right-of-way line of United States Route 6;

thence in a southerly direction paralleling the alignment of United States Route 6 and generally distant two-tenths of a mile easterly therefrom to a point three-tenths of a mile south of South Pamet Road;

thence west to the intersection of Old County Road and Mill Pond Road;

thence following the easterly right-of-way line of Old County Road southward to a point opposite the southerly right-of-way line of Ryder Beach Road at its intersection with Old County Road;

thence eastward to a point 300 feet east of the easterly right-of-way line of said Old County Road:

thence in a southerly direction paralleling Old County Road at a distance of 300 feet to the east of the easterly right-of-way line of said road to a point 600 feet south of the southerly right-of-way line of Prince Valley Road;

thence in a generally westerly direction, crossing Old County Road and the New York, New Haven, and Hartford Railroad right-of-way to the southern extremity of the town landing and beach in the Ryder Beach area, and continuing to a point in Cape Cod Bay a quarter of a mile offshore from the mean low-water line of Cape Cod Bay;

thence turning and running along a line a quarter of a mile offshore of and parallel to the mean low-water line of Cape Cod Bay in a general southerly and easterly direction rounding Jeremy Point and thence in a general northerly direction along a line a quarter

of a mile offshore of and parallel to the mean low-water line on the westerly side of Wellfleet Harbor, to a point one quarter of a mile due north of the mean low-water line at the eastern tip of Great Island as depicted on the United States Geological Survey Wellfleet quadrangle sheet (1958);

thence north to the mean high-water line on the north shore of the Herring River estuary in the vicinity of its confluence with Wellfleet Harbor;

thence following the mean, high-water line southwestward, northwestward, and northeastward to the easterly right-of-way line of Chequesset Neck Road at its crossing of Herring River;

thence following the course of Herring River along the 20-foot contour line of the southeasterly shore thereof to a point near Mill Creek;

thence crossing Mill Creek in a northeasterly direction to the 20-foot contour level near and northeast of the confluence of Mill Creek and Herring River;

thence following generally northerly and easterly along the easterly edge of the Herring River marshes on the 20-foot contour to a point north of which the easterly right-of-way line of a medium duty road, as depicted on said Wellfleet quadrangle sheet, crosses northward across a marshy stream near the juncture of said medium duty road with Bound Brook Island Road;

thence crossing said marshy stream along said easterly right-of-way line of said medium duty road and continuing in a northerly direction to the 20-foot contour level on the north side of said marshy stream;

thence following the 20-foot contour line westward approximately 1,000 feet to its intersection with an unimproved dirt road, as depicted on said Wellfleet quadrangle sheet, leading from a point near the juncture of Bound Brook Island Road and the said medium duty road;

thence following said unimproved dirt road northwestward for approximately 1,600 feet to the 20-foot contour line bordering the southerly edge of the Herring River marshes;

thence following said 20-foot contour line in an easterly direction to Route 6;

thence crossing Route 6 and continuing to a point on the easterly right-of-way line of a power transmission line as depicted on said Wellfleet quadrangle sheet;

thence in a general southerly direction along the said easterly right-of-way line of a power transmission line to the Eastham-Wellfleet town line;

thence southeasterly for a distance of approximately 5,200 feet to a point due north of the intersection of the easterly right-of-way line of Nauset Road with the northerly right-of-way line of Cable Road;

thence due south to the intersection of the said easterly right-of-way line of Nauset Road and the said northerly right-of-way line of Cable Road;

thence in a general southerly direction crossing Cable Road and along said easterly right-of-way line of Nauset Road to a point

500 feet north of the northerly right-of-way line of Doane Road and its intersection with Nauset Road;

thence west to a point 500 feet west of the westerly right-of-way line of Nauset Road;

thence southerly and westerly 500 feet from and parallel to the said right-of-way line of Nauset Road to the easterly right-of-way line of Salt Pond Road;

thence southerly along the easterly right-of-way line of said Salt Pond Road to its intersection with the southerly right-of-way line of Nauset Road;

thence westerly along the southerly right-of-way line of Nauset Road to its intersection with the easterly right-of-way line of United States Route 6;

thence southerly along the easterly right-of-way line of said Route 6 a distance of about four-tenths of a mile to the northerly boundary of the Eastham town hall property;

thence easterly to a point one-tenth of a mile from United States Route 6;

thence turning and running in a generally southerly direction paralleling the general alignment of United States Route 6 and generally distant therefrom one-tenth of a mile to a small stream approximately one-tenth of a mile beyond Governor Prence Road extended;

thence southeasterly along the said stream to the Orleans-Eastham town line;

thence along the Orleans-Eastham town line to the southerly tip of Stony Island;

thence generally southeasterly in the town of Orleans by Nauset Harbor Channel to a point due north of the northerly tip of Nauset Heights as depicted on United States Geological Survey Orleans quadrangle sheet (1946);

thence due south to the 20-foot contour line in Nauset Heights as delineated on the said Orleans quadrangle sheet;

thence generally southerly along the said 20-foot contour to a point about one-tenth of a mile northerly of Beach Road;

thence southwestward along a line intersecting Beach Road at a point two-tenths of a mile easterly of the so-called Nauset Road leading northerly to Nauset Heights;

thence southerly to a head of a tributary to Little Pleasant Bay at the northerly tip of Pochet Neck as depicted on the said Orleans quadrangle sheet;

thence generally southerly along the thread of channel of the said tributary passing westerly and southwestward around Pochet Island and thence southwestward into Little Pleasant Bay passing to westerly of the northerly tip of Sampson Island, the westerly tip of Money Head, and the southwestward tip of Hog Island following in general the centerline of Little Pleasant Bay to Pleasant Bay;

thence generally southeasterly in Pleasant Bay along a line passing midway between Sipson Island and Nauset Beach to a point on the Chatham-Orleans town line one-quarter of a mile westerly of the mean low-water line of Pleasant Bay on the westerly shore of Nauset Beach;

thence generally southerly In Pleasant Bay in the town of Chatham along a line a quarter of a mile offshore of and parallel to the said mean low-water line of Pleasant Bay on the westerly shore of Nauset Beach to a point a quarter of a mile south of the mean low-water line of the southern tip of Nauset Beach;

thence easterly rounding the southern tip of Nauset Beach along a line a quarter of a mile offshore of and parallel thereto;

thence generally northerly and northwesterly, and westerly along a line a quarter of a mile offshore of and parallel to the mean low-water line of the Atlantic Ocean on the easterly shore of Nauset Beach and on to the outer cape to the point of beginning.

(Pub. L. 87-126, 11, Aug. 7, 1961, 75 Stat. 284.)

SEPARABILITY OF PROVISIONS

Section 10 of Pub. L. 81-126 provided that: "If any provision of this Act (sections 459b to 459b-8 of this title) or the application of such provision to any person or circumstance is held invalid, the remainder of this Act [such sections] or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459b-1 to 459b-8 of this title.

S 459b-1. Acquisition of property

(a) Authority of Secretary; manner and place; concurrence of State owner; transfer from Federal agency to administrative jurisdiction of Secretary

The Secretary of the Interior (hereinafter referred to as "Secretary") is authorized to acquire by purchase, gift, condemnation, transfer from any Federal agency, exchange, or otherwise, the land, waters, and other property, and improvements thereon and any interest therein, within the area which is described in section 459b of this title or which lies within the boundaries of the seashore as described pursuant to section 459b-2 of this title (both together hereinafter in sections 459b to 459b-8 of this title referred to as "such area"). Any property, or interest therein, owned by the Commonwealth of Massachusetts, by any of the towns referred to in section 459b of this title, or by any other political subdivision of said Commonwealth may be acquired only with the concurrence of such owner. Notwithstanding any other provision of law, any Federal property located within such area may, with the concurrence of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the provisions of sections 459b to 459b-8 of this title.

