Rockport Downtown Zoning Report

Funding provided by the District Local Technical Assistance program

Prepared for
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Planning Board
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Acknowledgements

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This project was undertaken with funds from the District Local Technical Assistance program. MAPC wishes to express our thanks to the Governor and the members of the Legislature for their continued support and funding of this program.

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Executive Summary

MAPC began working with the Town of Rockport in March 2010. Concurrent with MAPC's assistance, the Town embarked on a downtown planning initiative with the intent of creating a downtown master plan. MAPC's work was conducted in two separate phases, both of which were funded by the District Local Technical Assistance program.

The first phase of MAPC's work included two components. For the first planning component, MAPC reviewed existing conditions in the downtown and developed an analysis of downtown planning issues. The existing conditions review looked at any existing plans for the downtown, existing General Zone provisions, and a review of relevant state and federal laws and regulations that determine or limit development activities in the General Zone. For the second planning component, MAPC researched and compared the following zoning requirements from other communities in Massachusetts to the Town of Rockport's existing zoning:

- Discontinuance clauses
- Shared and off-site Parking
- Height Limits
- Street Frontage
- Density of New Construction
- Commercial to Residential Conversions
- Dormers
- Decks
- Egress

MAPC also conducted an analysis of Zoning Board of Appeals decisions that revealed some of the issues identified above. A final report was issued in December 2010.

For the second phase of work, MAPC continued discussions with the Planning Board and consulting planner to clarify issues in the General Zone. MAPC provided guidance on an approach to update the Zoning By-law and presented this approach at Planning Board public forums in March and May 2011. These forums allowed the Planning Board and members of local Boards and Commissions and the public to provide input on draft MAPC recommendations. Four key zoning issues were identified by the Planning Board through this process:

- The inclusion of mixed use structures in the downtown area
- Front yard setback requirements require revision
- Construction/restoration in the Velocity Zone
- Regulations pertaining to dormers and decks

The final report to the Town in June 2011 represents the concluding, key zoning issues and recommendations for revisions to the General Zone for improvements. Additional Recommendations and a guide to planning next steps are also included. The Rockport Planning Board won Town Meeting approval for MAPC's final recommendations relative to downtown zoning improvements. The changes include special provisions for the downtown district — including a change in lot regulation from a minimum 7,500 square feet to 5,000 square feet. Setback laws
were changed from 10 to 15 feet. Downtown Zone uses were clarified. Definitions were added or modified, including adding the definitions “deck” and “mixed use.”

The Massachusetts Chapter of the American Planning Association gave the Comprehensive Planning project an Honorable Mention as part of their annual 2011 Planning Awards Program.
This memorandum serves as the final report for the Rockport Zoning project funded by the District Local Technical Assistance Program and conducted by the Metropolitan Area Planning Council (MAPC) working with the Rockport Planning Board.

MAPC has been working with the Rockport Planning Board and Consulting Planner to identify provisions in the current Rockport Zoning By-law that require revision relevant to Rockport’s downtown General zone. The four key issues identified by the Planning Board include:

- The inclusion of mixed use structures in the downtown area
- Front yard setback requirements require revision
- Construction/restoration in the Velocity Zone
- Regulations pertaining to dormers and decks

Process:
Beginning in May 2010 with a public forum, several meetings were held. MAPC conducted an analysis of Zoning Board of Appeals decisions that revealed some of the issues identified above. Discussions with the Planning Board and Consultant clarified the deficiencies and provided guidance on an approach to update the Zoning By-law. Public forums in March and May 2011 allowed the Planning Board and members of local Boards and Commissions and the public to provide input on draft MAPC recommendations. The chronology of meetings includes:

5/20/10 Baseline information presentation
7/15/10 Parking forum
9/28/10 Innkeepers focus group
10/7/10 Merchants focus group
3/3/11 MAPC; initial zoning recommendations
3/10/11 Recommendations & Action Items
5/5/11 Final Downtown Master Plan
5/19/11 MAPC Zoning By-law revisions/recommendations
RECOMMENDED ZONING BY-LAW CHANGES

I. Establish a New Zoning District for the Existing “G” Zone in the Downtown. This new District would include different Uses from the existing G zone.

PURPOSE:

- To differentiate the downtown area of Rockport from surrounding neighborhoods and the other area zoned G by creating a separate zone
- To preserve the distinctive characteristics of the downtown
- To provide for appropriate economic development opportunities

Currently, there are two areas in Rockport zoned General Zone (or “G”): the downtown and an area near Pigeon Cove. In addition to residential use, the G zone allows commercial uses and limited industrial uses. Some of these Allowed Uses as well as some uses that require a Special Permit are not suitable for the downtown area, particularly for Bearskin Neck. To tailor uses to the downtown, and to provide the ability to continue to make changes consistent with recommendations in the Master Plan, MAPC is recommending that a new zoning district be created. This district could be called the “D” district, or the Downtown District.

To establish a new zone, the Zoning By-law would be amended by adding a new column in the Table of Permitted Uses and Structures. The column would be headed “D”, and would include uses appropriate for the downtown area. MAPC has included a Table with a suggested array of Allowed Uses. These uses were chosen to encourage retail and to provide for active street frontage, meaning the uses would encourage pedestrian traffic and lessen “dead space” – discouraging less active first floor uses, such as a doctor’s office.

Use Item Changes in the D Zone

In response to the question in the May 10, 2011 email concerning a rationale for why uses are treated differently between the G and Downtown zones: We acknowledged that various Principal Uses have very different impacts and we considered these potential impacts on the downtown area.

In addition, some of the existing categories of Principal Permitted Uses and Structures are at times redundant and confusing in the Table of Permitted Uses and Structures. For example:

- **Item D7b**: Any of the following service establishments dealing directly with the consumer: Repair shops for motor vehicles (provided that all work is performed within a building), service stations, bakeries, blacksmiths, collection stations for laundry or dry cleaning.

AND

- **Item E10e**: Any of the following service establishments dealing directly with the consumer, laundry or dry cleaning establishments, frozen food locker plants, or hand or self services laundries.
ANALYSIS

The impacts of the uses within these categories vary greatly. For Item D7b: a motor vehicle repair shop has a vastly different neighborhood impact than a collection station (drop off storefront, for example) for laundry or dry cleaning. Item E10e: the impacts and contributions to downtown retail from a frozen food locker plant are different from those of a self-service laundry.

RECOMMENDATION

MAPC recommends Item D7b be Special Permit uses and Item E10e be Not Permitted in the D zone, respectively, but remain Allowed Uses and Special Permit uses in the G zone.

As part of the Master Planning implementation process, the Planning Board should discuss and revise these groupings to be more compatible. For example, put repair shops for motor vehicles, service stations, blacksmiths, frozen food locker plants and laundry or dry cleaning plants in one category and bakeries, collection stations for laundry or dry cleaning in another. A rationale for grouping the uses should be apparent, based on impacts of the uses. See Appendix 1 for the Table of Permitted Uses.

II. Front Yard Setback Requirements

PURPOSE:

- To codify existing setbacks in the downtown that varies from the current requirements
- To provide flexibility for front yard setbacks for future development
- To provide for a contextual setback that respects the existing setbacks and is harmonious with the existing setbacks

The existing Zoning By-law Schedule of Area and Dimensions includes Footnote # 2 relevant to Front Yard Minimum Yard Setbacks as follows:

“(2) Front Yard Setback requirements for residential buildings may be reduced if the setbacks of residential buildings on adjoining lots are less than the minimum front yard setback specified herein. In such cases the setback requirement shall be determined by taking the average setback of all residential buildings on the adjoining lots as the setback for the lot under consideration. In the case of a lot having more than one front yard, each average setback shall be calculated individually, using setbacks from the same street or way. (Amended ATM 6/10/02)”

The Footnote allows requirements for residential buildings to be reduced to less than the minimum. The same provision should be applied to all buildings in the downtown to allow for flexibility.

It is recommended to add a Footnote 2A, applicable only to the D zone:

(2A) Within the D zone, the provisions of Footnote 2 apply to determining the Front Yard Setback of any structure. The Board of Appeals may grant a Special Permit for a lesser setback than the calculated average setback, including zero (0) feet.
Proposed SCHEDULE OF AREA AND DIMENSIONS

<table>
<thead>
<tr>
<th>ZONE</th>
<th>G</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Lot Dimensions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Area square feet - 1 family</td>
<td>7,500</td>
<td>7,500</td>
</tr>
<tr>
<td>Area square feet - Two Family</td>
<td>7,500</td>
<td>7,500</td>
</tr>
<tr>
<td>Frontage on Street or Way</td>
<td>50</td>
<td>30</td>
</tr>
<tr>
<td>Minimum Required Yard Dimensions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front Yard (2)</td>
<td>15</td>
<td>10 (2A)</td>
</tr>
<tr>
<td>Side Yard</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Rear Yard</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stories</td>
<td>2.5</td>
<td>2.5</td>
</tr>
<tr>
<td>Feet</td>
<td>30</td>
<td>30/35#</td>
</tr>
<tr>
<td>Coverage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bldg. Coverage % of Sq. Feet</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>Accessory Buildings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum Bldg. Separation</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Side/rear setbacks</td>
<td>10</td>
<td>10</td>
</tr>
</tbody>
</table>

#  See “CONSTRUCTION IN VELOCITY ZONE” below

III. Mixed Use Structures

**PURPOSE:**

- To codify an existing land use pattern in the downtown area
- To provide opportunities to create additional residential and retail spaces
- To enhance the economic viability of downtown buildings
- To encourage sustainable community planning principles

Currently, there are many examples of properties that include both a residential component, and a retail or commercial use. This is a historic land use pattern that the Rockport Planning Board and residents want to acknowledge and encourage. The best way to do this is to clearly define
“Mixed Use” in the Zoning By-law, and to allow a mix of uses, without requiring a variance or special permit, provided all zoning requirements are met.

The current Zoning By-law definition of “Apartment” actually provides for mixed use, but this is not very clear. The current definition is:

“A multiple dwelling for more than two families, under one roof, or for two or more families above a first floor used for non-residence purposes.”

RECOMMENDATION

Delete the existing definition of “Apartment”. There is no need to create a new “Apartment” use definition because the Zoning By-law also currently contains definitions for Multiple Family (“A Structure consisting of 3 or more dwellings) and Two Family dwellings.

Add a new definition for Mixed Use as follows:

**MIXED USE**

One or more dwelling units, under one roof, either behind or above a first floor street-front unit that is used for any Retail Business and Consumer Service Use allowed in the D zoning district.

**ANALYSIS**

This Definition would allow for a single dwelling unit as well as multiple units and restricts the non-residential uses to those listed as “Y” in the Table of Permitted Uses in the Downtown zone.

Currently, the “Apartment House” use is authorized by grant of a Special Permit in the G zone. MAPC recommends that Mixed Use be Allowed As of Right to encourage this type of use and to maximize flexibility of uses in the D zone. This would also be consistent with all of the other Residential Use categories; these are currently Allowed Uses in the G zone, and would be Allowed Uses (“Y”) in the D zone. The category of “Multiple Dwelling”, currently a Special Permit Use, is proposed to remain a Special Permit Use in the new D zone. (See Table of Permitted Uses at the end of this Memo.)

IV. Construction/Restoration in the Coastal Flood District

**PURPOSE:**

To regulate construction that may be required to be elevated because it is located within a Federal Emergency Management Agency–identified Velocity Zone.

The existing Zoning By-law includes Section VIII Coastal Flood District, with five Subsections (A-E). It is recommended to include additional regulations under the existing Subsection D “Development Regulations”

**D. DEVELOPMENT REGULATIONS**

3. **DIMENSIONAL REGULATIONS**

   a. This subsection applies to any land in the Downtown (D) zone within the V 1-30, V and A zones.
b. For construction or restoration of any structure that is required by FEMA regulations to elevate the first floor five (5) feet or less, the Height of Building is 30 feet above the Base Flood Elevation or 2 ½ stories. The main roof shall have a minimum pitch of 4:12.

For construction or restoration of any structure that is required by FEMA regulations to elevate the first floor more than five (5) feet, the Height of Building is 35 feet above ground level or 2 ½ stories. The main roof shall have a minimum pitch of 4:12.

c. It is desirable to consider a Mixed Use building that would include a use not required to be elevated above flood elevation.

V. Decks, Dormers and Half-Story Definitions

PURPOSE:

- To allow for appropriate expansion compatible with the architecture of the downtown area
- Revised Half-Story Definition is necessary to accommodate a new Gable Dormer definition

Decks

Outdoor space is very desirable, particularly in denser downtown environments. It is an attractive amenity to be able to dine outdoors at a restaurant, or to have some private outdoor space as part of a dwelling unit. Due to the proximity of residences, however, and the potential for conflicts due to noise, as well as for aesthetic considerations, it is appropriate to regulate the location and design of decks.

Currently, there is no definition of Decks in the Zoning By-law. It is proposed to add the following definition:

DECK: An unroofed platform typically with plank flooring, enclosed by railings with spaced balusters. No deck shall or be constructed above the elevation of the highest habitable floor of the structure.¹

DORMERS/HALF STORIES

There was considerable discussion during several public meetings concerning the size and style of dormers. Highly desirable additions to existing structures, there were concerns that at times the dormers were too large and architecturally inappropriate. Also, the current definition of Dormer does not differentiate between large “shed” style dormers and smaller gable dormers. It was also suggested during various meetings that the Definition of Half Story be revised in order to align with the new Definition of Gable Dormer.

Half Story (Could be inserted as a separated definition instead of being included under the definition of “Story”.)

¹ It was the consensus of the March 3 Planning Board Public Forum, and MAPC agrees, that all issues dealing with a second means of egress are State Building Code issues, and as such, are not subject to local zoning control. MAPC therefore does not have recommendations relative to stair landings.
“A set of rooms, occurring directly under a dormer or directly under a roof, whose habitable square foot floor area shall not exceed 66% of the square foot floor area of the FIRST story or the first story of the wing of the building in which it occurs, whichever is smaller. Habitable square foot floor area under a roof is defined by the State Building Code.”

There are two new proposed Definitions for Dormers:

Current Definition

“DORMER: A roofed structure projecting through a sloping roof with the following characteristics: a. A sloping or gabled roof which does not exceed the height of the ridgepole of the roof from which it emanates, b. Does not exceed 80% of the ridgeline length.”

