

07.00 GENERAL REGULATIONS:

07.01 Pre-Existing Non-conforming Uses and Structures:

Except as hereinafter provided, a zoning bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to applications made for Permits, Special Permits, building, and/or construction, permits submitted before the first publication of the notice of public hearing on such bylaw.

.01 Regulations:

This Zoning Bylaw shall apply, except as in Section 07.01.02 and Section 07.01.03, to the following:

- any change or substantial extension of a non-conforming use;
- reconstruction, extension or structural change of a non-conforming structure;
- any alteration of a structure, begun after the first publication of notice of public hearing of the Bylaw, to provide for its use for a substantially different purpose or for same purpose in a substantially different manner or to a substantially greater extent;
- a building or construction permit, Permit or Special Permit issued after the first publication of notice of public hearing of the Bylaw;
- a non-conforming use or structure that is damaged by fire, hurricane or other catastrophe may be restored or rebuilt and used again as previously, provided that this is done within two (2) years, and that the rebuilding or restoration following the catastrophe is not greater in extent or type of activity than the original;
- *abandonment*: a non-conforming use which has been abandoned for a period of two (2) years shall not be re-established and any future use shall conform with the Bylaw;
- *changes*: once changed to a conforming use, no structure shall be permitted to

07.00 GENERAL REGULATIONS:

07.01 Pre-Existing Non-conforming Uses and Structures,
cont.

revert to a non-conforming use, except where this Bylaw makes provision for Permit consideration;

- *exemption*: where alteration, reconstruction, extension or structural change to a single-family residential structure does not increase the non-conforming nature, neither public hearing nor Permit from the Board of Appeals is required for said alteration, reconstruction, extension or structural change, provided that it conforms to all statutory and Bylaw requirements in effect when the work was done.

.02 The Board of Appeals may, after a public hearing, grant a Permit to allow a pre-existing non-conforming use to be changed to a different non-conforming use, provided that the change reduces the degree of non-conformity through such changes as reduced auto or truck traffic, smaller or fewer signs, less floor area or land devoted to the use, less discernible noise, vibration, odor, or light, or exterior appearance more consistent with that of the district.

.03 The Board of Appeals may, after a public hearing, grant a Permit to allow a pre-existing non-conforming use or structure to be expanded in an area where, in the opinion of the Board, such expansion will not be more objectionable to, or detrimental to, the character of the neighborhood than the original pre-existing non-conforming use or structure.

07.02 Pre-Existing Non-conforming Lots:

Notwithstanding any other provision of this Bylaw, on any vacant lot, which has not previously been built upon, a dwelling may be located on any lot, in any District provided that such a lot:

07.00 GENERAL REGULATIONS:

07.02 Pre-Existing Non-conforming Lots, cont.

- was lawfully laid out by plan or deed duly recorded with the Dukes County Registry of Deeds;
- at the time of endorsement or recording, whichever occurred sooner, was not held in common ownership with any adjoining lot;
- at the time of endorsement or recording, whichever occurred sooner, conformed to the existing requirements;

- has at least five thousand (5000) square feet of area and fifty (50) feet of frontage;
- meets the front setback requirements of Schedule A and the following minimum side yard an rear yard setbacks*:

Side Yard Setbacks:

The minimum side yard setbacks shall be a percentage of the Schedule A minimum side yard setback requirement. The percentage shall be determined by dividing the actual lot frontage by the Schedule A requirement for minimum frontage.

(Amend Section 07.02: April 26, 1994; Acting on Article 43)

Rear Yard Setbacks:

The minimum rear yard setback shall be a percentage of the Schedule A minimum rear yard setback requirement. The percentage shall be determined by dividing the actual lot depth by the Schedule A requirement for lot depth.

*Notes: (1) These provisions are applicable only where the actual lot frontage or depth is less than the Schedule A minimum requirements; and, where otherwise the lot is a qualified pre-existing non-conforming lot. These provisions do not preclude

07.00 GENERAL REGULATIONS:

07.02 Pre-Existing Non-conforming Lots, cont.

the 'increase' protection afforded a lot which once conformed but could not meet a subsequent 'increase' requirement.