(b) Use of funds; fair market value

The Secretary is authorized (1) to use donated and appropriated funds in making acquisitions under sections 459b to 459b-8 of this title, and (2) to pay therefor not more than the fair market value of any acquisitions which he makes by purchase under sections 459b to 459b-8 of this title.

(c) Exchange of property; cash equalization payments; report* to Congress

In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property located within such area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary within such area. The properties so exchanged shall be approximately equal in fair market value: *Provided*, That the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the values of the properties exchanged.

The Secretary shall report to the Congress on every exchange carried out under authority of sections 459b to 459b-8 of this title within thirty days from its consummation and each such report shall include a statement of the fair market values of the properties involved and of any cash equalization payment made or received.

(d) "Fair market value" defined; appraisal

As used in sections 459b to 459b-8 of this title the term "fair market value" shall mean the fair market value as determined by the Secretary, who may in his discretion base his determination on an independent appraisal obtained by him.

(Pub. L. 87-126, i 2, Aug. 7, 1961, 75 Stat. 287.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459b-2 to 459b-8 of this title.

S 459b-2. Establishment

(a) Notice in Federal Register

As soon as practicable after August 7, 1961, and following the acquisition by the Secretary of an acreage in the area described in section 459b of this title that is in the opinion of the Secretary efficiently administrable to carry out the purposes of sections 459b to 459b-8 of this title, the Secretary shall establish Cape Cod National Seashore by the publication of notice thereof in the Federal Register.

(b) Distribution of notice and map

Such notice referred to in subsection (a) of this section shall contain a detailed description of the boundaries of the seashore which shall encompass an area as nearly as practicable identical to the area described in section 459b of this title. The Secretary shall forthwith after the date of publication of such notice in the Federal Register (1) send a copy of such notice, together with a map showing such boundaries, by registered or certified mail to the Governor of the Commonwealth of Massachusetts and to the board of selectmen of each of the towns referred to in section 459b of this title; (2) cause a copy of such notice and map to be published in one or more newspapers which circulate in each of such towns; and (3) cause a certified copy of such notice, a copy of such map, and a copy of sections 459b to 459b-8 of this title to be recorded at the registry of deeds for Barnstable County, Massachusetts. (Pub. L. 87-126, { 3, Aug. 7, 1961. 75 Stat. 288.)

SECTION REFERRED TO IN OTHER SECTIONS This section is referred to in sections 459b-1, 459b-3 to 459b-8 of this title.

S 459b-3. Acquisition by condemnation

(a) Right of use and occupancy for residential purposes for life or fixed term of years; exercise of right of election; impairment of interests of lienholders, etc; right as running with land; transfer, assignment and termination of right; computation of compensation

(1) The beneficial owner or owners, not being a corporation, of a freehold interest in improved property which the Secretary acquires by condemnation may elect, as a condition to such acquisition, to retain the right of use and occupancy of the said property for noncommercial residential purposes for a term of twenty-five years, or for such lesser time as the said owner or owners may elect at the time of such acquisition.

(2) The beneficial owner or owners, not being a corporation, of a freehold estate in improved property which property the Secretary acquires by condemnation, who held, on September 1, 1959, with respect to such property, an estate of the same nature and quality, may elect, as an alternative and not in addition to whatever right of election he or they might have under paragraph (1) of this subsection, to retain the right of use and occupancy of the said property for noncommercial residential purposes (i) for a term limited by the nature and quality of his or their said estate, if his or their said estate is a life estate or an estate pur autre vie, or (ii) for a term ending at the death of such owner or owners, or at the death of the survivor of them, if his or their said estate is an estate of fee simple.

(3) Where such property is held by a natural person or persons for his or their own life or lives or for the life or lives of another or others (such person or persons being hereinafter called "the life tenant"), with remainder in another or others, any right of election provided for in paragraph (2) of this subsection shall be exercised by the life tenant, and any right of election provided for in paragraph (1) of this subsection shall be exercised by the concurrence of the life tenant and the remainderman or remaindermen.

(4) The beneficial owner or owners of a term of years in improved property which the Secretary acquires by condemnation may elect, as a condition to such acquisition, to retain the right of use and occupancy of the said property for noncommercial residential purposes for a term not to exceed the remainder of his or their said term of years, or a term of twenty-five years, whichever shall be the lesser. The owner or owners of the freehold estate or estates in such property may, subject to the right provided for in the preceding sentence, exercise such right or rights of election as remain to them under paragraphs (1) and (2) of this subsection.

(5) No right of election accorded by paragraphs (1), (2), or (4) of this subsection shall be exercised to impair substantially the interests

of holders of encumbrances, liens, assessments, or other charges upon or against the property.

(6) Any right or rights of use and occupancy retained pursuant to paragraphs (1), (2), and (4) of this subsection shall be held to run with the land, and may be freely transferred and assigned.

(7) In any case where a right of use and occupancy for life or for a fixed term of years is retained as provided in paragraph (1), (2), or (4) of this subsection, the compensation paid by the Secretary for the property shall not exceed the fair market value of the property on the date of its acquisition by the Secretary, less the fair market value on such date of the said right retained.

(8) The Secretary shall have authority to terminate any right of use and occupancy of property, retained as provided in paragraph (1), (2), or (4) of this subsection, at any time after the date when any use occurs with respect to such property which fails to conform or is in any manner opposed to or inconsistent with any applicable standard contained in regulations issued pursuant to section 459b-4 of this title and in effect on said date: *Provided*, That no use which is in conformity with the provisions of a zoning bylaw approved in accordance with said section 459b-4 which is in force and applicable to such property shall be held to fail to conform or be opposed to or inconsistent with any such standard. In the event that the Secretary exercises the authority conferred by this paragraph, he shall pay to the owner of the right so terminated an amount equal to the fair market value of the portion of said right which remained on the date of termination.

(b) Suspension of authority for one year and during existence of zoning regulations

(1) The Secretary's authority to acquire property by condemnation shall be suspended with respect to all improved property located within such area in all of the towns referred to in section 459b of this title for one year following August 7, 1961.

(2) Thereafter such authority shall be suspended with respect to all improved property located within such area in any one of such towns during all times when such town shall have in force and applicable to such property a duly adopted, valid zoning bylaw approved by the Secretary in accordance with the provisions of section 459b-4 of this title.

(c) Suspension of authority respecting property used for commercial or industrial purposes

The Secretary's authority to acquire property by condemnation shall be suspended with respect to any particular property which is used for commercial or industrial purposes during any periods when such use is permitted by the Secretary and during the pendency of the first application for such permission made to the Secretary after August 7, 1961 provided such application is made not later than the date of establishment of the seashore.

(d) "Improved property" defined

The term "improved property," wherever used in sections 459b to 459b-8 of this title,

shall mean a detached, one-family dwelling the construction of which was begun before September 1, 1959 (hereinafter referred to as "dwelling"), together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated. The amount of the land so designated shall in every case be at least three acres in area, or all of such lesser amount as may be held in the same ownership as the dwelling, and in making such designation the Secretary shall take into account the manner of noncommercial residential use to which the dwelling and land have customarily been enjoyed: *Provided, however,* That the Secretary may exclude from the land so designated any beach or waters, together with so much of the land adjoining such beach or waters as the Secretary may deem necessary for public access thereto, (e) Acquisition of clear, marketable and encumbrance-free title

Nothing in this section or elsewhere in sections 459b to 459b-8 of this title shall be construed to prohibit the use of condemnation as a means of acquiring a clear and marketable title, free of any and all encumbrances.

(Pub. L. 87-126. § 4, Aug. 7, 1961, 75 Stat. 288.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459b-1, 459b-2, 459b-4 to 459b-8 of this title.