Shed Dormer: The front wall of the dormer shall be set back from the outside edge of the soffit for the entire length of the roof. The length should not exceed 80% of the main roof ridge length, with a gable wall setback of two (2) feet, or whichever results in a smaller dormer. The pitch of the dormer roof shall be a minimum of 3:12, and shall not rise above the ridge line of the roof from which it emanates. Windows should match the character of the structure.

MAPC’s final proposed Shed Dormer Definition includes the recommendation of Paul Orlando, Rockport Building Inspector concerning roof pitch and the elimination of mandating window area. MAPC also recommends that windows match the character of the structure. This is particularly important for Bearskin Neck, where there are no historic district regulations. The following rendering shows a two-story house with full shed dormers in the front and rear. The example exceeds the definition of half-story.

Gable Dormer: the front wall setback shall be at least 1 ft 6” from the building’s main wall, and the dormer(s) should comprise no more than 60% of the length of the main roof ridge with a gable end setback of four (4) feet, or whichever results in a smaller dormer. Roof pitch should be consistent with that of the main roof. House with two small gabled dormers:
In addition to the above changes, MAPC recommends the following:

1. **Eliminate Section III Permitted Uses in Zoning Districts Description by zoning district.**

   MAPC understands that the By-law is considered a “hierarchical” Zoning By-law. However, this section is a redundant listing of uses according to zoning district. The nomenclature of “A1; D7b”, etc. is confusing and not explained in the TABLE OF PERMITTED USES. The TABLE OF PERMITTED USES, together with DEFINITIONS should suffice to enumerate uses Permitted as of right, Not Permitted, or Permitted only be grant of a Special Permit by the Board of Appeals.

   This will save Consultant and Planning Board time and be more efficient. Currently whenever a use is modified, it must be done in these two places in the By-law. This change will also allow the By-law to become more accessible to the general public.

   NOTE: MAPC has carefully reviewed both the listing and the Table of Permitted Uses. We cannot definitively state that all uses are represented in the Table. A thorough Planning Board review, in concert with a review of groupings of Use Items (discussed above) will ensure that all the information is accurate and up to date in the Table.

2. **Actively Encourage Historic Preservation Requirements for Bearskin Neck**

   Bearskin Neck is unique and deserves additional protections, such as the existing three local historic districts provide to most of Downtown. It is our understanding that Historic District preparatory work is underway and that a public hearing will be held in July. An alternative designation that could be considered is a Neighborhood Conservation District. Either can be used effectively to achieve compatible design and high quality renovations. Many of the issues discussed in the Zoning By-law relate to quality of design and how well the proposed project “fits” with the existing architecture and streetscape. Some type of design review is the solution, conducted by architects/planners/landscape designers.

   No zoning regulation can cover every instance, every possible situation. It is therefore desirable to have an opportunity to review proposed work, particularly in unique areas. We strongly urge the Planning Board to work with the Board of Selectmen and Historic District Commission to achieve a heightened level of preservation for Bearskin Neck.

**NEXT STEPS**

MAPC recommends that the Planning Board continue with their Downtown Planning efforts, finalize the plan, and use the plan as the basis for community support of any future proposed changes to downtown zoning. While there is not any process governing the way district plans are reviewed, approved, and adopted, to gain support of the Plan, MAPC recommends that the Downtown Plan be reviewed, approved, and adopted by the Planning Board and the Board of Selectmen. This will establish a foundation for future support in the event of proposed zoning amendments or downtown district changes.

Further, the Downtown Plan sets forth an excellent analysis of existing conditions and constraints, and clear goals and objectives that provide a vision for strengthening downtown. The Planning Board, with community partners, should develop an Implementation Plan to truly usher this vision forward for the benefit of those who live, work, and visit the downtown. The Implementation Plan
would include identifiable actions to achieve Goals and Objectives, determine responsible parties who will implement plan elements, a timetable for implementation of each element, and identify the funding needed to implement each element.

Finally, the Plan provides a framework and context for change. The Planning Board should determine which additional zoning and regulatory refinements to focus on in the next year. While this memo identifies a number of potential changes, the Planning Board might want to begin by further informing the general public about the Downtown Plan during the Summer 2011 and advancing a few of the proposed Downtown Zone changes (where early consensus has been identified) for Fall Town Meeting.
### APPENDIX 1: TABLE OF PERMITTED USES AND STRUCTURES

<table>
<thead>
<tr>
<th>PRINCIPAL PERMITTED USES AND STRUCTURES</th>
<th>ZONING DISTRICT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SRAA &amp; SR</td>
</tr>
<tr>
<td><strong>Residential Uses</strong></td>
<td></td>
</tr>
<tr>
<td>A1: One family detached dwelling (limited to one single family dwelling unit per lot)</td>
<td>Y</td>
</tr>
<tr>
<td>A10: The conversion of any dwelling that existed prior to the date of the adoption of the Single Residential District, into two-family dwelling provided that the lot for the dwelling contains not less than the square feet of land area required in the Schedule of Area &amp; Dimensions in Part IV. B.</td>
<td>Y</td>
</tr>
<tr>
<td>B2: The conversion of an existing dwelling into a two family dwelling, provided that the lot for the dwelling contains not less than the square feet of land area required in the Schedule of Area and Dimensions in Part IV. B. * If dwelling existed prior to July 14, 1951.</td>
<td>N*</td>
</tr>
<tr>
<td>B3c: A two-family dwelling of new construction, or the conversion of an existing dwelling into a two-family dwelling, provided that the lot for the dwelling contains not less than the square feet of land area required in the Schedule of Area and Dimensions in Part IV. B.</td>
<td>N</td>
</tr>
<tr>
<td>C5: A two-family dwelling of new construction provided that the lot for the dwelling contains not less than the square feet of land area required in the Schedule of Area And Dimensions in Part IV. B.</td>
<td>N</td>
</tr>
<tr>
<td>B3b: One accessory dwelling unit per lot, provided the minimum lot area required in the Zoning district where the lot is located is provided for each dwelling on the lot.</td>
<td>N</td>
</tr>
<tr>
<td>C3a: The conversion of any existing building into a two-family dwelling or a multiple dwelling <em>apartment house</em>, with not more than four (4) dwelling units, or an inn, provided that the size</td>
<td>N</td>
</tr>
</tbody>
</table>

*Note: The table continues with similar entries for other uses and structures.*
of the building shall not be increased by more than ten (10%) percent of the area which was originally used for habitation.

<table>
<thead>
<tr>
<th>D7a: New apartment houses, New town houses and other multiple dwellings, not to exceed four dwelling units in any one structure provided that there is a minimum of ten thousand (10,000) square feet of land area for each dwelling unit.</th>
<th>N</th>
<th>N</th>
<th>N</th>
<th>SP</th>
<th>SP</th>
<th>SP</th>
</tr>
</thead>
</table>

**MIXED USE (New definition)**

### Educational, Institutional, Recreational and Agricultural Uses

<table>
<thead>
<tr>
<th>A4: Educational purposes on land owned or leased by the Commonwealth or any of its agencies, sub-divisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation.</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>A2: Churches and buildings for religious purposes.</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>E7: Private clubhouse, meeting halls and lodge rooms to be used by fraternal or other organizations.</th>
<th>N</th>
<th>N</th>
<th>N</th>
<th>N</th>
<th>Y</th>
<th>SP</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>A3: The use of land for the primary purpose of agriculture, horticulture or floriculture.</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>N</th>
</tr>
</thead>
</table>

### Governmental and Public Service Uses

<table>
<thead>
<tr>
<th>E10e: Transportation services, including railroad stations, bus passenger stations, bus terminals.</th>
<th>N</th>
<th>N</th>
<th>N</th>
<th>N</th>
<th>SP</th>
<th>SP</th>
</tr>
</thead>
</table>

### Retail Business and Consumer Service Uses

<table>
<thead>
<tr>
<th>A5: The office of a doctor or dentist or the member of a recognized profession residing on the premises, providing there is no display or advertising except for a sign of not more than three square feet.</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>SP</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>A6: Art studio provided it does not cause noise, undue commotion or traffic which is detrimental to a residential neighborhood.</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>A8a: The taking of boarders or the leasing of rooms by the person or persons residing on the premises provided that there is no sign or</th>
<th>SP</th>
<th>SP</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
</tr>
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<tr>
<td>C2: Guest houses, provided that there is no sign or display to advertise such use, except that one sign of not more than three square feet may be used.</td>
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<tr>
<td>C3b: Galleries or studios for the instruction, practice and recital of musical instruments, voice, drama &amp; dance.</td>
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<td>C3c: Greenhouses and nurseries. A greenhouse or nursery may also sell products and items usually associated therewith.</td>
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<tr>
<td>D2: Stores, salesrooms, showrooms or craft shops for the conduct of a retail business, excluding, however, the display or sale of motor vehicles.</td>
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<tr>
<td>D3: Personal service shops, such as a barber, hairdresser, photographic studios, professional offices or agencies.</td>
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<tr>
<td>D4: Shops for custom work by a dressmaker, furrier, interior decorator, milliner, or tailor.</td>
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<tr>
<td>D5: Shops for custom work, such as a shop for a cabinet maker, job printer, repair of household appliances or furnishings, shoemaker, upholsterer or woodworker, provided that such work is not detrimental to the neighborhood because of noise, odors or vibrations.</td>
<td></td>
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<tr>
<td>D7b: Any of the following service establishments dealing directly with the consumer: Repair shops for motor vehicles (provided that all work is performed within a building), service stations, bakeries, blacksmiths, collection stations for laundry or dry cleaning.</td>
<td></td>
<td></td>
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<tr>
<td>D7f: Retail display and sale of motor vehicles.</td>
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<tr>
<td>E2: Stores, salesrooms or showrooms for the conduct of a retail business.</td>
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<tr>
<td>E3: Shops for custom work by a dressmaker, furrier,</td>
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<tr>
<td>E4:</td>
<td>Business or professional offices or agencies, banks or other financial institutions.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>E5:</td>
<td>Restaurants or other eating places serving food only to persons seated at tables or counters if no mechanical or live entertainment is regularly furnished.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>D7d:</td>
<td>Funeral Homes.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>SP</td>
<td>Y</td>
</tr>
<tr>
<td>E9b:</td>
<td>Indoor theatres.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>SP</td>
</tr>
<tr>
<td>E10e:</td>
<td>Any of the following service establishments dealing directly with the consumer, laundry or dry cleaning establishments, frozen food locker plants, or hand or self service laundries.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>SP</td>
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</table>

### Commercial and Industrial Uses

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<tr>
<td>D7e:</td>
<td>Lumber and fuel establishments.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>SP</td>
</tr>
<tr>
<td>D7g:</td>
<td>Industrial buildings, including processing, fabricating, and assembly plants and manufacturing operations, provided they do not cause noise, odors, undue commotion or traffic which is detrimental to the neighborhood. The use of any land or building for the operation of the industry known as fish dehydration, fish processing or the manufacture of byproducts, so-called, from fish or fish waste, or the storage of such products is not permitted.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>SP</td>
</tr>
<tr>
<td>E10f:</td>
<td>Parking lots for commercial vehicles.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>E10g:</td>
<td>Industrial buildings, including processing, fabricating and assembly plants and manufacturing operations.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>E10h:</td>
<td>Wholesale business establishments.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
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<td></td>
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</tr>
<tr>
<td>E10i:</td>
<td>Research Laboratories.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>SP</td>
</tr>
<tr>
<td>D7c:</td>
<td>Contractor storage and repair facilities.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>SP</td>
</tr>
</tbody>
</table>

**Permitted Accessory Uses and Structures**

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<table>
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<tbody>
<tr>
<td>A7:</td>
<td>Gainful home occupation (including a reasonable display of goods) provided that there is no advertising sign except for a small announcement sign having an area of not more than three square feet, and further provided that such occupation shall be carried on only by the person residing upon the premises.</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>A9:</td>
<td>Accessory uses normally associated with a one-family detached dwelling, provided that such accessory uses are not detrimental to a residential neighborhood.</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>NA</td>
</tr>
<tr>
<td>B4:</td>
<td>Accessory uses normally associated with the permitted use allowed on each lot, provided that such accessory uses are not detrimental to a residential neighborhood.</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>NA</td>
</tr>
<tr>
<td>E6:</td>
<td>Such light manufacturing as is incidental to and usual in connection with any permitted uses on the same premises, provided that such light manufacturing is not detrimental to the neighborhood because of noise, odors or vibration.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td>E8:</td>
<td>Such storage of materials, equipment and merchandise as is incidental to and usual in connection with any permitted uses on the same premises.</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Y</td>
</tr>
</tbody>
</table>
FINAL MEMORANDUM: December 2010
Dear Board Members,

Thank you for the opportunity to provide you with an update of MAPC’s work for the Town of Rockport on downtown zoning improvements. MAPC is specifically working with the Town to develop the requirements and specific provisions of a new zone to replace the General Zone District description. This memorandum summarizes guidance and feedback from content reviews that MAPC has conducted and outlines specific recommendations for zoning provision changes that, upon Town approval, will result in new zoning for the Town Village area.

Phase 1: Review of Existing Plans for the Town and the General Zone District Area

In the first phase of the project, MAPC reviewed key plans prepared for the Town and the area, General Zone District (GZD) provisions, Chapter 91, state building code in relation to coastal zones and historic properties, and federal Flood Insurance Rate Maps and the associated requirements. During the initial review, MAPC noted issues relative to lot size, setbacks, build design, lot coverage, shared and off-site parking requirements, allowed uses and those that require a special permit, mixed uses, and other provisions. MAPC also noted the Town’s concern for protecting open spaces and views of the ocean, as evidenced by amendments to setbacks on side lots that abut a valuable view corridor. MAPC identified the following types of shortcomings in the current provisions:

- Numerous use change requests, which resulted in mixed used buildings, triggered special permit reviews. Often, the Zoning Board of Appeals (ZBA) approved these requests. Revisions can be made to the By-law to accommodate mixed uses and to expedite reviews.
- Historic preservation in the GZD is important and inclusion of construction requirements, i.e., lot size requirements for properties in the flood zone and the development of historic design guidelines are important.
- Downtown parking issues in Bearskin Neck are a major issue. Shared parking and the creation of design guidelines that address techniques and treatments like stone and brick
surfacing and landscaping, can be explored as possible solutions to downtown parking issues.