(2) Frontage is the length of the lot boundary line(s) along a way, street or road. Depth is the distance from the frontage boundary to the most distant opposite boundary. The frontage and depth measurements shall be those shown on a survey plan recorded with the Dukes County Registry of Deeds and appearing on the most current revision of the Assessor's Maps.

(3) These provisions do not waive or reduce setback requirements which are required by Flood/Storm, Coastal, Wastewater

Disposal, Aquifer Protection, Pollution Control Wetlands or other similar overlay regulations.

07.03 Wedges and Irregular Shaped Lots:

.01 Wedges:

The Wedge shaped lots which occur as a result of a cul-de-sac.

.02 Irregular Shaped Lot:

Based upon a substantial variation in depth, and/or width, measurements.

A lot where the difference between the maximum and minimum measurements of the depth, and/or width, respectively, of the lot exceeds the minimum measurement by 20% shall be considered an irregular shaped lot.

07.00 GENERAL REGULATIONS:

.02 Irregular Shaped Lot, cont:

.03 For wedges and pre-existing irregular shaped lots, minimum frontage may be measured at the declared front wall of the proposed building or structure, provided such lots have at least fifty (50) feet of frontage measure at the street line.

.04 Where two (2) or more lots are proposed to be created by a Form C Subdivision, no more than one (1) irregular shaped lot, with respect to the hereinafter fifty (50) feet of frontage provision, may be created; said irregular shaped lot may have the minimum frontage measured at the declared front wall of the proposed building or structure, provided that such lot has at least fifty (50) feet of frontage measured at the street line and that all other lots shall conform to the minimum frontage requirements.

Said regulation does not apply to the further division of lots created in an original subdivision.

(Amend Section 07.03.04: April 29, 2014 - Acting on Article 16)

07.04 Deep Lot Provisions

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Where a lot fronting on a public way has sufficient frontage to meet Schedule A (section 13.00) requirements and sufficient additional frontage to provide for an access way to the rear and sufficient area in the rear for one (1) or two (2) additional lots, the Planning Board may endorse* or approve* a plan creating such rear lots and accesses, provided:

- the lot fronting on the public way has sufficient frontage to meet the district requirements set forth in Schedule A (section 13.00) and additionally has sufficient frontage for an access way of thirty (30) foot width in the R10, R20, and R25 Districts and forty (40) foot width in all other Districts;
- the access way is laid out along one of the depth boundary lines such that an existing or

07.00 GENERAL REGULATIONS:

07.04 Deep Lot Provisions, cont.

proposed structure meets the Schedule A (section 13.00) side setbacks;

- the access way is continuous to the rearmost lot in full width, forty (40) or thirty (30) feet as applicable;
- the intervening lot, if any, between the front and rear lots, fronts on the access way for at least the frontage required by Schedule A (section 13.00);
- the access way , from the public way to the rear lot, is or becomes a part of the rear lot;
- the layout of the proposed access way would not conflict with any existent or proposed public way patterns or existing subdivision ways; and,
- in the R3A District, application of this section shall be under 'subdivision' (Chapter 41, MGL meaning of 'subdivision') processing rules only.

*re: Chapter 41, sections 81K through 81GG, MGL (a/k/a The Subdivision Control Law); to 'endorse' means to endorse that approval under the subdivision control law is not required; to 'approve' means to approve as a subdivision. There are specific requirements relating to a division of land, whether or not a subdivision, set forth in Chapter 41, MGL.

07.05 Height Regulations:

.01 Principal Structure:

No structure shall exceed thirty-five(35)feet in height, including the chimney(s),as measured from the mean natural grade.

Radio and television antennas, flag poles and similar slender structures may be erected upon the principal structure, provided they do not extend, vertically, more than twenty (20) feet

(Amended on April 12, 2016 - Acting on Article 17)

07.00 GENERAL REGULATIONS:

07.05 Height Regulations:

.01 Principal Structure, cont.

above the actual maximum height of an existing or permitted structure.

No principal structure shall have more than three (3) vertical slender structures attached, as in the above provision.

.02 Detached Structure:

Any antenna, flag pole or similar slender structure which is not attached to a structure incorporating a subsurface foundation and which is over forty (40) feet in height shall have complete structural drawings and specifications prepared by a qualified registered professional engineer.