§ 459b—J. Zoning regulations

(a) Standards for approval; submission to Congress and municipalities; publication in Federal Register; approval of local bylaws; revocation of approval

As soon after August 7, 1961, as may be practicable, the Secretary shall issue regulations specifying standards for approval by him of zoning bylaws for purposes of section 459b-3 of this title. The Secretary may issue amended regulations specifying standards for approval by him of zoning bylaws whenever he shall consider such amended regulations to be desirable due to changed or unforeseen conditions.

All regulations and amended regulations proposed to be issued under authority of the two preceding sentences of this subsection shall be submitted to the Congress and to the towns named in section 459b of this title at least ninety calendar days (which ninety days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) before they become effective and the Secretary shall, before promulgating any such proposed regulations or amended regulations in final form, take due account of any suggestions for their modification which he may receive during said ninety-day period. All such regulations and amended regulations shall, both in their proposed form and in their final form, be published in the Federal Register.

The Secretary shall approve any zoning bylaw and any amendment to any approved zoning bylaws submitted to him which conforms to the standards contained in the regulations in effect at the time of the adoption by the town of such bylaw or such amendment unless before the time of adoption he has submitted to the Congress and the towns and published in the Federal Register as aforesaid proposed amended regulations with which the bylaw or amendment would not be in conformity, in which case he may withhold his approval pending completion of the review and final publication provided for in this subsection and shall thereafter approve the bylaw or amendment only if it is in conformity with the amended regulations in their final form. Such approval shall not be withdrawn or revoked, nor shall its effect be altered for purposes of section 459b-3 of this title by issuance of any such amended regulations after the date of such approval, so long as such bylaw or such amendment remains in effect as approved.

(b) Commercial and industrial use prohibition; acreage, frontage, setback and miscellaneous requirements

The standards specified in such regulations and amended regulations for approval of any zoning bylaw or zoning bylaw amendment shall contribute to the effect of (1) prohibiting the commercial and industrial use, other than any commercial or industrial use which is permitted by the Secretary, of all property within the boundaries of the seashore which is situated within the town adopting such bylaw; and (2) promoting the preservation and development, in accordance with the purposes of sections 459b to 459b-8 of this title, of the area comprising the seashore, by means of acreage, frontage, and setback requirements and other provisions which may be required by such regulations to be included in a zoning bylaw consistent with the laws of Massachusetts.

(c) Adverse provisions and absence of notice for variance as requiring disapproval of local bylaws

No zoning bylaw or amendment of a zoning bylaw shall be approved by the Secretary which (1) contains any provision which he may consider adverse to the preservation and development, in accordance with the purposes of sections 459b to 459b-8 of this title, of the area comprising the seashore, or (2) fails to have the effect of providing that the Secretary shall receive notice of any variance granted under and any exception made to the application of such bylaw or amendment.

(d) Termination of suspension of authority for acquisition by condemnation because of nonconforming variances and uses; agreements concerning exercise of authority

If any improved property with respect to which the Secretary's authority to acquire by condemnation has been suspended by reason of the adoption and approval, in accordance with the foregoing provisions of this section, of a zoning bylaw applicable to such property (hereinafter referred to as "such bylaw")—

(1) is made the subject of a variance under or an exception to such bylaw, which variance or exception fails to conform or is in any manner opposed to or inconsistent with any applicable standard contained in the regulations issued pursuant to this section and in effect at the time of the passage of such bylaw, or

(2) is property upon or with respect to which there occurs any use, commencing after the date of the publication by the Secretary of such regulations, which fails to conform or is in any manner opposed to or inconsistent with any applicable standard contained in such regulations (but no use which is in conformity with the provisions of such bylaw shall be held to fail to conform or be opposed to or inconsistent with any such standard),

the Secretary may, at any time and in his discretion, terminate the suspension of his authority to acquire such improved property by condemnation: *Provided, however,* That the Secretary may agree with the owner or owners of such property to refrain from the exercise of the said authority during such time and upon such terms and conditions as the Secretary may deem to be in the best interests of the development and preservation of the seashore.

(Pub. L. 87-126, § 5, Aug. 7, 1961, 75 Stat. 290.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459b-1 to 459b-3, 459b-5 to 459b-8 of this title.

§ 459b-5. Certificate of suspension of authority for acquisition by condemnation

The Secretary shall furnish to any party in interest requesting the same, a certificate indicating, with respect to any property located within the seashore as to which the Secretary's authority to acquire such property by condemnation has been suspended in accordance with the provisions of sections 459b to 459b-8 of this title, that such authority has been so suspended and the reasons therefor.

(Pub. L. 87-126, § 6, Aug. 7, 1961, 75 Stat. 291.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459b-1 to 459b-4, 459b-6 to 459b-8 of this title.

§ 459b-6. Administration of acquired property

(a) Utilization of authority for conservation and management of natural resources

Except as otherwise provided in sections 459b to 459b-8 of this title, the property acquired by the Secretary under such sections shall be administered by the Secretary subject to the provisions of sections 1 and 2 to 4 of this title, as amended and supplemented, and in accordance with laws of general application relating to the national park system as defined by sections 1b to 1d of this title; except that authority otherwise available to the Secretary for the conservation and management of natural resources may be utilized to the extent he finds such authority will further the purposes of sections 459b to 459b-8 of this title.

(b) Preservation of seashore; incompatible visitor conveniences restricted; provisions for public enjoyment and understanding; developments for recreational activities; public use areas

(1) In order that the seashore shall be permanently preserved in its present state, no development or plan for the convenience of visitors shall be undertaken therein which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing or with the preservation of such historic sites and structures as the Secretary may designate: *Provided,* That the Secretary may provide for the public enjoyment and understanding of the unique natural, historic, and scientific features of Cape Cod within the seashore by establishing such trails, observation points, and exhibits and providing such services as he may deem desirable for such public enjoyment and understanding: *Provided further,* That the Secretary may develop for appropriate public uses such portions of the seashore as he deems especially adaptable for camping, swimming, boating, sailing, hunting, fishing, the appreciation of historic sites and structures and natural features of Cape Cod, and other activities of similar nature.

(2) In developing the seashore the Secretary shall provide public use areas in such places and manner as he determines will not diminish for its owners or occupants the value or enjoyment of any improved property located within the seashore.

(c) Hunting and fishing regulations; navigation

The Secretary may permit hunting and fishing, including shellfishing, on lands and waters under his jurisdiction within the seashore in such areas and under such regulations as he may prescribe during open seasons prescribed by applicable local, State and Federal law. The Secretary shall consult with officials of the Commonwealth of Massachusetts and any political subdivision thereof who have jurisdiction of hunting and fishing, including shellfishing, prior to the issuance of any such regulations, and the Secretary is authorized to enter into cooperative arrangements with such officials regarding such hunting and fishing, including shellfishing, as he may deem desirable, except that the Secretary shall leave all aspects of the propagation and taking of shellfish to the towns referred to in section 459b of this title.

The Secretary shall not interfere with navigation of waters within the boundaries of the Cape Cod National Seashore by such means and in such areas as is now customary.

(Pub. L. 87-126, § 7, Aug. 7, 1961, 75 Stat. 291.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459b-1 to 459b-5, 459b-7, 459b-8 of this title.

6 459b-7. Cape Cod National Seashore Advisory Commission

(a) Establishment; termination

There is established a Cape Cod National Seashore Advisory Commission (hereinafter referred to as the "Commission"). Said Commis-

sion shall terminate 30 years after the date the seashore is established under section 459b-2 of this title.

(b) Membership; term

The Commission shall be composed of ten members each appointed for a term of two years by the Secretary as follows:

(1) Six members to be appointed from recommendations made by each of the boards of selectmen of the towns referred to in section 459b of this title, one member from the recommendations made by each such board;

(2) One member to be appointed from recommendations of the county commissioners of Barnstable County, Commonwealth of Massachusetts;

(3) Two members to be appointed from recommendations of the Governor of the Commonwealth of Massachusetts; and

(4) One member to be designated by the Secretary.