- The Town values appropriately scaled mixed uses in the GZD that contribute to the character of the area. The adoption of design guidelines that apply for the entire GZD can establish standards for signage, outdoor dining and displays, roof decks, accessibility, and similar exterior issues that are important to the appeal of downtown Rockport.

**Phase II: Examples of Recent ZBA Cases and Recommended Zoning Provision Modifications**

During phase II of the project, MAPC reviewed a docket of thirteen historic ZBA determinations in order to determine precedents set by the Board that could inform modifications to zoning. The following is a summary of findings from the cases review and outlines recommended zoning modifications. A detailed review of the cases is also provided in Attachment 1.

**ZBA Case Outcomes**

- **Allowing as-of-right, mixed-use zoning in the GZD.** The ZBA approved a petition to change a building use from commercial to residential use in light of the fact that uses in the District are currently mixed and provided that the use did not increase the building’s current level of nonconformity.

- **Creating design standards for the GZD.** Six cases concerned requests to expand or modify conforming and non-conforming buildings. Design standards can clarify the following:
  - Additions such as the construction of bay windows, which enhance the physical and aesthetic character of buildings and structures within the downtown area are allowed as long as they are complimentary to nearby buildings and structures and align to the District’s design standards (such standards are to be developed).
  - Buildings in the congested Lower Main Street area (area to be specified on a map in the By-law) may be permitted to have open patios or decks that may decrease setbacks on the side and rear provided that the open patio or deck ensures the availability of light or air to adjacent buildings.
  - New patios or decks that will decrease setbacks will be allowed provided that the construction does not increase lot non-conformity with other By-law requirements and will not cause noise or unsightliness. Approval will also be provided for such construction particularly if a building is in close proximity to high traffic areas and such construction may limit noise or unsightliness from adjacent properties.
  - Construction of first-floor decks and landings on conforming and non-conforming buildings in order to ensure public access is allowed as an as-of-right construction activity in the Coastal Flood Plan District, as required by accessibility standards set by the Department of Environmental Protection. Reconstruction activities that will improve buildings’ water resistance and maintain a structure’s foundational integrity are also as-of-right.
  - As-of-right construction that will improve accessibility to buildings is authorized; such construction includes wheelchair lifts and landings to conforming and
nonconforming buildings in order to ensure compliance with the Americans with Disabilities Act and State Architectural Access Board requirements.

- Structural modifications that involve low impact design and/or modifications that ensure proper stormwater runoff retention are important to the Town and add value to its public resources. Design standards can articulate that structural improvements that foster such techniques, and are not detrimental to the neighborhood conform to the intent of the By-law.

- Amend GZD requirements to accommodate the construction and upgrade of arts and cultural economic development entities so long as construction retains the character of existing buildings in the vicinity.

- Adopt a mixed-use zoning district that includes clear guidance on Town expectations regarding parking and density. The ZBA denied a variance request for converting two nonconforming buildings in very close proximity and on a dense piece of property due to lack of adequate parking to accommodate the requested change of use and the projected impact on the density in the area. Another case was approved – despite much nonconformity – on the basis that the conversion of a commercial unit to residential use would contribute to the mix of uses in the Bearskin Neck area and would also exert no marginal increase on current parking resources.

MAPC recommends that the Town adopt the modifications outlined above to the downtown area currently delineated as the General Zone District. The proposed modifications will encourage mixed-use development within certain guidelines, protect open space and access to natural resources, and preserve the character and historic resources of the area. In particular, adoption of the modifications will streamline the approval process for use changes that are in harmony with the By-law’s general purpose and intent and the design standards in particular can reinforce the Town’s concern for maintaining and improving the Town’s natural and historic assets and community character. The recommendations are in line with the Town’s resident feedback at community meetings, the range of change-of-use requests that the Zoning Board of Appeals has approved and those identified by the Town of Rockport’s Consulting Planner, Carolyn Britt. The new zone may also be renamed to “Mixed Use Downtown Village District” to better reflect the new standards.

Draft Design Guidelines for Rockport Historic Districts

To address the Town’s valuable historic resources, valued human scale, and to preserve waterfront views and connections, the following comments are provided to improve design guidelines for the downtown zone.
<table>
<thead>
<tr>
<th>Section</th>
<th>MAPC Comment</th>
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<tbody>
<tr>
<td>3.3 Buildings within the district may not be</td>
<td><em>without</em></td>
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<tr>
<td>demolished with HDC review.</td>
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<tr>
<td>Under “What Changes Are Not Subject to</td>
<td>*I think it is important to retain some kind of oversight, but it can be a</td>
</tr>
<tr>
<td>Review”</td>
<td>more expedited review process, i.e., delivering in writing an intent to do</td>
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<tr>
<td>4.9 Reconstruction, substantially similar in</td>
<td>x,y,z and using X contractor to accomplish it.</td>
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<td>exterior design of a building, structure, or</td>
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<td>exterior architectural features damaged by</td>
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<td>fire, storm or other disaster.</td>
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<tr>
<td>Under “What Changes Are Not Subject to</td>
<td>*I believe this will be covered under the design guidelines for the GZD so</td>
</tr>
<tr>
<td>Review”</td>
<td>for consistency’s sake they should be reviewed as well or, at the very</td>
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<tr>
<td>4.8 Signs</td>
<td>least, general guidelines should be provided.</td>
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<tr>
<td>5.6 Missing architectural features shall be</td>
<td>Unclear; is this meant to state that architectural features that will be</td>
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<tr>
<td>documented as authentic by photographic,</td>
<td>reproduced must be documented? What about all unique features? What is</td>
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<tr>
<td>physical or historical evidence before they</td>
<td>the standard on what is documented and what is not (e.g., stained glass</td>
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<td>are reproduced.</td>
<td>windows, carvings, etc.)?</td>
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<tr>
<td>Under 6.0 “Storefronts”</td>
<td>More detail is needed on what specific elements are to be retained</td>
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<tr>
<td>Storefronts have typically been remodeled</td>
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<td>many times over the years. Historic</td>
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<tr>
<td>storefronts shall be retained, including</td>
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<td>later remodeling that have acquired</td>
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<td>architectural significance as part of the</td>
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<td>history of the building.</td>
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<td>N/A</td>
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<tr>
<td>It may be beneficial to outline the simple</td>
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<td>process/timeframe that will be in place for</td>
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<td>reviews. Also, what type of documentation</td>
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<td>does the Historic Commission keep on file?</td>
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<td>What do homeowners need to know, aside from</td>
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<td>taking pictures of things that are</td>
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<td>reproducing (section 5.6)? Also, is 5.6</td>
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<tr>
<td>specific to reproducing or does it include</td>
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<td>repairs of the type for which clear</td>
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<td>guidance is offered in the preservation</td>
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<td>guidelines?</td>
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<tr>
<td>Recommendations</td>
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<tr>
<td>1. Requirement of screened parking areas or</td>
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<td>other parts of the premises from adjoining</td>
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<td>premises or from the street by walls, fences,</td>
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<td>planting, or other devices.</td>
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<tr>
<td>2. Modification of the exterior features or</td>
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<td>appearance of the structure.</td>
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<td>3. Limitation of size, number of occupants,</td>
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<td>method or time of operation, or extent of</td>
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<tr>
<td>facilities.</td>
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<td>4. Regulation of number, design, and location</td>
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<td>of access drives or other traffic features.</td>
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<td>5. A bond or other security to insure</td>
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<td>compliance with the conditions of</td>
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<tr>
<td>authorization.</td>
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</table>
The applicant, when other than the owner(s), and the owner(s) of land will be responsible for mitigation measures or conditions which are required as part of a favorable decision for issuance of a special permit.

The following section is a summary of specific zoning By-law revisions that Planning Consultant Carolyn Britt has provided.

<table>
<thead>
<tr>
<th>Section</th>
<th>Comments/ Recommended Changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1.C Definitions</td>
<td>Specify that residential building coverage can include outdoor patio area on the ground level as long as the lot continues to conform to setback requirements. Maintain coverage at 50%, but consider a lot coverage definition that includes required parking and cannot exceed 70% or 75%. This will allow maintenance of area for outdoor seating and landscaping.</td>
</tr>
<tr>
<td>Section 1.C Definitions</td>
<td>Add a design guideline citing that commercial buildings not be built with a 0-lot line but with a buffer of open space so that they do not directly abut the public right-of-way. The additional space maybe allocated to Town-approved uses such as outdoor seating and plants and other amenities that can add to the character and aesthetics of the street.</td>
</tr>
<tr>
<td>Section 1.C Definitions</td>
<td>Amend section 1C on Set backs to define what uses are allowed in “open unoccupied space”. Patio seating, stairs, and plantings can be specified as allowed in regards to set backs for all building types. Eliminate front yard set-back to 0ft., and allow reduction of side yard with a SP.</td>
</tr>
<tr>
<td>Section 7</td>
<td>Amend section 7 on Lot Width of the General Zone District provisions in case lot width ought to be smaller. Reduce lot size to 5,000 sf.</td>
</tr>
<tr>
<td>Section III E</td>
<td>Amend number 1 in Section 3e on General Districts regarding Single Residential Districts, Residential A districts, Residential Districts and Semi-Residential</td>
</tr>
</tbody>
</table>
Residential A districts, Residential Districts and Semi-Residential Districts.

Districts. Remove A3 (agriculture) and D7f (sale of motor vehicles), D7e (lumber and fuel establishments), D7g and E10g (industrial uses) and D7c (contractor storage and repair) by special permit only.

Section II E

10. The following uses, when authorized by a Special Permit issued by the Board of Appeals:
   a. Any of the following service establishments dealing directly with the consumer, laundry or dry-cleaning establishments, frozen food locker plant, or a hand or self service laundry.
   b. Indoor theaters.
   c. Funeral Homes. (Delete)
   d. Lumber and fuel establishments. (Delete)
   e. Transportation services, including railroad stations, bus passenger stations, and bus terminals.
   f. Parking lots for commercial vehicles. (Delete)
   g. Industrial buildings, including processing, fabricating and assembly plants and manufacturing operations. (Delete)
   h. Wholesale business establishments.
   i. Research laboratories.
   j. Boat yards not having sufficient square footage or waterfront boundaries.
   k. New construction or manufacture of vessels, or parts thereof, or other marine structures of wood, metal and plastic impregnated laminates in buildings or in open air yards.

Potentially amend number 10 in section 3e on approved uses in the General District that require authorization of Special Permit to exclude the following from the list: funeral homes, lumber and fuel establishments, parking lots for commercial vehicles, and industrial buildings, including processing, fabricating and assembly plants and manufacturing operations.

PROJECTIONS: Nothing herein shall prevent the projection of cornices or eaves not exceeding eighteen inches in width, or of uncovered steps, not exceeding more than forty-eight inches from the structure, into any required yard or other open space.

Any and all improvements must be consistent with historic period architecture, materials, and design as approved by the Rockport Historical Commission.

HEIGHT LIMITATIONS: No building in any district shall exceed thirty feet in height or two and one-half stories above the ground. Buildings can exceed these limits when authorized by a special permit issued by the Board of Appeals. The height limitation shall not apply to private radio or television antenna, chimneys, flagpoles, church spires, belfries, monuments, water towers or municipal fire towers.

Specify that the height of buildings in Bearskin Neck must be a minimum of 30’ above the base flood elevation so that the building meets clearance requirements in the Velocity zone.

Recommendation: Review height of key buildings within the zone to determine height. Require roof lines of minimum and maximum angles, and reduce the allowed development area in the ‘half-story’ definition.

RETAIL AND COMMERCIAL USE: The following requirements shall apply to all retail and commercial uses.

Determination needs to be made by the Planning Board with guidance from the Building Commission.
<table>
<thead>
<tr>
<th>TIDAL BOUNDARIES</th>
<th>existing lots</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where any portion of a lot is covered by tidal waters, the mean high water line as established by the U.S. Coast and Geodetic Survey shall be considered the boundary or boundaries in computing the size of the lot, the square foot area of the lot and the setback of the lot.</td>
<td>any lot which, at the time of the passage of the 1951 Zoning By-Law, or any amendment thereof, was of lesser area than therein specified, and which was described in a deed or shown on a plan recorded with the Registry of Deeds, may be built upon, provided however, that said lot was not subsequently diminished in area, and provided further that if, at the time of the passage of the Zoning By-Law, or of any amendment thereof, there was other contiguous land of the same owner which might be used in connection with such lot, such contiguous land was used to the amount necessary to conform to the requirements of this section, and such lot was not thereafter diminished in area below the requirements stated in this section. In the case of any lot so described or shown in the Registry of Deeds which is without sufficient other land of the same owner contiguous and capable of use to constitute a lot of the area required in this section, on such lot, the owner may erect and maintain one dwelling and such other structures as will comply with all regulations herein specified except for minimum lot area, provided, in all cases that a lot has at least five thousand square feet of area or fifty feet of frontage. For lots having less than five thousand square feet or fifty feet of frontage the Board of Appeals may grant special permits for the use of such lots.</td>
</tr>
</tbody>
</table>
Next Steps

Following review of this memorandum by Town staff and relevant town boards and commissions, MAPC will work with the Town of Rockport to move the project forward according to the following activity timeline that the Rockport Planning Board has outlined.