Excepting governmental institutions, no antenna, flag pole or similar slender structure shall exceed eighty (80) feet in height above the mean natural grade of the lot and lots adjacent thereto, nor shall the structure herein above set forth be so located as to have its base less distant from the nearest lot boundary than 110% of its height above the mean natural grade in all districts except in the B-2 Business District.

In residential areas, such detached slender structures, as herein set forth shall require a Permit from the Board of Appeals for heights in excess of forty (40) feet.

In the B-2 Business District, such detached slender structures, as herein above set forth, shall not be so located as to have its base less distant from the nearest lot boundary than 110% of its height above the mean natural grade. Such detached slender structures shall require a Permit from the Board of Appeals for heights in excess of eighty (80) feet.

(Amend Paragraph 2 and Add Paragraph 4: May 2, 3, 7, 14 and June 5, 1990 - Acting on Article 71)

07.00 GENERAL REGULATIONS:

07.06 Sign Regulations

- .01 .Except as provided in Zoning By-Law Section 05.23.01, no non-appurtenant signs shall be permitted. A non-appurtenant sign shall mean any sign which directs attention to an occupation, business, commodity, service or entertainment supplied or originated on other than the premises of which the sign is located.
- .02 In Residential Districts and for residential uses in non-residential districts, signs advertising ownership or occupancy, services offered, or for rent shall be limited to three (3) square feet in total area. In addition, a temporary For Sale sign, not to exceed one (1) square foot in area, shall be permitted.
- .03 On religious, educational or government property with buildings, signs shall be limited to ten (10) square feet in total area.
- .04 In Business Districts 1 and 2, and in the Commercial District, a business may be identified by a sign or signs up to one (1) square foot of sign for each lineal foot of building frontage, provided the aggregate of all external signs pertaining to all businesses conducted on a given premise shall not exceed thirty-two (32) square feet. The maximum size per sign for signs affixed flat against a building shall be twenty (20) square feet. Hanging signs shall not exceed eight (8) square feet per sign. The area of a hanging sign with but two (2) parallel display surfaces not over six (6) inches apart shall be determined by the measurement of a single face; for all other configurations, the area of a hanging sign shall be the sum of the areas of all display surfaces.

Self-supported signs (including signs not attached to buildings) shall be regulated as hanging signs. The Board of Selectmen, in

07.00 GENERAL REGULATIONS:

07.06 Sign Regulations, continued

considering whether or not to approve self-supported and/or hanging signs that are within 100 feet of a public way, shall especially consider safety factors (resistance to collapse, danger of being struck, danger of being moved by storm forces and the potential for distracting or impeding traffic in a hazardous manner).

- .05 In open land, woods or agricultural land, signs shall be limited to sixteen (16) square feet, with a minimum setback from the road of not less than twenty (20) feet, advertising only the uses of the property or For Sale or For Rent signs. No signs shall be painted on or affixed to any tree, fence, utility pole, rock or ledge.
- .06 No sign shall extend beyond the property line of the business to which it refers.
- .07 Signs painted or placed on the inside of the glass of a window shall not in size exceed 50% of the window area.
- .08 There shall be no neon, internally illuminated, flashing, occulting or moving signs, pennants or whirligigs.
- .09 Present signs not conforming to this Bylaw may be continued for the life of the sign but not renewed.

(Amended on February 20, 2007 - Acting on Article 18)

07.07 Parking Regulations:

.01 General Requirements

All Off-street Parking shall be accessory to a permitted use.

Applications for permits requiring twenty (20) or more parking spaces, shall be accompanied by a parking plan

07.00 GENERAL REGULATIONS:

07.07 Parking Regulations, continued:

of the lot and be referred forthwith to the Planning Board for their review and written advisory report; and no permits for construction shall be issued prior to the receipt of said report unless thirty (30) days have elapsed from the date of referral.

Plans subject to Site Plan Review by the Planning Board shall show existing and proposed topography, water, sanitary sewerage and storm drainage, and response to criteria for safety provisions and for landscaping.

.02 Business District I and Waterfront/Commercial District:
Business District I and the Waterfront/Commercial District shall be exempt from these requirements.