(c) Chairman; vacancies

The Secretary shall designate one member to be Chairman. Any vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

(d) Compensation and expenses

A member of the Commission shall serve without compensation as such. The Secretary is authorized to pay the expenses reasonably incurred by the Commission in carrying out its responsibilities under sections 459b to 459b-8 of this title upon vouchers signed by the Chairman.

(e) Majority Tote

The Commission established by this section shall act and advise by affirmative vote of a majority of the members thereof.

(f) Consultation of Secretary with Commission

The Secretary or his designee shall, from time to time, consult with the members of the Commission with respect to matters relating to the development of Cape Cod National Seashore and shall consult with the members with respect to carrying out the provisions of sections 459b-3 and 459b-4 of this title.

(g) Advice of Commission for commercial or industrial use permits and establishment of public use areas for recreational activities

No permit for the commercial or industrial use of property located within the seashore shall be issued by the Secretary, nor shall any public use area for recreational activity be established by the Secretary within the seashore, without the advice of the Commission, if such advice is submitted within a reasonable time after it is sought, (h) Exemption from other provisions of law

(1) Any member of the Advisory Commission appointed under sections 459b to 459b-8 of this title shall be exempted, with respect to such appointment, from the operation of sections 281, 283, 284, and 1914 of title 18 and section 190 of the Revised Statutes (5 U.S.C. 99) > except as

otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) of this subsection shall not extend—

(i) to the receipt or payment of salary in connection with the appointee's Government service from any sources other than the private employer of the appointee at the time of his appointment; or

(ii) during the period of such appointment, and the further period of two years after the termination thereof, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter concerning which the appointee had any responsibility arising out of his appointment during the period of such appointment.

(Pub. L. 87-126, § 8, Aug. 7, 1961, 75 Stat. 292; Pub. L. 99-420, title II, § 201, Sept. 25, 1986. 100 Stat. 960.)

REFERENCES IN TEXT

Sections 281, 283, 284, and 1914 of title 18, referred to in subsec. (h)(1), were repealed by Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126. "except as they [sections 281 and 283] may apply to retired officers of the armed forces of the United States", and were supplanted by sections 203, 205, 207, and 209, respectively, of Title 18, Crimes and Criminal Procedure. For further details, see Exemptions note set out under section 281 of Title 18.

Section 190 of the Revised Statutes (5 U.S.C. 99), referred to in subsec. (h)(1), was repealed by Pub. L. 87-849, § 3, Oct. 23, 1962, 76 Stat. 1126. See section 207 of Title 18.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-420 substituted "30 years" for "ten years".

REESTABLISHMENT AND EXTENSION OF COMMISSION

Pub. L. 99-349, title I, July 2, 1986, 100 Stat. 731, provided: "That the Cape Cod National Seashore Advisory Commission established under section 8(a) of the Act of August 7, 1961 (Public Law 87-126; 75 Stat. 292) [16 U.S.C. 459b-7(a)] is reestablished and extended through February 28, 1996".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459b-1 to 459b-6, 459b-8 of this title.

§ 459b-8. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 459b to 459b-8 of this title; except that no more than \$42,917,575 shall be appropriated for the acquisition of land and waters and improvements thereon, and interests therein, and incidental costs relating thereto, in accordance with the provisions of such sections.

(Pub. L. 87-126, § 9, Aug. 7, 1961, 75 Stat. 293; Pub. L. 91-252, May 14, 1970, 84 Stat. 216; Pub. L. 98-141, § 3, Oct. 31, 1983, 97 Stat. 909.)

AMENDMENTS

1983—Pub. L. 98-141 substituted "\$42,917,575" for "\$33,500,000".

1970—Pub. L. 91-252 substituted "\$33,500,000" for "\$16,000,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459b-1 to 459b-7 of this title.

¹ See References in Text note below.

CAPE COD NATIONAL SEASHORE; ZONING STANDARDS

CODE OF FEDERAL REGULATIONS, Title 36, PART 27

Sec.

27.1 General objectives.

27.2 Commercial and industrial activities.

27.3 Seashore District.

27.4 Variances and exceptions.

AUTHORITY: Secs. 1, 5, 75 Stat. 284, 290; 16.S.C. 459b, 459b-4.

SOURCE: 27 FR 6714, July 14, 1962, unless otherwise noted.

§ 27.1 General objectives.

(a) Consistent with the objectives set out in section 5 of the Act of August 7, 1961 (75 Stat. 284), development and management of the Cape Cod National Seashore will be conducted in a manner which will assure the widest possible public use, understanding and enjoyment of its natural, cultural and scientific features. The regulations in this part are designed and promulgated to establish minimum standards which local zoning bylaws must meet in furtherance of those purposes.

(b) The standards hereby established for approval of zoning bylaws or amendments of zoning bylaws—are intended: (1) To contribute to the effect of prohibiting the commercial and industrial use, other than existing commercial or industrial use not inconsistent with the purposes of the Act of August 7, 1961 (75 Stat. 284, 291), of all property within the boundaries of the Cape Cod National Seashore and situated in the towns of Provincetown, Truro, Wellfleet, Eastham, Orleans and Chatham; and (2) to promote preservation and development, in accordance with the purposes of the said Act, of the area comprising the seashore, by means of acreage, frontage and setback requirements and other provisions which may be required to be included in zoning bylaws consistent with the laws of Massachusetts. Zoning bylaws or amendments of zoning bylaws applicable to the area within Cape Cod National Seashore, in order that they may be approved, shall conform to the standards herein set forth relating to preservation and development of the seashore in accordance with the purposes of the said Act. The Secretary shall be given notice of any amendments to approved zoning bylaws that affect the Seashore District. Nothing in these standards or in the zoning bylaws adopted pursuant thereto for the area within Cape Cod National Seashore shall preclude the Secretary of the Interior from fulfilling the responsibilities vested in him by the Act of August 7, 1961, or by the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented.

(c) Wherever the term “‘improved property’” is used in this part it shall mean a detached, one-family dwelling, the land on which it is situated, and accessory structures, and as further defined in section 4(d) of the Act of August 7, 1961 (75 Stat. 284).

§ 27.2 Commercial and industrial activities.

No commercial or industrial districts may be established within the Cape Cod National Seashore.

§ 27.3 Seashore District.

(a) Description. The Seashore District shall include all those portions of the towns of Provincetown, Truro, Wellfleet, Eastham, Orleans and Chatham lying within the exterior boundaries of the Cape Cod National Seashore.

(b) Zoning bylaws for the Seashore District shall be consistent with the objectives and purposes of the Act of August 7, 1961, so that—to the extent possible under Massachusetts law—the scenic, scientific and cultural values of the area will be protected, undeveloped areas will be preserved in a natural condition, and the distinctive Cape Cod character of existing residential structures will be maintained.

(c)(1) No moving, alteration, or enlargement of existing one-family residential dwellings or structures accessory thereto situated within this District shall be permitted if such would afford less than a 50-foot setback from all streets measured at a right angle with the street line, and a 25-foot distance from the abutters' property lines (or less than such lesser setback or distance requirements already in existence for such dwellings or accessory structures).

(2) If through natural phenomena or causes a lot or lots are so diminished in size that an owner would be unable to comply with the setback or sideline requirements herein prescribed, such owner or the zoning authorities may, as provided in § 27.4(b), request the Secretary of the Interior to determine whether a proposed move, reconstruction, alteration or enlargement of an existing residential dwelling or accessory structure would subject the property to acquisition by condemnation.

(d) Zoning bylaws adopted pursuant to this regulation shall contain provisions designed to preserve the seashore character of the area by appropriate restrictions or prohibitions upon the burning of cover, cutting of timber, filling of land, removal of soil, loam, sand or gravel and dumping, storage, or piling of refuse and other unsightly objects or other uses which would detract from the natural or traditional seashore scene.