<table>
<thead>
<tr>
<th>Date</th>
<th>General Zone District (GZD)</th>
<th>Comment of Related Activities (GZD)</th>
<th>Downtown Master Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan 6</td>
<td>Discuss Memo #1; send any additional revisions to MAPC</td>
<td>Discuss Sections pertaining to Infrastructure</td>
<td></td>
</tr>
<tr>
<td>Jan 20</td>
<td>Approve Memo #2 (revisions of #1 plus recommendations and comparisons); circulate to relevant boards, etc.</td>
<td>PUBLIC FORUM If not now, will have to wait until May 19</td>
<td></td>
</tr>
<tr>
<td>Feb 3</td>
<td>PUBLIC FORUM, gather feedback; MAPC to attend</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interim</td>
<td>MAPC incorporates any revisions; send to PB by Feb. 9</td>
<td></td>
<td></td>
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<tr>
<td>Warrant closes for by-law changes Feb. 8</td>
<td></td>
<td></td>
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<tr>
<td>Feb 17</td>
<td>Approve #2 as revised Plan process of educating public in advance of town meeting</td>
<td></td>
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<tr>
<td>CB away Feb 13-21</td>
<td></td>
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<tr>
<td>Interim</td>
<td>MAPC drafts language for proposed new By-law</td>
<td></td>
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<tr>
<td>Mar 3</td>
<td>Review proposed new By-law; circulate to relevant boards, etc. PUBLIC FORUM re proposed revisions</td>
<td></td>
<td></td>
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<tr>
<td>Mar 17</td>
<td>PUBLIC FORUM re proposed new By-law; MAPC attends Prepare for town meeting</td>
<td></td>
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<tr>
<td>Town Meeting April 2</td>
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<tr>
<td>May 5</td>
<td>MAPC incorporates any revisions into a final draft; MAPC attends meeting</td>
<td></td>
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<tr>
<td>May 19</td>
<td>Approve draft of proposed new By-law</td>
<td></td>
<td></td>
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<tr>
<td>May</td>
<td>Plan process of educating public about new By-law; MAPC to provide informational materials</td>
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Appendix 1: MAPC Review of Rockport Zoning Board of Appeals Cases (as provided by the Rockport ZBA)

Variance No. 090502

- **Purpose:** Requested variance and/or special permit to change building use from commercial to residential.
- **Details:** Property is opposite a park. Building front does not meet setback requirements and overall lot area building covers 70 percent of lot and is deficient from the square foot minimum. Building when built predated current zoning and historically for commercial use only. Previous owners were at first denied right to build a second floor and a dormer on the building. However they were allowed to extend the deck. Eventually a second floor for commercial use (office and storage) was approved and as a second parking spot was not needed, a variance was approved not to build it. A sink on the second floor was denied but a circular window was approved. Petition for residential use of the second floor was denied as was a petition to use both floors for commercial. Town historically favored the commercial use of the building and has granted variances that improved its outward appearance. Town has not approved its mixed use. Conforming uses like an extended deck and circular window were approved.
- **Variance Approval:** Latest petition to make the whole building residential was approved. An off-site parking space is required. Board decision was made in light of the fact that downtown Rockport is filled with a mix of residential and commercial. Use will not increase current levels of nonconformity; see guidelines in Section XI.C.7 of the zoning code. Building now recognized as a full single-family residence that is compatible to the area. It is important to note that the property is considered one of the smallest in the neighborhood.
- **Recommendation:** Consider as-of-right mixed use zoning - in the downtown area.

Variance No. 080303

- **Purpose:** Requested variance to enlarge a non-conforming, mixed-use building to expand the second floor to the existing footprint at the front of the building, extend the roof ridge to enlarge the third floor, add dormers to the third floor rear, and increase third floor area by 66 percent.
- **Details:** Property is on Rockport's Main Street. Current building covers 36 percent of the lot. Conforms to frontage, rear, and side setback requirements. Building is nonconforming in regards to the east side setback (exceeds) and the front setback. Building in terms of location marks the end of a long row of mixed use commercial and residential buildings. Several in the district are greater than three stories high. The building's first floor was once commercial shops that have since been converted to a single dwelling. Building contributes aesthetically to the street but all the recent additions give it an irregular appearance.
- **Variance Approval:** This building on the main street qualified for a special permit under subsection I.D.3 as the footprint of the building will not be exceeded and nonconformity will not be increased by the approach to expanding living space. See guidelines in Section XI.C.7 of the zoning code. The expansion will likely increase uniformity in the external appearance of this building on Main Street.
- **Recommendation:** Consider adopting design standards to ensure that the physical character of buildings and structures within the downtown area is “complementary to nearby buildings and structures”.

**Variance No. 070505**

- **Purpose:** Variances and/or special permits to enlarge a nonconforming condo building on Main Street by enclosing a current roof deck and creating a new deck at the rear of the building.
- **Details:** The building has typical nonconformities similar to that of other lots and structures in the area. The lot area is less than half the lot size specified in the By-law requirement, the frontage is less than half the size of the requirement, and the front setback is not met. The property conforms to the maximum height requirements due to a drop in street level as you approach the rear. The petitioners’ plan also impacts the rights of two other member groups of the condominium trust.
- **Variance Approval:** Approved. Precedents was set by an approval for a similar modification to a non-conforming condo provided that it remained entirely open without roofing, tenting, or side enclosures and that any deviation to the approved plans must be presented to the Board for approval. As Lower Main Street is a congested area, ensuring the openness of the deck and its lack of impact on availability of light or air to adjacent buildings
- **Recommendation:** Clarify in the design standards for the Main Street area – particularly pertaining to the congested Lower Main Street area – that any additions that may decrease setbacks on the side and rear must maintain the availability of light or air to adjacent buildings.

**Variance No. 100501**

- **Purpose:** Variance or special permit to extend an existing dormer and construct a roof deck on a nonconforming residential property located in the General District on Bearskin Neck.
- **Details:** The property conforms to current By-law in terms of height but is nonconforming in all other requirements, i.e., the property has no front setback and no rear and side setbacks except for the northeast side which has a setback that is 10 percent of the requirement. The lot size is also far less than the required lot size in the By-law. Building coverage also greatly exceed the percent coverage currently allowed.
- **Variance Approval and Denial:** The dormer construction is approved but the deck is denied as the proposed location of the deck would be too close to abutting properties and would adversely affect privacy and potentially cause noise and unsightliness and is not in harmony with the general purpose of the By-law to lessen congestion.
- **Recommendation:** Similar to the recommendation made regarding the decision on Variance No. 070505: Clarify in the design standards for the Main Street area that any additions to nonconforming lots that may decrease setbacks on the side and rear must maintain the availability of light or air to adjacent buildings. Preference will be given to modifications that do not increase lot unconformity to existing By-law requirements.
Variance No. 070604

- **Purpose**: Variance to enclose an existing porch deck on second floor and construct a landing at the second floor (property is a second floor condo unit).
- **Details**: The property is on Rockport’s Main Street. Property has typical nonconformities — narrow frontage, small lot area, unmet front setbacks, and varying side setbacks. Owners of adjacent units have submitted letters of support. Board considers the condo’s proximity to other building types, i.e., a restaurant and future performance center.
- **Variance Approval**: Board finds the proposed structure is in harmony with the intent and purpose of the By-law and deemed appropriate for the neighborhood and the structure and the changes will potentially limit noise, odors, vibration, or unsightliness.
- **Recommendation**: See previous comment about adopting design standards for the Main Street area.

Variance No. 020904

- **Purpose**: Variance to authorize construction of a first floor deck at the rear of a commercial building (nonconforming) and expansion of an approved deck on the rear of the second floor.
- **Details**: Lot is located on the north basin of Rockport Harbor and in a Historical District and in a Coastal Flood Plain District. Building has retail and residential. It is important to note that the high water mark is deemed to be the property line for setbacks, and this building extends the high water mark and has zero rear setback whereas 10 ft is required. There is also zero setback on the front and sides. This is typical of buildings established long before zoning requirements existed. DEP requires a rear first floor deck for public access.
- **Variance Approval**: Board recognizes Section 10 of Zoning Act and that without approval of this variance the property would be unbuildable and a hardship would be imposed on the owners.
- **Recommendation**: Perhaps the Zoning By-law can include a provision that outlines the need for both conforming and non-conforming buildings and structures in the Coastal Flood Plain District to make modifications as necessary to ensure public access.

Variance No. 060906

- **Purpose**: Variance or special permit to add a wheelchair lift and landing and other related modifications to a nonconforming building and addition of bow windows to the front of the building on Main Street.
- **Details**: The building is within the town’s General District which is most permissive in terms of use. The structure dates from 1780 and has gone through numerous additions over the years.
- **Variance Approval**: Approved as literal enforcement of the By-law would involve substantial hardship to the petitioner. The bay windows were also approved as improving the retail viability and rental potential of the property.
• **Recommendation:** The By-law can have a statement about accessibility improvements.

**Variance No. 090905**

• **Purpose:** Variance or special permit to alter the roof and porch of a nonconforming lot located in a General District, a Historic District, and a Coastal Flood Plain District. The roof has problems because it was created when two small buildings were joined and it does not shed water properly. The roof will be extended and increase living space in the building. Construction, while remaining within the existing footprint of the structure, will increase nonconformity.

• **Details:** The project will eliminate maintenance problems and will not increase building height.

• **Variance Approval:** Approved as ensuring the building’s proper operation and not being detrimental to the neighborhood nor causing noise, odors, vibration or unsightliness (pursuant to XI.C. 7 of the By-law)

• **Recommendation:** The By-law can include a statement that approves structural improvements that ensure proper stormwater runoff as long as the changes are not detrimental to the neighborhood.

**Variance No. 070504**

• **Purpose:** Series of variances and special permits request by Rockport Chamber Music Festival to demolish its current building from the 1870’s and construct a new three-story building. The request is therefore to: enlarge, change or alter the nonconforming use and building; increase height; seek retail and consumer service use above the first floor; extend a portion of the building, increase lot coverage; obtain exemption from parking regulations to allow off-site, off-street parking; excavate below the grade of main street; and improve structures on the property that are within the Coastal Flood District.

• **Details:** The parcel is located in a General District, the Historic District, and in a Coastal Flood Plain District. All requests will not exceed the maximum height of the existing building and will duplicate the architecture of the original building. The uses will include a concert hall and balcony on the first two floors and a catering kitchen and offices on the third floor. The building will also feature acoustical design to both contain and exclude sound. Off-site parking will be accomplished using shuttle service and private and public facilities. The changes require relief from current By-law requirements.

• **Variance Approvals and Denials:** Approved as pursuant to Section 10 of the Zoning Act. The changes will not result in substantial detriment to the public good, desirable relief can be granted, and literal enforcement of the By-law may pose financial hardship to the petitioner. The requests for a dimensional variance, special permits for indoor theater use, height according to current nonconforming use, retail and consumer uses above the first floor, off-street parking, an increase in total building coverage, excavation of abutting roads to a lower grade, and construction in a Coastal Flood Plain were all approved. The Flood Plain District construction was approved on the grounds that the foundation will have a much stronger water resistant barrier. The request to extend the building to the north, which would reduce the easterly setback, was later deemed unnecessary by petitioner and thus denied by the Board.
Recommendations: Amend General District requirements to accommodate arts and culture economic development resources as long as modifications and development retain the character and appearances of existing buildings in the village. Amend Coastal Flood Plain District construction regulations to allow for reconstruction that will improve the water resistance of the existing foundation or maintain the structure’s foundational integrity.

Variance No. 060403

- **Purpose:** Special permit to convert a nonconforming building to a single family and to convert another nonconforming building - from two units to a single family. Property at the address currently consists of five buildings of various uses.
- **Details:** An accessory building (for storage and office) is proposed for conversion to a single family accessory dwelling and two units in another building would be combined into one unit.
- **Variance Denial:** Board declined the first request noting the overdeveloped nature of the property, the nonconforming building separation, and the egregious parking inadequacy for the property as a whole. Density and parking were the deciding factors in the denial of the accessory conversion; however, the consolidation of two units to one was approved (because it reduces density and parking issues). The board could not authorize the creation of new nonconformities.
- **Recommendation:** This decision was made in line with Section IV B of the Zoning Bylaw.

Variance No. 090403

- **Purpose:** Variance or special permit to construct a new deck and two exterior staircases to raise the building by one foot and reconfigure a street-level garage.
- **Details:** The building is mixed-use with two stores on the first floor and three dwelling units. The lot is deficient in all respects except for frontage (re: the downtown General District zoning). An accessory dwelling structure above the garage is the subject of the appeal. Request is for an uncovered deck, a required second egress as required by State Building Code, and a two-story stair extension. The construction of the stair hall extension will cut into the already inadequate eastern setback.
- **Variance Denial:** Proposal was deemed to impinge upon the intent of the By-law and its strictures on setbacks. Board notes other egress options. These changes may contribute to overbuilding. Board will consider other possible enlargements or changes that are not more detrimental to the neighborhood.
- **Recommendation:** This decision was made in line with the Zoning By-law.

Variance No. 070802

- **Purpose:** Variance to acquire an abandoned institutional property (Carnegie Library) and convert it to single-family residential use and create a deck and a front step in order to create a secondary egress and meet State Building Code as required.
• **Details**: The Town sold the property in 2006 after no significant Town use of the building could be identified and the cost of upkeep against other crucial funding imperatives made its maintenance a low priority. The property is located in a General District.

• **Variance Approvals**: Approved on the basis of compatibility with existing uses in the District and the additions to the existing structure will be amenable to the neighborhood as a whole. However extension of the front step will extend the lot line onto Town Property and final approval for this addition will rest with the Board of Selectmen.

• **Recommendation**: This decision was made in line with the zoning code.

Variance No. 050805

• **Purpose**: Request for special permits authorizing conversation of a second floor of a nonconforming building from retail to residential use and the waiving of required parking spaces.

• **Details**: The property is located in a General District. The property is nonconforming to virtually all of the By-law’s dimensional requirements. Such permit granting and without required parking has been approved for the petitioners in the past (2003) however the permits lapsed.

• **Variance Approval**: Approval was granted with the recognition that the proposed residential use will in fact be less intrusive than the existing nonconforming use and that it adds to the mix of uses in the Bearskin Neck area, which consists largely of buildings with retail on the first floor and residences above them. The Board recognizes that there will be no marginal increase in parking according to V.F. of the By-law and the proposed conversion would actually reduce nonconformity to the By-law’s parking requirements.

• **Recommendation**: The By-law could include a statement similar to the recommendation outlined in the previous variance summary — modifications of building use types will be considered by the Board as long as they are deemed amenable to the neighborhood as a whole and more so if they enhance conformity to current By-law requirements.
APPENDIX 1: Zoning Analyses
Comparison of Shared and Off-Site Parking Requirements

Note: The table below extracts parking requirements from six towns’ zoning ordinances: Gloucester, Marblehead, Newburyport, Provincetown, Saugus, and Stoneham. The parking requirements of the town of Rockport are located in the first column.

Please note that in some cases, parking requirements language has been extracted from different parts of a town’s zoning ordinance and therefore the text may not read with a logical flow.
rockport shall be issued without the conversion of any building for

B. Joint and Mixed Uses:

within 75 feet of buildings converted to any of the

C. Conversions:

various buildings and uses the sum of the requirements of the

D. Buildings

permitted area

at least 1500 square feet of floor area

2. All parking areas for more than five vehicles have a minimum of at least four (4) feet on the sides and rear, and

3. At least, or at three inches in diameter of the base, shall be provided for on street parking.

E. Plans Required:

4. No building permit for the erection, extension or alteration or conversion of any building for which parking areas shall be issued without the submission of an off-street, on-street parking plan.