.03 Business District II

All increase in parking demand created by new structures or uses, additions to existing structures or uses, and change of use in existing structures, shall be accommodated on the premises entirely off-street.

Minimum Off-Street Parking Requirements - Vehicle Spaces:

- Dwelling Units
 - (private or commercial).....2/
- Offices
 - (client occupancy).....1/150 sq. ft.*
- Employer(s)
 - (working on the premises).....1/
- Food Service Establishments
 - Counter Service.....3 PLUS
 -1/ 2 ft. counter length
 - Seated Service.....1/ 2 seats
- Assemblages**
 - 1/3 persons permitted occupancy
- Business Vehicles & Trucks.....1/
- Trailer Tractors.....1/
- Trailers.....1/
- Semi-trailers
 - 1/ 20 ft. of length or fraction thereof

07.00 GENERAL REGULATIONS:

07.07 Parking Regulations, continued:

- Trade and Manufacturing
 - on premises delivery.....3
 - off premises delivery.....2
- Room (as in Rooming House).....1/
- Retail Store.....1/ 150 sq. ft.***

and, in addition to the above, one (1) parking space for each person employed on the premises.

- *....wall to wall measure
- **...theaters, clubs, meetings rooms/halls, private for profit schools, etc.
- ***..wall to wall measure excluding only office and warehouse sections separated by permanent partitions.

Exceptions:

Where the total minimum off-street parking requirement is more than six (6) spaces and the site is in the Business District II, the Zoning Board of Appeals may; on a finding of good and sufficient reasons and by the Special Permit process, allow up to a one-third 1/3) reduction in the total on-site and off-street requirements; or may allow up to one-half (1/2) of the original minimum total requirements to be met by spaces on other property in the same district and within one-tenth (1/10) of a mile of the site. If an off-site location is used, the property shall be in the same ownership as the site or there shall be documentation which designates a specific area exclusively reserved for the applicant's off-street parking requirements, such documentation shall be of a quality and cover such time period as the Board finds appropriate. Off-site locations shall not be used where sidewalks are not available or there are otherwise unsafe arrangements.

These exception provisions recognize that, in certain situations, a parking space could effectively serve more than one business.

- (a) No off-street parking shall be maintained within ten (10) feet of a street line.

07.00 GENERAL REGULATIONS:

07.07 Parking Regulations, continued:

Exceptions, cont.

For parking areas of six (6) spaces or more, the following shall apply:

- their use shall not require backing onto a public way;
- there shall be not more than one (1) entrance and one(1) exit from such lots per three hundred (300) feet of street frontage or fraction thereof. If necessary, to meet this requirement, users shall arrange shared egress;
- such lots shall be screened from any abutting residential use by densely planted shrubs or similar means.

For parking areas of twenty (20) spaces or more, the following shall apply:

- the lot shall contain or be bordered by a five (5) foot wide planting strip buffer with at least one (1) tree per eight (8) parking spaces; trees are to be of two (2) inch trunk diameter

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or larger, with not less than twenty-five (25) square feet of unpaved soil area per tree;

- egresses shall be designed so as to provide a safe and unobstructed view of traffic in each travel direction.

(Reformat Section 07.07.03: April 11, 2000 - Acting on Article 21)

.04 Residential Districts

- (a) Parking requirements for roadside stands and rented rooms shall be provided as required in Section 07.07.03 of this Bylaw.
- (b) Multiple Dwelling Units and Structures, cont.
 - (I) Each dwelling unit shall be provided with a minimum of two (2) vehicular parking spaces, so arranged as to permit turning vehicles around and precluding the necessity of backing onto a public way.

07.00 GENERAL REGULATIONS:

07.07 Parking Regulations, continued:

.04 Residential Districts, cont.

(II) No commercial vehicles, other than one (1) pickup truck or van per dwelling unit, shall be kept on the premises.

(III) For dwelling structures which do not front on a public way there shall be an additional access frontage of forty (40) feet in the R50 District and thirty (30) feet in the R10, R20, and R25 Districts; said access widths shall extend and be arranged so as to serve all dwelling structures and parking areas on the premises; and, shall be designed to accommodate emergency vehicles (e.g. fire, police, ambulance).