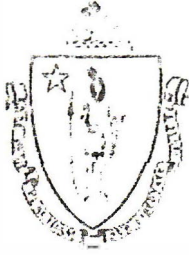
(e) Zoning bylaws for the Seashore District may permit residential uses of “improved property” and other uses of such dwellings and their accessory structures: Provided, Such other uses are traditional to these seashore communities, are customarily incidental to the principal residential use and do not alter the essential character of the dwelling and premises as a private residence. Subject to those conditions such uses may include, but are not limited to: (1) Partial use of dwellings by residents for a professional office (as for the practice of theology, law or medicine), as an artists' studio, for appropriate small scale home occupations as the making and selling of traditional Cape Cod products produced on the premises, and for the rental of rooms and serving of meals by residents of the premises to overnight guests; (2) the existence of structures, such as a garage, barn or boathouse accessory to the dwelling; (3) display of a sign which may be indirectly but not directly illuminated and not to exceed two square feet in the area, referring to the occupancy, sale, or rental of the premises; (4) traditional agricultural uses of cleared land, but not including such objectionable uses as a piggery or the raising of livestock, poultry, or fur-bearing animals for commercial purposes; and (5) the opening of shellfish, the storage and use of fishing equipment, and other traditional fishing activities. No commercial or industrial ventures (other than of the types described above), may be established within the Seashore District.

§ 27.4 Variances and exceptions.

(a) Zoning bylaws may provide for variances and exceptions.

(b) Bylaws adopted pursuant to these standards shall contain provisions which constitute notice to applicants for variances and exceptions that, under section 5(d) of the Act of August 7, 1961, the Secretary of Interior is authorized to withdraw the suspension of his authority to acquire, by condemnation, "improved property" that is made the subject of a variance or exception which, in his option, fails to conform or is in any manner opposed to or inconsistent with preservation and development of the seashore as contemplated in the said Act. The Secretary may be consulted at any time by zoning authorities or by the owner of "improved property" regarding the effect of a proposed variance or exception upon the status of the affected property with regard to the suspension of the Secretary's authority to condemn. The Secretary, within 60 days of the receipt of a request for such determinations, or as soon thereafter as is reasonably possible, shall advise the owner or zoning authorities whether or not the intended use will subject the property to acquisition by condemnation.

(c) The Secretary shall be promptly notified of the granting of any variance or exception.



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

October 16, 2017

Cynthia A. Slade, Town Clerk
Town of Truro
P.O. Box 2012
Truro, MA 02666

RE: Truro Annual Town Meeting of April 25, 2017 - Case # 8568
Warrant Articles # 17, 18, and 32 (Zoning)
Warrant Articles # 14, 19, 20, 21, 22, 23, and 31 (General)

Dear Ms. Slade:

Articles 14, 17, 18, 19, 20, 21, 22, 23, 31, and 32 - We approve Articles 14, 17, 18, 19, 20, 21, 22, 23, 31, and 32 from the April 25, 2017, Truro Annual Town Meeting. Our comments regarding Articles 14 and 17 are provided below.

Article 14 - Article 14 amends Chapter 1 of Town's general by-laws by adding a new Section 1.1.8, "Revolving Funds." General Laws Chapter 44, Section 53E ½, requires revolving funds to be established by by-law. Section 53 E ½ authorizes municipalities to establish revolving funds for "any fees, charges or other receipts from the departmental programs or activities supported by the revolving fund," to be accounted for separately from other monies in the town, and authorizes expenditures from such fund without further appropriation, subject to the provisions of Section 53 E ½. According to the Department of Revenue/Division of Local Services (DOR/DLS), the purpose of a departmental revolving fund is to enable the department to separately account for money received from a specific program or activity and to make expenditures from that separate account for that specific program or activity.

However, according to DOR/DLS, not all receipts may lawfully be deposited in a revolving fund. For example, property taxes, motor vehicle taxes, or revenues from general municipal activities, rather than those of a particular department, are not properly categorized as "fees, charges or other receipts from the departmental programs or activities supported by the revolving fund." See G.L. c 44, § 53 and 53E ½. In addition, receipts reserved by law (for example betterment payments under G.L. c. 44, § 53J), or receipts authorized by law for expenditure for a particular purpose (for example, local acceptance of G.L. c. 44B, Community Preservation Act), are expressly prohibited from being included in a revolving fund under the statute.

The DOR/DLS has published several informational guidelines to provide information regarding municipal revenues and special funds. In particular, DOR/DLS has published Bulletin 2017-01B, "Authorization of Departmental Revolving Funds and Model By-law/Ordinance:"

<http://www.mass.gov/dor/docs/dls/publ/bull/2017/2017-01b.pdf>

and an "Overview of Statutory Treatment of Municipal Revenues:"

<http://www.mass.gov/dor/docs/dls/training/overview.pdf>

We approve the by-law created under Article 14. However, the Town should consult closely with Town Counsel to ensure that receipts designated for each revolving fund are not already reserved under other funds or statutes, and are properly included in the designated revolving fund. In addition, the Town should consult closely with Town Counsel to ensure that any deposits into a revolving fund are properly from "fees, charges or other receipts" associated with a specific departmental program or activity and that the funds are expended in connection with that specific program or activity, not for the general use of the department.

Further, G.L. c. 44, § 53E ½, requires the establishment of any revolving fund to be "made not later than the beginning of the fiscal year in which the fund shall begin." The Town established these revolving funds by by-law at a vote of Town Meeting on April 25, 2017, apparently with the intention that these funds be used during Fiscal Year 2018 (beginning July 1, 2017). According to DOR/DLS, all receipts collected during Fiscal Year 2018 can be credited to the revolving funds created under Article 14. The Town should consult with Town Counsel and/or DOR/DLS with any questions on this issue.

Article 17 - Article 17 deletes in its entirety Section 40.2, "Affordable Accessory Dwelling Unit," and inserts a new Section 40.2, "Accessory Dwelling Unit." The new Section 40.2 allows one accessory dwelling unit ("ADU") per buildable lot in any zoning district in the Town after receiving an ADU permit from the Town's Planning Board. *See* Section 40.2 (B).

During our review of Article 17 we received a letter urging our disapproval of Article 17 on the basis that it is in conflict with federal law, more specifically, 36 CFR § 27 *et seq.*, "Cape Cod National Seashore; Zoning Standards," because the by-law would allow two-family year-round dwellings in the Cape Cod National Seashore. As provided in more detail below, we have determined that the asserted deficiencies cited in the opposition letter do not provide grounds for us to disapprove Article 17.

Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986). In order to disapprove a by-law, the Attorney General must cite an inconsistency between the by-law and the *state Constitution or laws* (emphasis added). Id. at 796. "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass 136, 154 (1973) (emphasis added). "The legislative intent to preclude local action must be clear." Id. at 155. Massachusetts has the "strongest type of home rule and municipal

action is presumed to be valid.” Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted). The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) Nor does she disapprove a by-law that may “as applied,” be inconsistent with laws and Constitution of the Commonwealth.

The new Section 40.2 allows one accessory dwelling unit (“ADU”) per buildable lot in *any zoning district in the Town* after receiving an ADU permit from the Town’s Planning Board. Whether the new by-law could be applied in a manner to allow ADU’s in the Cape Cod National Seashore is an “as applied” issue that is outside the scope of the Attorney General’s review under G.L. c. 40, § 32.¹ The Town may wish to discuss the application of Article 17 with Town Counsel to ensure it is applied consistent with federal law.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext.

cc: Town Counsel John W. Giorgio

¹ Although we did not receive an opposition to Article 32, it must also be applied consistent with federal law. Article 32 adds to Section 30.3 of the Town’s zoning by-laws, “Seashore District,” a new Section 30.3.1, “Residential Building Size Regulations.” The new Section 30.3.1 pertains to the total gross floor area allowed by right and by special permit in the Seashore District.