Definition

Parking Space—Adequate space to park an automobile, plus means of access.

Parking space required by this Ordinance shall be built to the standards set forth in Section 4.1.6. Where spaces are not marked, each space shall be assumed to require 350 square feet.

200-21. Parking space requirements.

Each parking space shall be at least nine feet wide and 20 feet long and shall be properly configured for vehicular access to a motor vehicle as well as pedestrian access. Access to parking areas shall not be obstructed or used for the parking of motor vehicles.

200-22. Parking requirements modified by special permit.

The parking requirements of this Ordinance may be modified by special permit for use and dimension from the Board of Appeals. The parking requirements of the Board shall not be modified by special permit upon a showing by the school or place of worship that strict compliance with the provisions of the Bylaw, the Board of Appeals in implementing the Bylaw shall not take any action, impose any conditions, or make any decision, which would compromise or compromise the provisions of the Massachusetts General Laws Chapter 44A, Section 3.

200-23. Parking impact on open areas.

An increase in parking or moving space which reduces the open space in an area in below that required by the Bylaw shall require a special permit for use and dimension from the Board of Appeals.

200-24. Parking requirements for wireless communication facilities (WCF).

As amended 5-3-1997 and 6-30-1997

Where a monopole is located, a minimum of one parking space shall be required for each 200 square feet of

5. The provisions of these requirements to ensure that adequate quality of well-designed off-street parking is provided to serve all parking demands.

7. Any subsequent change in land use for which the shared parking proposal was approved, and which results in the need for additional parking spaces, shall require a new special permit application under this subsection.

The provisions of this section shall take effect upon completion of construction of a portion of an approved special permit application under this section.

Use of Number of Spaces

- Theater: 1 space/5 seats
- Church: 1 space/8 seats
- Funeral home: 1 space/50 sq. feet
- Offices: 1 space/100 sq. feet
- Restaurants, bar, or 1 space/350 sq. feet
- Skating rink: 1 space/100 sq. feet
- Bowling alley: 1 space/250 sq. feet
- Retail stores: 1 space/300 sq. feet
- Office: 1 space/350 sq. feet or less
- Miscellaneous building or space, not specifically identified as one of the above mentioned use or any other use.

2473 Cemités District

In all districts except TCC, which is exempt, every non-residential structure or building shall provide for a minimum parking of five (5) cars or comply with the following:

- 1 space per two residential units

26. Parking impact on open area.

Any increase in parking or moving space which reduces the open space in an area in below that required by the Bylaw shall require a special permit for use and dimension from the Board of Appeals.

Parking space and requirements for the purposes of determining the dimensional requirement for off-street parking, the measurement shall be taken in a straight line from the appropriate lot parking lot line to the parking structure associated to the principal building, structure or use on the premises. In the event a development of more than one building is comprised of more than one unit, the parking requirement shall be the sum total of the requirements for the individual buildings. Structures and uses converted to non-residential use shall be at least one and one half off-street parking spaces shall be provided for each dwelling unit located in other districts. Such spaces shall be located on the same lot as the dwelling they serve. When the off-street parking space is not on the same block as the use of such parking space may be provided for more than one use.

For residential structures: at least one parking space of 200 square feet of parking area.

The sum total of the requirements for the individual buildings, structures or use on the premises shall be computed separately.

Parking requirements modified by special permit.

The provisions of this section shall take effect upon completion of construction of a portion of an approved special permit application under this section.

The Board of Appeals, in exercising their authority (SPGA) for the purposes of this Ordinance, shall not enlarged or changed in a manner that increases their parking needs. All parking requirements as set forth in the special permit, are subject to the following provisions.
Regulating parking access driveways:

- parking access driveways are defined as being a minimum width of 11 feet for single lane and 20 feet for two lane access for each dwelling unit.

Regarding municipal parking structures by non-residential uses. The improvements necessitated by such uses are intended to increase the supply of available public parking space which would otherwise be available if not for the use of the municipal parking structures by such non-residential uses, to allow for related improvements that are necessitated by the use of municipal parking structures by such non-residential use and to pay for increases in the cost of operating and maintaining municipal parking structures which said cost can be directly attributed to the use of the municipal parking structures by such non-residential users. It is intended that all property owners within these districts that request a special permit from the SPGA to utilize a municipal parking structure to meet their off-street parking requirements shall meet the requirements of this section. Recognizing the particular intermodal transportation and parking needs of these districts, the SPGA may allow the reimbursement of credit (UPNC) to be applied and deposited in the ITF as a method of meeting the parking requirements of section V.E. for non-residential uses. As provided in this section, the UPNC may only be requested by a property owner of a non-residential use within five hundred (500) feet of an off-street municipal parking structure. Applications shall be administered by the SPGA as part of the special permit process and calculated using the table listed in the intermodal transportation improvement fund.

To calculate this credit, any unused parking need shall be calculated by multiplying the required unmet parking need by a rate of ten thousand dollars ($10,000.00) per space. Prior to the issuance of a building permit, the resulting dollar amount shall then be deposited in the ITF. The ITF shall be used within the districts to provide support for transportation related improvements cited above, operations and shall be controlled and administered by the city council. The use of funds collected under this section is intended to meet the requirements of this section. The Planning Board shall consider, among other requirements, the adequacy of the parking during the two-year temporary variance period. The Planning Board may impose reasonable conditions on any permanent parking waiver granted by special permit under this section.

**TABLE OF MINIMUM REQUIREMENTS**

| Use Number of Spaces Required | Single family residential | Two-family residential | Commercial parking for non-residential uses | Residential | Retail or service uses (other than automotive) | Professional or other office, bank | Restaurant, bar | Industrial, light manufacturing | Warehouse | Places of public assembly, including church | Auditoriums, theaters, clubs, houses of worship determined by State Building Code | Agricultural and municipal facilities | Ward houses and small multi-family housing | Boat or vessel without canopy | Recreational or commercial boat or hospital | Commercial Golf | Marinas from the MAPC Parking Toolkit or on Shared Parking |
|--------------------------------|--------------------------|------------------------|-------------------------------------------|------------|-----------------------------------------------|---------------------------------|----------------|--------------------------------|-----------|-----------------------------------------------|------------------------------------------------|-------------------------------------------------|------------------------------------------------|--------------------------------|-------------------------------|-----------------------------------|
| Single family residential      | 1 space                  | 2 space                | 4 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Two-family residential         | 1 space                  | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Commercial parking for non-residential uses | 1 space                 | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Residential                     | 1 space                  | 2 space                | 3 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Retail or service uses (other than automotive) | 1 space                 | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Professional or other office, bank | 1 space                 | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Restaurant, bar                | 1 space                  | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Industrial, light manufacturing | 1 space                 | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Warehouse                       | 1 space                  | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Places of public assembly, including church | 1 space                 | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Auditoriums, theaters, clubs, houses of worship determined by State Building Code | 1 space                 | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Agricultural and municipal facilities | 1 space                 | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Ward houses and small multi-family housing | 1 space                 | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Boat or vessel without canopy   | 1 space                  | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Recreational or commercial boat or hospital | 1 space                 | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |
| Commercial Golf                 | 1 space                  | 1 space                | 1 space                                   | 1 space    | 1 space                                        | 1 space                        | 1 space        | 1 space                          | 1 space   | 1 space                          | 1 space                            | 1 space                           | 1 space                          | 1 space                      | 1 space                     | 1 space                        |

The quantity, location and dimensions of all driveways, maneuvering spaces and similar parking spaces, drainage facilities and landscaping, (greenbelt), the locate(s) and size of type of materials for surface paving, curbing, or wheel stops, trees, screening and lighting, the location of all buildings, lot lines, and parking areas, showing set back lines and distances; Such other information as the Building Inspector may reasonably require.

All plans required hereunder shall be filed with the Building Inspector, shall be shown to scale and shall be a scale of not less than one inch equals forty feet.

F. SINGLE AND TWO-FAMILY DWELLINGS

One-on-one, off-street parking space shall be provided for each dwelling unit.

G. EXTERNAL ENLARGEMENT

A building shall not be considered externally enlarged unless it exceeds 10% of the first floor area existing on July 1, 1973.

H. MODIFICATIONS

The Parking and Greenbelt requirements set forth in the Part V., may be modified by a special permit issued by the Board of Appeals.
Section 4.1.4 Design and Layout of Required Parking Facilities

(a) General Provisions

1. The following are not subject to the design and layout standards set forth in this Section 4.1.4:
   a) parking spaces required for single-family and two-family dwellings;
   b) parking spaces required for the expansion of a building in existence on April 1, 1991; or
   c) the expansion would require the creation of no more than ten additional spaces.

2. No accessory off-street parking space shall be permitted within the required front yard of a lot in any residential district.

3. Parking areas shall be designed so as to allow each vehicle to enter and leave each parking space without requiring the backing of any other vehicle (except for an area providing vehicle parking or a parking lot in which spaces are assigned to occupants of the building served by that lot) and so as not to require the backing of a vehicle onto a collector street.

4. Required off-street parking facilities may be constructed on any portion of the lot which is not required to be paved or paved so as to conform to the requirements of the building code for parking spaces.

5. Parking areas shall be designed so as to allow for the movement of vehicles of any kind.

6. Any light fixture used to illuminate vehicles of any kind shall be shielded so as not to shine parking areas onto public ways or adjoining property.

7. No parking stall, except those contained in a parking structure, shall be located within ten feet of the boundaries of the property.

8. Parking areas shall be located within two hundred feet of the street.

9. Parking areas shall be located within one foot of a sidewalk, street, or external property line.

10. Parking areas which contain more than five off-street parking spaces and which are located within ten feet of the boundaries of the property shall be equipped with a barrier.

### Table: Parking Requirements

<table>
<thead>
<tr>
<th>Use</th>
<th>Parking Spaces Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hotels and motels</td>
<td>1.25 spaces per guest unit plus spaces required for other commercial uses</td>
</tr>
<tr>
<td>Religious exempt uses</td>
<td>1.25 spaces per guest unit</td>
</tr>
<tr>
<td>Bed and breakfast</td>
<td>1 space for every four occupants</td>
</tr>
<tr>
<td>Clubs and lodges</td>
<td>1 space for every four occupants</td>
</tr>
<tr>
<td>Educational exempt uses</td>
<td>1 space for every four occupants</td>
</tr>
<tr>
<td>Tourism</td>
<td>1 space for every four occupants</td>
</tr>
<tr>
<td>Commercial</td>
<td>1 space for every 200 square feet of gross floor area</td>
</tr>
<tr>
<td>All other uses</td>
<td>1 space for every 200 square feet of gross floor area</td>
</tr>
</tbody>
</table>

### Deleted Section

- [Deleted: bylaw]
<table>
<thead>
<tr>
<th>Backpant - Current</th>
<th>Gloucester</th>
<th>Marblehead</th>
<th>Newburyport</th>
<th>Provincetown</th>
<th>Schute</th>
<th>Stoneham – from the MAPC Parking Toolkit section on Shared Parking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parking spaces for compact automobiles shall be permitted only in parking lots or garages having 10 spaces or more, shall be appropriately and clearly marked, and shall comprise not more than 30% of the spaces provided.</td>
<td>(c) Parking Aisle Dimensions: For one-way traffic, the minimum width of aisles providing access to stalls shall be 12 feet for parallel and angle parking, and 14 feet for perpendicular parking. For two-way traffic, the minimum width of aisles providing access to stalls shall be 20 feet for parallel and angle parking, and 24 feet for perpendicular parking.</td>
<td>(d) Access: 1. The minimum width for entrance and exit drives to parking areas shall be the same as required for parking sidles, per 4.1.4(c) of this section. The minimum width for entrance and exit drives is 25 feet. 2. No portion of any entrance or exit driveway to or from a parking area shall be closer than 20 feet to the curb line of an intersecting street, and all such driveways shall be separated from each other by at least 30 feet.</td>
<td>The location, configuration of, and size of on-street provided bicycle storage by the building it serves. The number and location of bicycle parking spaces is at the discretion of the Planning Board, but shall be not less than 10% (rounded to the nearest whole number) of automobile spaces required provided that, if in the opinion of the Planning Board such bicycle parking spaces will compromise public safety, safety or welfare, the Planning Board may allow fewer than the minimum 10% bicycle parking spaces.</td>
<td>760-B BUSINESS DISTRICT PARKING REQUIREMENTS WAIVERS The Planning Board may waive the parking requirements of this Section for office and retail uses in the General Business or Harbour Business Districts if the applicant can demonstrate that sufficient on-street parking (public or private) exists that may adequately fulfill, in part or in whole, the parking needs of the applicant, or that special circumstances exist, such as the shared use of a parking lot by activities having different peak demand times.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Comparison of Discontinuance Clauses:**

<table>
<thead>
<tr>
<th>Chapter 40A, Sections 7 and 9</th>
<th>Dedham</th>
<th>Leominster</th>
<th>Wayland</th>
<th>Beverly</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Exempt, Section 7</strong></td>
<td>No action, suit or proceeding shall be maintained in any court, nor any administrative or other action taken to recover a fine or damages or to compel the removal, alteration, or relocation of any structure or part of a structure by reason of any violation of any zoning-by-law or ordinance except in accordance with the provisions of this section.</td>
<td>No action, suit or proceeding shall be maintained, unless such action, suit or the conditions of any variance or by-law adopted thereunder, or the provisions of any variance or special permit, shall be maintained, unless such action, suit or proceeding is commenced and notice thereof recorded in the registry of deeds for each county.</td>
<td>No action, suit or proceeding shall be maintained, unless such action, suit or the conditions of any variance or by-law adopted thereunder, or the provisions of any variance or special permit, shall be maintained, unless such action, suit or proceeding is commenced and notice thereof recorded in the registry of deeds for each county.</td>
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</tr>
</tbody>
</table>

### General

4. **Discontinuance:** In the event that a nonconforming building or structure shall not be used, or a nonconforming use shall not be exercised for a period of two years, the right to maintain such nonconforming building or structure, or to carry on such nonconforming use, shall be deemed to have been abandoned and extinguished. Thereafter, the premises shall be subject to the regulations herein applying to the zoning district in which they are located.