ZONING BYLAW ARTICLES

TWO-THIRDS VOTE

Article 11: Amend Zoning Bylaw §30.8(B) Special Permits

To see if the Town will vote to amend the Zoning Bylaw Section 30.8(B), Special Permits, by deleting the language in ~~strike-through~~, adding the **bold underlined** wording as follows:

§30.8 (B)

*A special permit shall lapse after ~~one~~ **two** years if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.*

or to take any other action relative thereto.

Requested by Town Planner & Land Use Counsel

Explanation: Many projects receiving special permits from the Zoning Board of Appeals are unable to commence construction within one year, due to labor and/or material shortages, additional permitting required, or other valid reason. Currently, a permittee must seek a permit extension if unable to commence within one year. Extending the period for commencing construction from one to two years would align the term of special permits with the term of other approvals under the Zoning Bylaw (for example, Site Plan approvals). In addition, this amendment streamlines the permitting process to the benefit of applicants and the Town’s Planning and Building Departments.

	In Favor	Not In Favor	Abstain
Planning Board Recommendation	7	0	0
Select Board Recommendation	5	0	0

TWO-THIRDS VOTE**Article 12: Amend Zoning Bylaw §40.1 Duplex Houses and Apartments; and §30.2 Use Table**

To see if the Town will vote to amend Section 40.1, Duplex Houses and Apartments, and Section 30.2, Use Table, of the Zoning Bylaw by deleting the language in ~~strike through~~, adding the **bold underlined** wording and enumerate the bylaw correctly accordingly.

§ 40.1 Duplexes 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 **addressing the issue of availability of** ~~at the same time giving relief to those with problems of obtaining adequate housing,~~ **duplexes may be created by right** ~~the Board of Appeals may approve a special permit authorizing the~~ **via the** ~~new construction of duplexes houses or the conversion of single-family dwellings to~~ **duplexes 2-unit apartments,** consistent with **and subject to** the following **provisions.** ~~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 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.~~
- B. **New construction of duplexes or the conversion of single-family dwellings to duplexes is allowed in all districts except the: Beach Point and Seashore Districts.**
- C. **A minimum lot size of 33,750 sq. ft. is required for both new construction of duplexes and conversion of existing structures to duplexes.**
- D. **The Total Gross Floor Area (definition in §10.1) of the new or expanded duplex structure(s) shall 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:**
- a. **Plus 300 sq. ft. for each additional contiguous acre of land, or fraction thereof prorated.**
 - b. **Plus an ADU of up to 900 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.~~
- E. Requirements. All new construction or conversions shall comply with the following.**
- 1. One unit shall have a 12-month lease.**
 - a. 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.**
 - b. Proof of year-round rental shall be provided annually to the Building Commissioner or their designee, 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 the renter's primary residence. The proof shall be submitted to the Building Commissioner or their designee prior to initial occupancy and by May 1 each following year.**
 - 2. The second unit shall either be owner occupied or have a 12-month lease.**
 - a. If the unit is owner occupied, there shall be no rentals for less than 8 months (including, but not limited to, seasonal rental and rental through vacation rental services and websites)**
 - b. If there is a 12-month lease: 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.**
 - 3. Proof of year-round rental shall be provided annually to the Building Commissioner or their designee, 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 the renter's primary residence. The proof shall be submitted to the Building Commissioner or their designee prior to initial occupancy and by May 1 each following year.**
 - 4. The building shall conform to Section 50, Area and Height Regulations, of the Truro Zoning Bylaws.**
 - 5. The two units 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. All applicable provisions of the building, health, and safety codes, as determined by the Building Commissioner and Board of Health shall be met.**
 - 7. Units that are rented 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.**
- F. Violations and Penalties. Violation of any of the provisions of this bylaw may result in fines of up to \$300 for each offense. Each day that such a violation continues shall constitute a separate offense.**

And to amend the Principal Uses table in §30.2 as follows:

PRINCIPAL USES							
	R	BP	NT6A	TC	NTC	Rt6	S
RESIDENTIAL							
Cottage or cabin colony, motor court	N	P	N	N	P	P	N
<u>Duplex (as defined in Section 40.1)</u>	<u>P</u>	<u>N</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>N</u>
Hotel	N	N	N	N	P	P	N
Motel	N	P	N	N	P	P	N
Single family dwelling (9)	P	P	P	P	P	P	P (10)

or to take any other action relative thereto.

Requested by the Planning Board

Planning Board Explanation: This article will revise § 40.1 of the Zoning Bylaw - Duplex Houses and Apartments to make it more attractive and easier to build/create duplexes. The intent is to add to the year-round rental stock. Specifically, this article makes the following changes:

- *Makes the creation of duplexes By Right in all districts except for the Seashore & Beach Point Districts.*
- *Decreases the required lot size from 1 acre to the current minimum lot size of 33,750 square feet.*
- *Increases the maximum size of the structure’s Gross Floor Area from 3,000 square feet to 3,600 square feet on a minimum size lot with adjustments to other lot sizes based on the Residential District House Size Bylaw.*
- *Removes size limit on the second unit.*
- *In keeping with the intent of the bylaw to create year-round rental opportunities*
 - *Requires 1 unit have a 12-month lease.*
 - *The other unit to either be owner occupied or have a 12-month lease.*
 - *Proof of year round rental to be provided to the Building Commissioner annually.*

Select Board Explanation: The Planning Board has been working on the Duplex Bylaw amendments since before the 2022 Annual Town Meeting and has prepared iterations at the 2022 Annual Town Meeting and 2023 Annual Town Meeting, both of which were indefinitely postponed. This article includes amendments that strive to increase year-round housing by right.

	In Favor	Not In Favor	Abstain
Planning Board Recommendation	7	0	0
Select Board Recommendation	5	0	0

**Article XX: Amend Zoning Bylaw §10.4 Definitions, Amend Zoning Bylaw
§50.1 Area and Height Regulations, and Add Appendix Q**

Amend by deleting the language in ~~strike through~~ and adding the **bold underlined** wording.

§10.4 Definitions

Base Flood Elevation (or BFE). The 100-year flood elevation designated on the Truro Flood Insurance Rate Maps (FIRM). **The elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year. The BFE is shown on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) for “A” and “V” zones.**

Flat Roof. A roof surface having a pitch less than 3 units vertically to 12 units horizontally.

Sloped Roof. A roof surface having a pitch greater than or equal to 3 units vertically to 12 units horizontally.

Maximum Building Height. The difference in elevation between the Mean Ground Level Elevation and the elevation at the highest point of the roof or building, including parapets, railings, dormers and rooftop decks but excluding antennas, vents and chimneys. **Maximum Building Height shall be limited to 23 feet for Flat Roofs and Clerestory Roofs and for all Shed Roofs, regardless of pitch. Exceptions for specific Sloped Roof configurations are illustrated graphically in Appendix Q.**

Mean Ground Level. Where the finished ground level varies in elevation on different sides of a building, the average of the various elevations at the centers of the four main sides, **or the average of the four elevations as measured at the centers of the building sides as viewed or projected onto four orthogonal vertical planes (e.g., N, S, E and W building elevations).** In the case where fill has been used to raise the finished ground level on a side(s) of the building to an elevation higher than the preconstruction ground level, on those sides measurement shall be taken **as the preconstruction ground level elevation measured at a point offset** from the center of that side ten (10) feet out from the side of the building. Further, the finished grade of the fill, within one hundred (100) feet of the building shall not have a grade steeper than ten per cent (10%) (one foot of drop for every ten foot run).

§50.1 Regulations

A. Table

DIMENSIONAL REQUIREMENT	ALL DISTRICTS
Minimum Lot Size	33,750 sq. ft. (1)(2)(8)
Minimum Lot Frontage	150 ft (1)(2)
Minimum frontyard setback	25 ft (3)
Minimum sideyard setback	25 ft (3)(4)
Maximum building height	2 stories; 30 feet (5)(5a)(6)
Minimum backyard setback	25 ft (3)(4)
Lot Shape	(9)

(4/05, 4/06, 4/10)

NOTES

1. Except buildings for accessory use and cottage.
2. Except lots or parcels lawfully in existence and shown on a subdivision plan or described in a deed recorded at the Barnstable County Registry of Deeds prior to the adoption of the bylaw by Truro Town Meeting on February 15, 1960, having at least five thousand (5,000) square feet of area and at least fifty (50) feet of lot frontage.
3. Except in the Seashore District where the minimum setback from all streets is 50 feet measured at a right angle from the street line.
4. Except in those portions of the Beach Point Limited Business District served by the Town of Provincetown Water System, where the minimum sideyard and backyard setbacks shall be equivalent to five (5) feet per story of the building or structure in question. Structures less than a full story shall meet the minimum 5 ft setback.
5. The 2 story / **30 ft height** limitation shall be measured from mean ground level.
 - 5a. Except buildings which do not have a ridge or hip **defined by two opposing sloped roof surfaces** the maximum building height shall not exceed twenty-three (23) ft as measured to the highest point of the structure (4/12), **(5/24)**.
6. Free standing flagpoles and private noncommercial radio and television antennae shall not exceed fifty (50) ft above mean ground level.
7. (#7 deleted 4/12)
8. Except in the Seashore District where the minimum lot size is 3 acres. (4/05)
9. For any lot created after April 30, 2004, the portion of the lot connecting the frontage with the front line of any building site shall not be less than 50 feet wide, as measured between opposite sidelines.

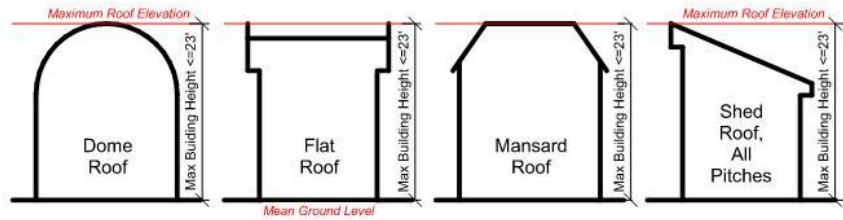
APPENDIX Q: MAXIMUM BUILDING HEIGHT RELATIVE TO MEAN GROUND LEVEL AND ROOF CONFIGURATION

Roof Type:

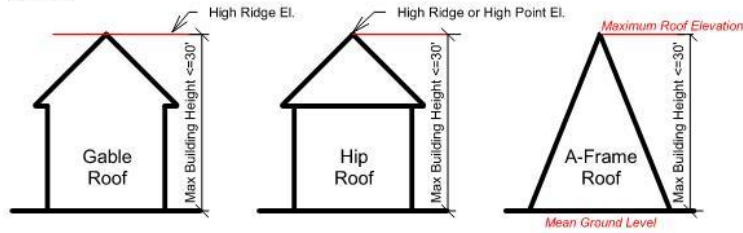
Dome/Flat
Mansard/Shed/
Clerestory

Maximum Building Height

For all roof Types: The elevation of the highest point of the roof, including the top of any parapet

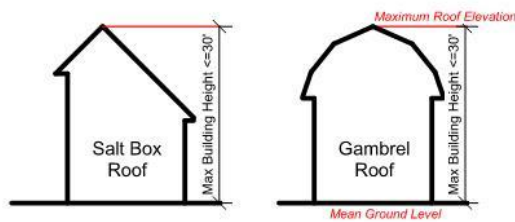


**Gable/Hip
A-Frame (With Sloped
Roof Surfaces
(pitch $\geq 3V:12H$)**



**Salt Box
(with Sloped Roof
Surfaces)**

**Gambrel
(with Sloped Roof
Surfaces)**



Note: Shed dormers for individual windows shall not be considered Sloped Roof Surfaces in this context.

Explanation:

This zoning article is intended to clarify certain ambiguities in the existing zoning ordinance that pertain to maximum allowable building height, as measured from mean (average) grade to the highest point of the structure. This article clarifies the intent and applicability of the existing building height limitations by the following means:

- Adding Definitions to define and differentiate a “Flat Roof” from a “Sloped Roof”.
- Adding clarifying language to the definition of “Mean Grade”.
- Providing a graphic, in the form of an Appendix, to illustrate how the resulting definitions and building height limitations are to be interpreted with respect to various common roof configurations.

This article is intended as an aid to interpreting and applying the Building Height limitations that are already included in the zoning ordinance. This article was developed in part to address ambiguities that are currently left to the Zoning Board of Appeals to adjudicate.

Also included is a definition of the term “Base Flood Elevation” or “BFE”, paraphrasing the definition of that term as defined by the Federal Emergency Management Agency (FEMA). Although that term is not utilized in this article, inclusion of this definition is anticipatory and is recommended by the Planning Board at this time. The Planning Board anticipates that this definition will be required for future articles that may impact the “Mean Grade” and “Building Height” definitions as they pertain to the Town’s Flood Plain bylaw.

**Article XX: Add New Bylaw §40.8 Attainable Housing on Undersized Lots
And Amend §30.2 Use Table**

To see if the Town will vote to amend §40 and §30.2, Use Table, of the Zoning Bylaw by amending §40 to add §40.8.

§40.8 Attainable Housing on Undersized Lots:

- A. Purpose: The purpose of this bylaw is to increase the supply of housing that is available in the town of Truro by allowing attainable single-family dwellings to be built on lots that do not meet the minimum lot size for the zoning district, provided the lots meet the criteria listed herein.
- B. For purposes of this bylaw, "Attainable" shall mean that the units are available for ownership or rental to households earning at or below 100% of the Barnstable County Area Median Income (AMI), adjusted for household size and shall remain affordable in perpetuity or for the longest period allowed by law.
- C. Undersized Lot – a lot that is smaller than the minimum lot size for the zoning district.
- D. This bylaw shall apply to lots of record as of January 1, 2024, as recorded in a deed or plan on file with the Barnstable County Registry of Deeds or Land Court, which do not meet the minimum lot size for the zoning district as determined by the Building Commissioner. This bylaw applies regardless of whether the lot is held in common ownership with an adjoining lot.
- E. This bylaw shall apply to lots in all districts except Beach Point and the Seashore District.
- F. REQUIREMENTS: A Special Permit may be obtained from the Zoning Board of Appeals to allow construction of a One Family Dwelling, pursuant to the following requirements, restricted by a Regulatory Agreement and/or Affordable Housing Deed Restriction in a form acceptable to the Executive Office of Housing and Livable Communities (EOHLC), executed and recorded by the applicant as an affordable homeownership or rental dwelling unit in perpetuity or the maximum time period allowed by law, on an eligible parcel of land that meets the following criteria:
 - 1. Parcel, at time of application, is not improved with any existing dwelling unit.
 - 2. Parcel contains at least 10,000 square feet of contiguous upland area.
 - 3. All applicable provisions of the building, health and safety codes are met.
 - 4. Parcel satisfies applicable Town of Truro's Conservation Commission Environmental Protection Regulations.
 - 5. Parcel has a minimum of 50 feet of frontage.
 - 6. The building setbacks shall not be less than 25 feet.
 - 7. If a dwelling is built within 25 feet of any other dwelling or principal structure screening of at least five feet in height be created and maintained if requested by the