#### 6.2.7 Discontinuance, Abandonment

- **A.** A nonconforming use or structure or other nonconforming situation is considered to be discontinued or abandoned whenever:
  - a. it is not used for a period of 24 consecutive months, or
  - b. there is evidence of discontinuance or abandonment and it is apparent that the owner does not intend to resume the use or other nonconforming situation, whichever occurs first.

- **In the administration of part b. above, evidence of discontinuance or abandonment shall include:**
  - 1. bringing the use, structure or other nonconformity into compliance with this By-Law, or,
  - 2. ceasing to be open to the public for the conduct of business for a period of six continuous months, and one or more of the following:
    - a. removal of customary equipment or supplies for the operation of a use,
    - b. disconnecting electrical, gas or other utility services,
    - c. failure to provide for operation in colder weather such as ceasing to heat the building at normal levels required by health regulations or failing to provide snow removal,
    - d. issuance of a notice of an unsafe structure by the Building Commissioner.

- **BY FINDING** In all other instances, the Board of Appeals may grant a FINDING for the discontinuance of a non-conforming use, structure, building, sign, or other nonconforming situation which is destroyed or damaged in whole or in part by explosion, collapse, fire, storm, natural disaster or other catastrophic event beyond the control of the owner which may be reconstructed by right within two years, subject to two prerequisites: (a) provided that such reconstruction does not increase the non-conforming nature of said structure (e.g. no increase in the site coverage, gross floor area, building volume, or degree of non-conformity) and (b) the single or two-family residential use of the structure shall either not have been (i) discontinued within two (2) years from the date such destruction or damage or (ii) abandoned. Discontinuance and abandonment are different determinations. Whether abandonment has occurred is based on the intent of the owner and shall be determined by the acts or inactions of the owner. (G.L. Chapter 40A §6).

<table>
<thead>
<tr>
<th><strong>SECTION 7: NON-CONFORMING SITUATIONS</strong></th>
<th><strong>ABANDONMENT</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A.</strong> A nonconforming use or structure or other nonconforming situation is considered to be discontinued or abandoned whenever:</td>
<td><strong>B.</strong> There is evidence of discontinuance or abandonment and it is apparent that the owner does not intend to resume the use or other nonconforming situation, whichever occurs first.</td>
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    - b. disconnecting electrical, gas or other utility services,
    - c. failure to provide for operation in colder weather such as ceasing to heat the building at normal levels required by health regulations or failing to provide snow removal,
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<th><strong>SECTION 8: NON-CONFORMING SITUATIONS</strong></th>
<th><strong>ABANDONMENT</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A.</strong> A nonconforming use or structure or other nonconforming situation is considered to be discontinued or abandoned whenever:</td>
<td><strong>B.</strong> There is evidence of discontinuance or abandonment and it is apparent that the owner does not intend to resume the use or other nonconforming situation, whichever occurs first.</td>
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- **In the administration of part b. above, evidence of discontinuance or abandonment shall include:**
  - 1. bringing the use, structure or other nonconformity into compliance with this By-Law, or,
  - 2. ceasing to be open to the public for the conduct of business for a period of six continuous months, and one or more of the following:
    - a. removal of customary equipment or supplies for the operation of a use,
    - b. disconnecting electrical, gas or other utility services,
    - c. failure to provide for operation in colder weather such as ceasing to heat the building at normal levels required by health regulations or failing to provide snow removal,
    - d. issuance of a notice of an unsafe structure by the Building Commissioner.

- **BY FINDING** In all other instances, the Board of Appeals may grant a FINDING for the discontinuance of a non-conforming use, structure, building, sign, or other nonconforming situation which is destroyed or damaged in whole or in part by explosion, collapse, fire, storm, natural disaster or other catastrophic event beyond the control of the owner which may be reconstructed by right within two years, subject to two prerequisites: (a) provided that such reconstruction does not increase the non-conforming nature of said structure (e.g. no increase in the site coverage, gross floor area, building volume, or degree of non-conformity) and (b) the single or two-family residential use of the structure shall either not have been (i) discontinued within two (2) years from the date such destruction or damage or (ii) abandoned. Discontinuance and abandonment are different determinations. Whether abandonment has occurred is based on the intent of the owner and shall be determined by the acts or inactions of the owner. (G.L. Chapter 40A §6).
or district in which the land lies within ten years next after the commencement of the alleged violation. Such notice shall include names of one or more of the owners of record, the name of the person initiating the action, and adequate identification of the structure and the alleged violation.

Excerpt, Section 9

MGL 40A section 9 references special permit references allowing residential use in non-residentially zoned areas...

Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for persons of low or moderate income, traffic or pedestrian improvements, installation of solar energy systems, protection for solar access, or other amenities. Such zoning ordinances or by-laws shall state the specific improvements or amenities or locations of proposed uses for which the special permits shall be granted, and the maximum increases in density of population or intensity of use which may be authorized by such special permits.

Zoning ordinances or by-laws may provide that special permits may be granted for multi-family residential use in non-residentially zoned areas where the public good would be served and after a finding by the special permit granting authority, that such non-residentially zoned area would not be adversely affected by such a residential use, and that permitted uses in such a zone are not noxious to a multi-family use.

Commissioner,

In the event that the Zoning Officer has evidence of discontinuance or abandonment, he/she shall communicate with the owner of record, by certified mail, inquiring as to the owner’s intent and informing the owner of the potential loss in nonconforming status. Such owner shall be allowed a period of thirty days from the transmittal of such communication in which to respond and to take action. Discontinuance or abandonment of a part of a nonconforming use, structure or situation shall not normally be considered to be evidence of discontinuance or abandonment of the whole unless that part which is discontinued or abandoned is the part which causes the nonconformity.

6.2.8 The rights of a nonconforming use, structure, building, lot, parking space, loading bay, landscaping or other situation are not affected by a change in ownership, tenancy or management unless such ownership, tenancy or management is specifically a condition of the issuance of a permit.

Customary equipment or supplies for the operation of a use,

a. There is an increase of no more than twenty-five percent (25%) in the site coverage, the gross floor area, the building volume or the degree of non-conformity;

b. The reconstruction conforms to the current requirements of this Ordinance to the maximum extent practicable. The Board of Appeals shall consider the (i) opinion of the Building Inspector in making this determination and (ii) extreme size and scale of the structure (such as steep grades, the presence of ledge or other unstable soil conditions), economic considerations, and the shape and configuration of the lot.

c. Failure to provide for operation in colder weather such as causing the building or normal levels required by health regulations or failing to provide snow removal,

d. Discontinuance or abandonment of a part of a nonconforming use, structure or situation which is destroyed or damaged in whole or in part by the voluntary action of the owner may be reconstructed by right within two (2) years from the date of such destruction or damage, subject to such prorogative (a) provided that such reconstruction does not increase the nonconforming nature of said structure (e.g., no increase in the site coverage, gross floor area, building volume, or degree of non-conformity) and (b) the single or two-family residential use of the structure shall either not have been (i) discontinued within two (2) years from the date such destruction or damage or (ii) abandoned. Discontinuance and abandonment are different determinations. Whether abandonment has occurred is based on the intent of the owner and shall be determined by the actions or inactions of the owner. (G. L. Chapter 40A [§].

BY RIGHT Any lawful single family or two-family residential structure which is destroyed or damaged in whole or in part by the voluntary action of the owner may be reconstructed by right within two (2) years from the date of such destruction or damage, subject to two prerequisites (i) provided that such reconstruction does not increase the nonconforming nature of said structure (e.g., no increase in the site coverage, gross floor area, building volume, or degree of non-conformity) and (ii) the single or two-family residential use of the structure shall either not have been (i) discontinued within two (2) years from the date such destruction or damage or (ii) abandoned.

BY FINDING in all other instances the Board of Appeals may grant a FINDING for the reconstruction of a non-conforming use, structure, building, lot, or other nonconforming situation which is destroyed or damaged in whole or in part by the voluntary action of the owner within two (2) years from the date of such damage or destruction provided the Board of Appeals determines that:

a. There is an increase of no more than ten percent (10%) in the site coverage, the gross floor area, the building volume or the degree of non-conformity;

b. The construction conforms to the current requirements of this Ordinance to the maximum extent practicable. The Board of Appeals shall consider the (i) opinion of the Building Inspector...
discontinuance or abandonment of the whole unless that part which is discontinued or abandoned is the part which causes the nonconformity.

In making this determination and (ii) extreme site conditions (such as steep grades, the presence of ledge or other unsuitable soil conditions), economic considerations, and the shape and configuration of the lot.

c. The proposed reconstruction/use is not substantially more detrimental to the neighborhood than the previous existing nonconforming structure/use. (Ord. No. 170, 1-3-07)
Review of Content on Height Limits, Street Frontage, Density of New Construction, and Commercial to Residential Conversions

This document compiles Massachusetts local codes language in reference to the topics below:

- Height limits/how is building height measured in velocity zones
- Street frontage/patio standards. What is allowed?
- Density standards — new construction
- Conversions standards specifically regarding loss of commercial to residential

Comments:

- None of the coastal communities we have been looking at had specific language on height limits in velocity zones; a wider search found language in the towns of Marion and West Tisbury note how elevated buildings must be, but they offer no language on final building height.
- Hingham has language on street frontage standards.
- Provincetown has language on conversion requirements regarding properties converting from commercial to residential.
- Hingham and Hudson have language on density standards for new construction, which also addressing allowable housing.

### Height Standards

<table>
<thead>
<tr>
<th>City/Area</th>
<th>Height Limits in Velocity Zone</th>
<th>Re: Street Frontage/Patio Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Re: Height Limits in Velocity Zone</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Re: Street Frontage/Patio Standards</td>
<td>Jured common driveways – conditions of license</td>
<td>Jured common driveways – conditions of license</td>
</tr>
<tr>
<td>19.3 Additional Requirements in V (Velocity Zones) – VE</td>
<td>If proposed construction of alteration of the land form is located within a V Zone (as defined), all Flood Plain Permits granted under Section 19.3 above shall be subject to the following additional requirements.</td>
<td></td>
</tr>
<tr>
<td>200-38, Special permit for incentive zoning</td>
<td>An applicant may seek a special permit for incentive zoning to increase density or intensity of use to allow that allowed by right in the zoning district in which the residential development is located or may</td>
<td></td>
</tr>
<tr>
<td>5.10.4.2 The</td>
<td>All new construction within the V Zones (as defined) shall be located landward of the reach of the mean high tide.</td>
<td></td>
</tr>
<tr>
<td>5.10.0 Adaptive Construction</td>
<td>New and existing structures have the potential for flood damage shall be</td>
<td></td>
</tr>
</tbody>
</table>

### Street Standards

<table>
<thead>
<tr>
<th>City/Area</th>
<th>Street Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Re: Street Frontage/Patio Standards</td>
<td>None</td>
</tr>
<tr>
<td>Re: Density Standards – New Construction</td>
<td>None</td>
</tr>
<tr>
<td>1. Residential structures have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on West Tisbury’s Flood Insurance Rate Map.</td>
<td></td>
</tr>
<tr>
<td>2. New construction or substantial improvements of residential structures within the special flood</td>
<td>Non-residential structures have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on West Tisbury’s Flood Insurance Rate Map.</td>
</tr>
<tr>
<td>Receptacle - Current Density, City Limit</td>
<td>Duxbury</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>New</td>
<td>Note: The previous section has been amended as per an update approved on the Town warrant held 4/13/10.</td>
</tr>
<tr>
<td>New</td>
<td></td>
</tr>
<tr>
<td>New</td>
<td>19.6 Additional Requirements in AO Zones.</td>
</tr>
<tr>
<td>No new</td>
<td>For new construction and substantial improvements in the AO Zones, all Flood Plain Permits granted under Section 19.3 are subject to the following additional requirements.</td>
</tr>
<tr>
<td>No new</td>
<td>a. Residential structures shall have the lowest floor (including basement) elevated above the town of not more than one hundred fifty (150) feet wide.</td>
</tr>
<tr>
<td>No new</td>
<td>b. Residential structures shall have the lowest floor (including basement) elevated above the town of not more than one hundred fifty (150) feet wide.</td>
</tr>
<tr>
<td>No new</td>
<td>19.9 Definitions.</td>
</tr>
<tr>
<td>VELCITY ZONES (V ZONES): These direct control areas within a Flood Plain Development Cluster which may be subject to extreme damage from the velocity of wave action and storm surge. The V Zones are shown on the Flood Plain Research Map effective July 6, 2010 amended on file with the Town Clerk in the Town Hall.</td>
<td></td>
</tr>
<tr>
<td>No new</td>
<td>Re: conversions standards specifically regarding loss of commercial to residential</td>
</tr>
<tr>
<td>No new</td>
<td>No new</td>
</tr>
</tbody>
</table>

**Webmaster**
6. For such lots containing a total area of (minimum density permitted for the District in which such lots are located, four dwelling units or one unit, whichever is greater, of the number of dwelling units permitted to be constructed on said total area of land based on said minimum permitted density.

7. For such lots containing a total area of land insufficient to provide for two or more dwelling units or a unit, whichever is greater, of the number of dwelling units permitted to be constructed on said total area of land based on said minimum permitted density. The provisions in this Part G are adapted to prevent the uncontrolled growth of the town pending its review and amendment.

10.04 Signs in Business and Commercial Districts By Special Permit

Special permits by the zoning board of appeals shall be granted only after a finding that the sign is reasonable in design and size, and the sign will not be a hazard to the public.

A. For sale signs, rent or lease signs, between six square feet and twenty square feet.

B. Signs may be placed along a sidewalk and store frontage yards, except that such signs shall not be permitted in the 20' wide green perimeter strip along business and commercial districts for the purpose of notifying clients to its facility by the business establishment which owns the name or identity of the business conducted therein, which shall not exceed six square feet.

C. A single sign not over three square feet in area, including frame or other decoration, erected to advertise real estate except as provided in Section 710.2.C, 710.4.B., and 710.6.A.