- abutter in writing to the Building Commissioner. The screening may be fencing, planting or a combination.
8. The building must comply with the house size bylaw §50.2.
- G. An applicant under this section shall submit a site plan prepared, stamped and signed by a Registered Land Surveyor or Professional Engineer, as applicable, that depicts:
1. the dimensions and setbacks of the subject Parcel, and
 2. the proposed structure on the subject Parcel
 3. the existing setbacks of principal structures on the lots immediately adjacent.
 4. The site plan shall show a parking plan and comply with parking requirements for “Affordable Dwelling Unit” in §30.9 Parking Regulation Use Table of 2 spaces per unit.
- H. A Parcel shall not be built upon if the Parcel was purposely created, subject to a deed restriction or designated as an unbuildable lot as part of a subdivision open space or park, or by any other condition or agreement with the Town.
- I. Accessory Dwelling Units are not permitted on undersize lots.
- J. Rental of the dwelling 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 or their designee, 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 the renter’s primary residence. The proof shall be submitted to the Building Commissioner or their designee prior to initial occupancy and by May 1 each following year. The Attainable Housing Deed Restriction shall identify a Monitoring Agent who shall ensure compliance with said deed restriction.
- K. The Applicant must submit a Regulatory Agreement and Affordable Housing Deed Restriction, to be approved as to form by Town Counsel, that restricts the use of the dwelling unit to low- or moderate- income housing in perpetuity, or the maximum time period allowed by law. Said Regulatory Agreement shall include an Affirmative Fair Marketing Plan that complies with EOHCL’s requirements for the selection of income-eligible tenants/occupants and shall identify a Monitoring Agent who shall be responsible for ensuring that any re-sales of units created under this bylaw shall be made to income-eligible purchasers and comply with the Affirmative Fair Marketing Plan and Attainable Housing Deed Rider.
- L. For lots to be sold/rented to households earning below 80% AMI, that are owned privately, the Applicant shall work with the Town to provide any information necessary to ensure that units created under this bylaw are eligible for inclusion on the Subsidized Housing Inventory maintained by the EOHCL’s as Local Action Units.

M. No building permit shall be issued until the Regulatory Agreement and Affordable Housing Deed Rider has been approved by Town Counsel, executed by all parties, and recorded at the Registry of Deeds and proof of such recording has been furnished to the Building Commissioner.

§40.8.1 Transfer or Lease. A lot developed with a One Family Dwelling under this section shall be transferred or leased at such attainable re-sale price or rent set forth in the Regulatory Agreement.

§40.8.2 No Building Permit shall be issued by the Building Commissioner until the developer has demonstrated that all of the applicable requirements of §40.8.F and §40.8.G have been met.

§30.2 Use Table
Add to Use Table

	R	BP	NT6A	TC	NTC	RT6	S
Attainable Undersized Lot	SP	N	SP	SP	SP	SP	N

Explanation:

This article is part of a wide range of strategies to increase the stock of affordable and attainable housing in Truro. According to the Local Comprehensive Plan *“With limited acreage available, creative housing solutions are needed. This includes increasing density where appropriate and feasible, considering additional uses for town-owned property, and changes in zoning regulations to create housing opportunities on lots that are currently undersized or otherwise don’t conform to existing zoning regulations,…”*

There are approximately a dozen properties that may become buildable as a result of this article with slightly more Town owned properties than private properties. All but one of the currently identified lots are in the Residential District with the other in the North Truro 6A Limited Business District.

**Article XX: Amend Zoning Bylaw §40.2 Accessory Dwelling Unit,
§50.2 Gross Floor Area, and §30.2 Use Table, Note 9**

Amend by deleting the language in ~~strike-through~~ and adding the **bold underlined** wording.

§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 Building Permit. (6/21)
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 Special Permit or Variance, respectively, from the Zoning Board of Appeals. (6/21)

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 nine hundred (900) 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 ADU Building Permit, and in no case shall an ADU be permitted to exceed the square footage allowed by this section. (6/21)
3. At least two (2) off street parking spaces in addition to parking otherwise required for the property is required for an ADU. ~~This requirement may be reduced or waived at the discretion of the Planning Board.~~ (6/21)
4. An ADU shall be clearly subordinate in use, size and design to the principal dwelling or structure. When accessory to a principal dwelling, the intent is to retain the appearance of a single-family dwelling and the privacy of abutters. (6/21)
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~~ **Building Department** consisting of:
 - a. Deleted. (6/21)
 - b. Papers copies and one digital copy of the required plans in addition to other required information under §40.2; (6/21)
 - c. Applicable filing fee;
 - d. Deleted. (6/21)
 - 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. Deleted. (6/21)
 - g. Building floor plans at a scale of no less than 1/8" = 1' 0". (6/21)
 - h. Affidavit declaring that the ADU and/or principal dwelling to which it is accessory will be rented on a twelve month basis.
 - i. Deleted. (6/21)
 - j. Deleted. (6/21)
 - k. For ADUs proposed in a new structure or that require the modification of the exterior of an existing structure, building elevations at a scale of no less than 1/8" = 1' 0" of the dwelling or structure that contains the ADU. (6/21)
 - l. Photographs of the exterior of the existing principal dwelling taken from the north, south, east and west. (6/21)
 - m. For ADUs proposed within an existing accessory structure, photographs of the exterior of the existing accessory structure taken from the north, south, east and west. (6/21)

E. Deleted. (6/21)

F. Deleted. (6/21)

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 Building **Commissioner** 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. (6/21)

H. Requirements for Tax Exemption

Qualifying ADUs permitted under this section are eligible to seek tax abatement pursuant to Chapter 1, Section 11 of the Truro General Bylaws, Tax Exemption for Affordable Accessory Dwelling Units. (6/21)

§50.2 Building Gross Floor Area for the Residential District (11/18)

A. Purpose: The purpose of this bylaw is to limit the size of future residential construction, alteration, or reconstruction to preserve the special character and prevailing size and massing of buildings in the Town, and to be in harmony with the historic nature, sense of community, and aspirations of Truro.

B. Applicability and Exceptions:

1. Total Gross Floor Area Allowed by Right: Subject to the exceptions provided for in subsections 50.2.B.2, 50.2.C, and 50.2.D, building permits for new construction or for projects that seek to increase the Gross Floor Area of buildings that exist on lots as of November 13, 2018, shall be issued only where, on completion of the construction or project, the 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:
 - a. Plus 300 sq. ft. for each additional contiguous acre of land, or fraction thereof prorated.
 - b. 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.
 - c. Plus a ~~Planning Board~~ **Building Commissioner** Approved Accessory Dwelling Unit of up to ~~1,000~~ **900** sq. ft.
2. 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 established by this subsection, by Special Permit, as provided in 50.2.C and 50.2.D. No Special Permit may be issued for any construction if the construction would result in the Total Gross Floor Area exceeding 4,600 sq. ft. for a Residential District Minimum Lot Size of 33,750 sq. ft. (or .775 acre) and prorated to 4,668 sq. ft. for one acre of land:
 - a. Plus 300 sq. ft. for each additional contiguous acre of land, or fraction thereof prorated.
 - b. 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.
 - c. Plus a ~~Planning Board~~ **Building Commissioner** Approved Accessory Dwelling Unit of up to ~~1,000~~ **900** sq. ft.

§30.2 Use Table, Accessory Uses, Notes:

9. Uses in this category are further subject to the special regulations set forth in §40.2, Accessory Dwelling Unit and the **Planning Board Building Commissioner** shall serve as the ~~Special~~ Permit granting authority. (04/07, 4/17)

Explanation: *The ADU Bylaw was amended at 2021 ATM, the principal changes being 1) allowing ADUs as of right (where otherwise compliant with zoning), instead by permit from the Planning Board only; and 2) reducing maximum gross floor area from 1000 square feet to 900 square feet, for consistency with state law. The 2021 amendments left a few internal inconsistencies (i.e., references to “Planning Board” no longer applicable. In addition, Zoning Bylaw section 50.2, “Building Gross Floor Area,” requires amendment for consistency with the ADU Bylaw. The above amendments are “housekeeping”-type changes and do not alter the process for obtaining approval for an ADU.*

Water Resources Protection Overlay District - Appendix B