10.04 Signs in Business and Commercial Districts By Special Permit

A. There shall be no new residential or commercial construction within the Marion Velocity Zone. The only exceptions are:

a. Seaviews, piers, wharves, and similar structures are not prohibited by this section, and
b. lots created before the enactment of this by-law whose areas lie completely within the Marion Velocity Zone. The only exceptions are:

c. lots created before the enactment of this by-law whose areas lie completely within the Marion Velocity Zone. The only exceptions are:

vi. Climate requirements, growth potential, and adaptability to the urban environment shall be considered when selecting plant types and species.

vii. Landscaping shall be installed to properly screen dumpsters, transformers, or conditioning equipment, and building equipment.

viii. Trash receptacles shall be provided at all gathering places and properly maintained.

ix. Windows, balconies, or other similar openings shall be located in appropriate locations.

x. Sign standards shall be maintained so as not to interfere with entry to stores or block visibility of signs.

x. The previous Standards for the AROD shall be summarized. The provisions in this Part G. are adapted to prevent the uncontrolled growth of the town pending its review and amendment.

10.07.1 Table of Dimensional and Density Standards

New construction projects in the AROD shall be subject to the following dimensional and density standards.

Minimum Density Standards

Minimum Lot Frontage 60 feet
Maximum Building Height 60 feet

Build-in Zones: At least 75% of the front facade of the principal building shall be located with the referenced range from the front line to 0 to 10 feet

Minimum Side Yard Width 0 feet
Minimum Rear Yard Depth 20 feet
Maximum LotCoverage 80%

Minimum Lot Coverage Range 0%-

Minimum Floor Area Ratio N/A

The provisions in this Part G are adapted to prevent the uncontrolled growth of the town pending its review and amendment.
ARTICLE XI. GENERAL REGULATIONS

11.1 Subdivision of Lots.

11.13 The conversion of a pre-existing, non-conforming Transient Residential Facility in the R-20, R-60 R-120 and RA-120 districts into a time-sharing or time-interval ownership dwelling unit is not permitted.

3250 Temporary and Politkal Signs
Cloth or cardboard signs, banners and posters, except posters intended for window display, shall be referred to the Building Inspector for approval and issuance of a permit. Temporary signs, banners, and posters covering social, holiday and political events must be firmly attached to a supporting device and present no undue hazard to the public. The time allowed for this type of advertising shall not exceed ninety (90) days.

Control of political advertising during an election

ARTICLE XII. USES IN ZONING DISTRICTS A. SINGLE RESIDENTIAL AA DISTRICTS

11.20 Commercial to Residential, SP required for conversions from residential to commercial. However, the below may be of interest regarding conversions.

11.31 ARTICLE XII. USES IN ZONING DISTRICTS

A. No signs shall be allowed on any rock, tree, utility pole, or town sign on public property within the Town of South Harwich.

B. No signs shall be permitted within the town greens without special permission from the board of selectmen or their designee.

C. No signs shall obstruct visibility of vehicular traffic.

D. No sandwich board signs are allowed on sidewalks.

E. Nothing herein shall be construed to prohibit the placement within the Town of South Harwich of street signs, traffic signs, and directional signs or any other governmental authority or agency signs.

Purposes:
(a) To encourage the permanent preservation of open space, water bodies and supplies, wetlands and other natural resources, and historical and archeological resources.
(b) To preserve and enhance community character by allowing for greater flexibility, creativity and open space within residential developments,
(c) To provide for diversified housing stock, including Moderately-Staged Homes and Low or Moderate Income housing,
(d) To facilitate the construction and maintenance of housing, streets,
(e) To encourage the velocity zone. If this area is not sufficient to allow for the required zoning setbacks, the applicant may apply for a variance to allow lesser setbacks.

C. Every buildable lot created after the enactment of this by-law shall have an adequate building area, plus the required setbacks, except where outside the Velocity Zone and all structures shall be placed within this area. The only exceptions are: Seawalls, piers, groins, wharves, wiers and similar structures.

D. The landward side of the Velocity Zone must be located on the official lot plan by a licensed surveyor and registered with the plan at the Massachusetts Registry of Deeds. (Amended at STM 11/13/00, approved by A.G. 3/12/01)

Re: Density Standards – New Construction

Located under FLEXIBLE RESIDENTIAL DEVELOPMENT (FRD) – Special Permit

1 Purpose:
(a) To encourage the permanent preservation of open space, water bodies and supplies, wetlands and other natural resources, and historical and archeological resources.
(b) To preserve and enhance community character by allowing for greater flexibility, creativity and open space within residential developments,
(c) To provide for diversified housing stock, including Moderately-Staged Homes and Low or Moderate Income housing,
(d) To facilitate the construction and maintenance of housing, streets,
(e) To encourage the velocity zone. If this area is not sufficient to allow for the required zoning setbacks, the applicant may apply for a variance to allow lesser setbacks.

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D. The landward side of the Velocity Zone must be located on the official lot plan by a licensed surveyor and registered with the plan at the Massachusetts Registry of Deeds. (Amended at STM 11/13/00, approved by A.G. 3/12/01)
B. RESIDENTIAL A DISTRICTS

The following uses shall be permitted in Residential A Districts:

1. The conversion of an existing dwelling into a two-family dwelling, provided that the lot for the dwelling contains not less than the square feet of land required in the Schedule of Area and Dimensions in Part IV, B.

2. The conversion of an existing dwelling into two units, or an apartment dwelling, provided that the dwelling is not increased by more than twenty percent (20%) of the area which was originally used for dwelling purposes, and

3. The following uses, when authorized by a Special Permit issued by the Board of Appeals:

a. The conversion of an existing dwelling into a two-family dwelling or an apartment house, with not more than (4) dwelling units, or on lots, provided, that the size of the building not increased by more than ten percent (10%) of the area which was originally used for dwelling purposes, and

C. RESIDENTIAL DISTRICTS

The following uses shall be permitted in Residential Districts:

1. The conversion of an existing dwelling into a two-family dwelling or an apartment house, with not more than (4) dwelling units, or on lots, provided, that the size of the building not increased by more than ten percent (10%) of the area which was originally used for dwelling purposes, and

Part IV, B. ZONING DISTRICTS

Schedule of Area and Dimensions in Part IV, B.

Provincetown

Utilities and public service facilities in an economical and efficient manner, and

(e) To minimize the total amount of disturbance on the site.

... 7 Density

The total number of Dwelling Units permitted on the site shall not exceed the Conventional Yield, provided that, if the Planning Board makes a finding that the proposed development complies with all of the provisions of this Section IV-Q, the total number of Dwelling Units permitted on this site shall be the greater of (i) one hundred thirty five percent (135%) of the Conventional Yield (rounded to the nearest whole number) or (ii) the Conventional Yield plus two (2). The number of Dwelling Units permitted in excess of the Conventional Yield are referred to herein as the "Additional Dwelling Units"

(a) Subject to (d) through (f) below, at least one third (1/3) of the Additional Dwelling Units shall be Low Income.
### E. GENERAL DISTRICTS

The following uses shall be permitted in General Districts:


### Re: Density Standards – New Construction

None

### Re: conversions specifically regarding loss of commercial to residential

#### 4170 Change of Use /Non-Residential to Residential Use

1. **Purpose and Intent**
   - The purpose of this by-law is to establish special permit requirements for changes of use from commercial to residential use and to minimize adverse impacts on the community from such development. In addition, this by-law is intended to create additional affordable housing opportunities for Provincetown residents and to assist the Town in creating units eligible for inclusion in its Subsidized Housing Inventory.

2. **Applicability**
   - The following types of change of use shall not be displayed under this article between May 2 and October 31 of any given year.
   
   **Banners**
   - Banners may be hung only in the areas designated as commercial or business districts and will be placed no closer than one thousand feet together. Permission to erect such a sign or banner shall be given only by consent of the building commissioner or his designee. All banners hung across a street or public way shall be positioned at a height so as not to impede pedestrian or vehicular access.

**Hingham**

- Immediately following the event.
- Banners may be hung only in the areas designated as commercial or business districts and will be placed no closer than one thousand feet together. Permission to erect such a sign or banner shall be given only by consent of the building commissioner or his designee. All banners hung across a street or public way shall be positioned at a height so as not to impede pedestrian or vehicular access.

**Marion**

- None

**West Tisbury**

- None

**Belmont**

- None
shall require Special Permit authorization from the Zoning Board of Appeals as provided for in Article 5, Section 5300:

(a) Any change of use from a non-residential use to a residential use;

(b) Any change of use from a boarding, lodging or tourist homes use to a residential use; and

(c) Any change of use involving mixed use development that alters the existing mix of uses such that a predominantly non-residential development becomes predominantly residential.

3. Requirements

The Zoning Board of Appeals, as a condition of any development referred to in Section 2(a)-(c) shall require that the applicant for special permit approval comply with the following requirements regardless whether other Special Permits or Variances are required:

(a) Such change of use shall be authorized with a Unit shall be designated as Low or Moderate Income Housing and the second Additional Dwelling Unit shall be designated as either a Moderately-Sized Home or an Unrestricted Dwelling Unit,

(f) The Additional Dwelling Units shall be allocated such that the number of Additional Dwelling Units designated as Unrestricted Dwelling Units shall not exceed the number designated as Low or Moderate Income Housing,

(g) Low or Moderate Income Housing and Moderately-Sized Homes shall not be segregated on the site, and shall be designed in the same architectural style and constructed with building materials comparable to any Unrestricted Dwelling Units constructed on the site,

(h) If the proposed development consists of a mix of Single Family Detached Houses and Town Houses, the Low or Moderate Income Housing and the Moderately-Sized Homes (i) shall be developed with a

<table>
<thead>
<tr>
<th>Rockport - Current</th>
<th>Duxbury</th>
<th>Gloucester</th>
<th>Edgartown</th>
<th>Marblehead</th>
<th>Newburyport</th>
<th>Provincetown</th>
<th>Scituate</th>
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Special Permit from the Zoning Board of Appeals as provided for in Section 5300, which may require a Development Impact Statement as specified in Article 5, Section 5331.

(b) The applicant shall obtain a finding of compliance with Title V of the State Sanitary Code, as determined by the Board of Health, with such compliance to be certified by a Registered Engineer.

(c) Any such change of use resulting in the creation of five (5) or more dwelling units shall be required to provide Affordable Housing as defined in Article 1 of these By-Laws and more fully described below in Section 4 Provision of Affordable Units.

(d) The project must comply with the provisions of Article 4, Section 4100.

(e) None of the above shall relieve the applicant of complying with any other provisions of these By-Laws.

4. Provision of Affordable Units

Any special permit shall conform to such Single Family Detached Houses and Town Houses and (ii) must be evenly distributed among the Single Family Detached Houses and the Town Houses constructed on the site. In addition, the number of bedrooms in any Town Houses which are designated as Low or Moderate Income Housing shall mirror the number of bedrooms in the remaining Town Houses (for example, if there are two market rate Town Houses, one with two bedrooms and one with three bedrooms, the corresponding Town Houses designated as Low and Moderate Income Housing must also contain two bedrooms and three bedrooms, respectively), and

(i) It shall be a condition of the approval of a Definitive Plan that the procedure for the sale or rental of Low and Moderate Income Housing shall be in writing and approved by the Hingham Housing Authority (or such other board or authority granted jurisdiction over affordable housing units by the Town) prior to the issuance

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<table>
<thead>
<tr>
<th>Rockport</th>
<th>Current</th>
<th>Duxbury</th>
<th>Gloucester</th>
<th>Edgartown</th>
<th>Marblehead</th>
<th>Newburyport</th>
<th>Provincetown</th>
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<td>application for a change of use requiring an affordable housing provision pursuant to Section 3(c) above shall comply with the following requirements for affordable units. For the purpose of calculating the 20% affordable housing contribution, all numbers shall be rounded to the nearest whole number. At least 20% of the units created shall be established as affordable housing units and shall be constructed or rehabilitated on the locus subject to the special permit (see Section 5).</td>
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<tr>
<td>5. Provisions Applicable to Affordable Housing Units</td>
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<td>(a) Siting of affordable units. All affordable units constructed under this by-law shall be situated within the development so as not to be in less desirable locations than market rate units in the development and shall, on average, be no less accessible to public amenities as the market-rate units.</td>
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<td>(b) Minimum design and construction for affordable units. Affordable housing units within market-rate developments</td>
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<td>of a building permit for the site. To the extent permitted by applicable law, preference shall be given in the sale or rental of Low- and Moderate-Income Housing units to (i) persons currently residing in the Town for at least 24 consecutive months or (ii) persons who have previously resided in the Town for at least ten (10) years or (iii) persons who are currently employed by the Town for at least 24 consecutive months for a minimum of twenty (20) hours per week</td>
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<td>CONVENTIONAL YIELD - The number of Single-Family Detached Houses that would be permitted under Massachusetts General Laws, Chapter 41, Sections 61K-81GG (The Subdivision Control Law) and which could reasonably be expected to be developed in full conformance with applicable zoning, subdivision rules and regulations, wetland by-laws, Board of Health rules and regulations and all applicable rules and regulations of the Town of Hingham</td>
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<td>Re: conversions standards</td>
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shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units. Where feasible, interior features of affordable units shall comply in all respects to the minimum design and construction standards set forth in the Local Initiative Guidelines by the Department of Housing and Community Development (DHCD) November 2006, or as amended. There shall be a similar proportion of affordable and market rate units in developments with a mix of unit/bedroom sizes.

(c) Timing of construction or provision of affordable units or lots. The development of affordable housing units shall take place at the same rate and timeframe as the development of market rate units.

1. Building permits for any phase shall be issued at a ratio of 4 (four) market rate units to 1 (one) affordable unit. Building permits for subsequent phases will not be issued unless all the specifically regarding loss of commercial to residential

None
required affordable units in the preceding phase are constructed. The last unit permitted and constructed shall be a market rate unit.

2. The project may also be constructed in its entirety with all permits issued at once provided that the occupancy permits are issued at a ratio of 4 (four) market rate units to 1 (one) affordable unit. The last occupancy permit to be issued shall be for a market rate unit.

6. Distribution

Distribution of affordability for rental or ownership units as Low Income Community Housing or Moderate Income Community Housing shall be set as determined by the ZBA in consultation with the Provincetown Community Housing Council.

7. Maximum Incomes and Selling Prices; Affordable Housing Inventory

Maximum incomes and sales prices are set forth in Article 1 Definitions. It is intended that the affordable housing units created under this by-law be considered as Local...
Initiative Units or Local Action Units in compliance with DHCD requirements.

B. Preservation of Affordability; Use Restrictions

(a) Affordable housing units created in accordance with this by-law shall use affordable housing restrictions that are recorded at the Barnstable County Registry of Deeds and that require the units to remain affordable in perpetuity. Such affordable housing restriction shall grant, among other things, the Town’s right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

(b) The ZBA shall require, as a condition for special permit under this by-law, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the affordable housing restriction noted in Section 10(c) above. The Building Commissioner shall not issue an occupancy permit for any affordable
art until the affordable housing restriction is recorded.

9. Segmentation - Developments may not be phased or segmented to avoid compliance with conditions or provisions of this by-law.

10. Conflict with Other Bylaws

The provisions of this by-law shall be considered supplemental of existing zoning bylaws/ordinances. To the extent that a conflict exists between this by-law and others, the more restrictive by-law, or provisions therein, shall apply.

11. Severability

If any provision of this by-law is held invalid by a court of competent jurisdiction, the remainder of the by-law shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this by-law shall not affect the validity of the remainder of Provincetown's zoning bylaw.
Comparison of Dormers, Decks, and Egress Requirements

Note: The table below extracts requirements on dormers, decks, and egresses from several towns’ zoning ordinances. The current requirements of the town of Rockport are located in the first column.

Please note that requirements language has been extracted from different parts of a town’s zoning ordinance and therefore the text may not read with a logical flow.

- Exterior stairways, second egress
- Exterior stairways, deck access
- Raised decks
- Dormers and half-stories
- Bay and bowed windows

MAPC also contacted several communities for guidance on how to regulate the above provided that explicit design standards do not necessarily in writing. This process reduces the number of design-related cases the Zoning Board of Appeals must review. Second egresses are regulated solely by building code.

- Newburyport commented that regulation of dormers is a popular topic. Currently they are excluded from the Historic Commission’s reviews and from the demolition delay ordinance. Currently the building inspector handles approvals on dormers and decks. Regarding second egresses, they must not be covered or enclosed. Any egress that is covered or enclosed counts against the lot coverage guidelines. The town does not regulate half stories and it also does not deal with floor areas. The town does have high height limits, however. The town also has no design standards regarding decks and roofs in general. Second egresses are regulated solely by building code.
- Edgartown commented that they have delegated the application of design requirements for things like dormers to the Historic District Commission, and while the Commission may regulate the different elements, the standards are not necessarily in writing. This process reduces the number of design-related cases the Zoning Board of Appeals must review. Second egresses are regulated solely by building code.
- Marblehead commented that dormers are regulated on a case by case basis and that there are design guidelines regulating them in the town’s Smart Growth Overlay District document. Second egresses are allowed to encroach on side yard provided that they fit within the minimum setback requirements. Dormer roof pitch and width and setbacks for upper floors are also regulated in business districts and in areas of mixed use and increased density (see section 560 of the code pertaining to the Village Business Overlay District). Bay windows can extend into front yards and encroach into minimum setback requirements provided that they are cantilever and extend more than eighteen inches. It is important to note that a lot of Marblehead’s downtown is in a Historic District. Second egresses are entirely regulated in the building code.
- Provincetown commented that exterior stairways are not an issue as most buildings are non-conforming old wood buildings with gable roofs that are two and a half stories and 33 feet high. The town recently amended its zoning ordinance to remove old design standards on roof style and minimum and maximum pitch because it found that it was bogging down the ZBA’s reviews. Acknowledging that half of the town is currently in a Historic District, the town decided to let the Commission worry about design issues.
- Gloucester commented that it does not deal with dimensional requirements pertaining to dormers, raised decks, second egresses, or bay windows. It is primarily concerned with height. The town’s site plan review process has some oversight, however. Second egresses are regulated solely by building code. The town’s development guidelines also contain language regarding the streetscape.

Exterior Stairways/Second Egresses or Exterior Stairways/Deck Access

<table>
<thead>
<tr>
<th>Location</th>
<th>Allowance</th>
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<tbody>
<tr>
<td>Rockport - Current</td>
<td>Regarding two-family dwellings and the conversion of single family homes to two-family homes (2) Not more than the required minimum alterations have been or will be made to the one family house and to any accessory buildings, and the site plan of the lot and floor plans of the dwelling thereon must be filed with the Building Inspector prior to the application to the Board of Appeals. Architectural features such as exterior stairways or two front doors which are not in character with a single family type appearance will not be allowed.</td>
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<tr>
<td>Assonet</td>
<td>Regarding multifamily developments: (b) Egress. A secondary exit shall be available to each family unit above the first floor consisting of an exterior stairway, or a fire escape of noncombustible construction when approved by the Inspector of Buildings, with access to the street or a second interior enclosed stairway.</td>
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<tr>
<td>Lawrence</td>
<td>Supplemental regulations for permitted and special permit uses regarding the following: museums, convenience stores, hospitals and nursing homes, restaurants, hotels/motels, conference centers, places for public or commercial recreational use, mixed use, shopping centers (1) At least one means of two-way access/egress, at a width deemed appropriate by the permit granting authority shall be provided, however said permit granting authority may require two means of access/egress.</td>
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<tr>
<td>Edgartown</td>
<td>No content on exterior stairways or second egresses</td>
</tr>
<tr>
<td>Scituate</td>
<td>Permitting to accessory dwellings</td>
</tr>
<tr>
<td>Hingham</td>
<td>No content on exterior stairways or second egresses</td>
</tr>
<tr>
<td>Duxbury</td>
<td>No content on exterior stairways or second egresses</td>
</tr>
</tbody>
</table>
Dormers and Half-Stories

Footnote - Current

G. Dormers

[1] Dormer styles may include gable, eyebrow, or shed dormers. Shed dormers shall only be placed in the rear or less publicly visible side of a building with a single-gable roof, whose ridge line is directly above the area of the gable end of the building.

ARTICLE 5: DEFINITIONS

ARTICLE 5A: DEFINITIONS APPLICABLE IN NEIGHBORHOOD Districts AND IN ARTICLE 80: DEVELOPMENT REVIEW AND APPROVAL

ARTICLE 8.000 NONCONFORMITIES

ARTICLE 8.100 EXISTING BUILDINGS

Section nonconformance via dormers:

o. Construction of a dormer or on the addition to a nonconforming building which will further violate the yard and height requirements of Article 8.000, but no other requirements of Article 8.000 including FAR, in the following cases:

1. A dormer or addition to the second story that does not extend horizontally beyond the vertical walls of the existing first story of the structure.

2. A dormer on the third story no longer than fifteen (15) feet that does not extend horizontally beyond the vertical walls of the existing second story or the existing ridge line of the roof.

Halftory, Half-story roof, Half-story dormer:

1. A story directly under a sloping roof in which the points of intersection of the bottom of the rafters and the interior faces of the walls are less than three feet above the floor level on at least two exterior walls of the building. Dormers may be constructed on exterior walls provided the length of the dormer(s) as measured between the lowest bearing points of the dormer(s) on the rafters of the sloping roof does not exceed 50 per cent of the average finished floor area of the building.

2. A story or the first story of a building with a sloping roof in which the area of the higher finished floor is not more than 50 per cent of the area of the finished floor of the floor above it.

3. A story or the first story of a building with a sloping roof in which the area of the higher finished floor is not more than 50 per cent of the area of the finished floor of the floor above it, occupied by a single uniform degree of pitch (such as in gable or shed roof types) the points of intersection of the bottom of the rafters and the interior faces of the walls are less than three feet above the floor level on at least two exterior walls of the building.

For the purposes of determining the number of stories specified in the Dimensional Requirements of the Zoning By-Law, the following provisions shall apply:

a. If the top story of a building is roofed by a dormer covering fifty (50) per cent or more of the floor area, it shall be counted as a full story.

b. Roof Pitch

1. Dormers shall be not less than twenty (20) degrees.

2. Dormers shall
The length of the sloping roof to which it is attached. NOTE: See Figure 21.

Exception: Elevated decks or porches not meeting these criteria may be granted a special permit by the Special Permit Granting Authority provided that the proposed deck or porch is based on historical precedent such as a widow’s walk or is designed as an integral part of the dwelling and, in the opinion of the Special Permit Granting Authority, is not out of keeping with the architecture of Edgartown.

Elevated decks & elevated porches which meet the following criteria are permitted:

a. They shall be constructed entirely above livable area including first floor porches and decks not patios or terraces on grade.

b. They shall be accessed only from the inside of the dwelling unless required as part of a mandatory second means of egress through a door or doors with minimum dimensions of 2’ 8” x 6’ 6” hung in a vertical plane.

c. The walkable surface area of the deck or elevated porch shall not be higher than the level of the second floor of the dwelling.

Exception: Elevated decks or porches not meeting these criteria may be granted a special permit by the Special Permit Granting Authority provided that the proposed deck or porch is based on historical precedent such as a widow’s walk or is designed as an integral part of the dwelling and, in the opinion of the Special Permit Granting Authority, is not out of keeping with the architecture of Edgartown.

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of all dormers on the third story of the building, after the issuance of the permit authorized by this Subparagraph h 2, does not exceed fifteen (15) feet.

definition shall apply to all single-family detached dwellings, two-family detached dwellings, and apartment and multi-family dwelling units permitted by Special Permit in the Center Business District and located in the half-story directly above the second floor. For all other buildings the definition is, that part of a building under a sloping roof where the full-length rafters rest on the top beam of the story below.

have a minimum pitch of 4:12. No part of a dormer shall extend above the ridge height of the roof from which it projects.
## Bay and Bowed Windows

### Lowell

#### Article VII: Dimensional Requirements

5.1.7 Projections

1. Projecting awnings, chimneys, bay windows, balconies, open fire escapes and like projecting which do not project more than three and one-half (3 1/2) feet, and which are part of a building shall not project beyond the minimum side and rear yard requirements, provided however, that these elements are not any closer to property lines or parking areas than ten (10) feet; and the yard areas over which these project are not included in the minimum yard area and open space requirements.

2. Projecting awnings, bay windows, balconies, and like projections may extend beyond the minimum front yard regulations; provided however, that these elements are not any closer to property lines or parking areas than the distance listed under "projections" in table 5.1, the total width of projecting features does not exceed thirty percent (30%) of the width of the building whichever is less, and the yard areas over which these project are not included in the minimum yard area and open space requirements.

### Marshfield

#### Article VI: Dimensional and Density Regulations

5. Projections

So, Projections into Front Yards: First story building elements such as bays, bay windows and oriel windows (provided that said bays, bay windows or oriel windows encumber no more than fifty percent (50%) of the length of the front side of the structure they project from), balconies, dormers, flues and fire escapes, steps down from the first story, cornices, belt courses, leaders, sills, pilasters, lintels, decks, unenclosed porches, or other similar structures and ornamental features may project into a required front yard provided a minimum ten (10) foot distance is maintained from the front lot line. NOTE: §8.6.5a was amended by Ordinance 1991-1 on January 10, 1991.

### Somerville

#### Section XV: Yards and Density Provisions

PROFIT YARD: An area, on the same lot with the building, measured from the street line to the building extending across the entire front of the lot, and unenclosed above ground level except by uncovered steps, across projecting not more than 2 feet from the wall of the building, bay windows that do not have a foundation and do not extend more than two feet from the wall of the building and a covered or unenclosed, enclosed or unenclosed, entrance porch on the first floor which neither exceeds a total area of 30 square feet nor projects more than five feet from the face of the building nor extends more than 25 feet to the street line.

SIDE YARD - An area, on the same lot with the building, measured from the side line of the lot to the building, extending from the front yard to the rear yard, and unenclosed above ground level except by covered basement entrances not over four feet in height and nor over 35 square feet in area, bay windows that do not have a foundation and do not extend more than two feet from the wall of the building, uncovered steps, eaves, porches projecting not more than 2 feet from the wall of the building, attached chimneys projecting not more than 2 feet from the wall of the building and unenclosed, covered or unenclosed stoops and landings not over 25 square feet in area.

REAR YARD - An area, on the same lot with the building.
measured from the rear line of the lot to the building, extending the full width of the lot, and unoccupied above ground level except by covered basement entrances not over four feet in height and not over 35 square feet in area, bay windows that do not have a foundation and do not extend more than two feet from the wall of the building, uncovered steps, eaves projecting not more than 2 feet from the wall of the building, covered or uncovered, enclosed or unenclosed, entrance porches on the first floor which do not exceed a total area of 50 square feet, attached chimneys projecting not more than 2 feet from the wall of the building and stair landings not over 25 square feet in area.
APPENDIX 2:
DORMER ANALYSIS AND HEIGHT IN THE V-ZONE - SKETCHES
Examples of Slope

Scale
3' per Square

Gable Slope
3:12

Gable Slope
10:12

24' 23'

84' 30'
Examples of Slope

Scale
2' per Square

Gable Slope
4:12

Gable Slope
8:12

2' 5'

2' 5'
<table>
<thead>
<tr>
<th>Structure requiring</th>
<th>Galile Roof</th>
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<tr>
<td>4&quot; pilings to achieve height above flood level.</td>
<td>Slope = 10:12</td>
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<tr>
<td>2½ stories maximum</td>
<td>3rd Floor Space</td>
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<td>#12' Wide</td>
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<td>Approx 60% of floor below, based on 5' height in Building Code</td>
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**Diagram:**

- BFE = 14'
- MSL
- Ridge 34' above ground level
- 20' hill
- 1st floor to ridge
- 25'
- Ground level 10' above MSL
- 4' pilings
Construction in the Velocity Zone - 2
Illustration to accompany proposed Section VIII D.3.

Gable Roof
Slope = 10:12

3rd Floor Space
2:12 wide
Approx 50% of floor below based on 5' height in Building Code

Area with Dormer is 16' wide - Could raise 3rd floor to more than 65%

Dormer Slope 2:12

Ridge 3'4" above ground level

30' tall house 1st floor to Ridge

BFE = 14'

4' fillings

Ground Level 10' above MSL
Construction in the Velocity Zone - 3

Illustration to accompany proposed Section VIII D.3.

Scale
2" per Square

Structure requiring 8' pilings to achieve height above flood level

35' height maximum

Gable Slope
7:12

Ridge limited to
35' above MSL

House is limited to 27' 1st Floor to Ridgeline

No Room for 2nd Story

BFE = 14'

MSL

Ground Level 6'
above MSL

8' Pilings