(c) Accessory Apartment:

There shall be a minimum of one (1) parking space, not less than ten feet by twenty feet, per accessory apartment. The spaces shall be located so as to minimize the visual impact from the street or abutting properties by a minimum landscaped area setback of ten feet.

(Amend Section 07.07: April 14, 1998 - Acting on Article 19;
Amend and reformat Section 07.07.04: April 11, 2000 - Acting on Article 21)

07.08 MOBILE HOMES, TRAILERS AND CAMPERS:

The storing or occupying for residential or business use of a mobile home, trailer or similar facility is prohibited, except as provided in Section 04.00. However, mobile homes, travel trailers or similar facilities used for a construction office or for construction storage are allowed on the premises where and as long as construction is taking place, provided that prior to being placed on the site, such use has been authorized in writing by the Fire Chief upon his determination that no fire hazard is being created; and that the Police Department has been notified. Also, a camper, camping trailer

07.00 GENERAL REGULATIONS:

07.08 MOBILE HOMES, TRAILERS AND CAMPER, CONT:

(recreational vehicles) registered to the occupant, may be kept on the premise in other than a front yard, but not occupied.

07.09 NOISE, ILLUMINATION AND ODORS:

Any non-residential use permitted in any Residential District shall be so situated, landscaped and constructed to prevent the transmission of excessive sound, light, odor, vibration, commotion or other noxious disturbance to adjoining properties.

In Residential Districts and Business Districts, it shall be considered a violation of the uses permitted under this Bylaw if, between the hours of 11:00 p.m. and 7:00 a.m., a property owner, a member of the property owner's family, an employee, agent, or lessee of the property owner shall cause or allow excessive noise, unnecessary bright outside illumination, or offensive odors and the effects thereof are not wholly contained within the owner's property.

07.10 SCIENTIFIC ACCESSORY USES:

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

07.11 MULTI-UNIT DWELLINGS - SPECIAL PERMIT DETERMINATION:

The Planning Board shall, in accordance with Special Permit procedures, make a determination of the need and consistency with public policy of any plan or development proposing Multi-Unit Dwelling structures in all zoning districts. No permits endorsing or approving plans or authorizing facility or structure construction shall be issued in conflict with, or in excess of said determination. These provisions are applicable to single lots, multiple lots, developments and subdivisions; they are not applicable to the uses permitted in Section 04.00 (Residential Districts).

07.00 GENERAL REGULATIONS:

07.11 MULTI-UNIT DWELLINGS - SPECIAL PERMIT DETERMINATION, cont.

(Amend Section 07.11: April 29, 2014 - Acting on Article 18)

Exceptions:

This section shall not apply to:

Developments totaling not more than three (3) lots, three (3) dwelling structures and six (6) dwelling units, provided that at the time this Bylaw became effective, no property contiguous to the proposed development was owned, in whole or in part, by the developer.

Developments devoted entirely to not-for-profit low or moderate-income housing or not-for-profit elderly housing provided that the developer is a non-profit corporation and certifies to the permit granting authority(s) these aforesaid conditions.

07.12 EXCAVATION AND TOPOGRAPHIC ALTERATION

When planned or intended construction would require permits, or other authorizations, no excavation, removal or relocation of topsoil shall occur prior to the granting of all permits, or authorizations, necessary to complete the construction.

The provisions of this section shall not apply to:

- activities related to locating, installing or testing a water supply well;
- the construction of a single minimum width, unimproved and un-surfaced access road;
- the minimum necessary land surface disturbance required to accomplish surveys, install bounds or small markers, or to accomplish soil tests.

07.13 LAGOON HARBOR PARK:

The land comprising 'Lagoon-Harbor Park' is entirely owned by the Town of Tisbury and contains three separate parcels (the parcels are separated by the 'Beach Road', also known as 'The Massachusetts State Highway', and by the waters of Vineyard Haven Harbor; there are no intervening 'lots'). For the purposes of

07.00 GENERAL REGULATIONS:

07.13 LAGOON HARBOR PARK, Cont.

uniform and discriminating reference, these parcels are identified as:

- 'Harbor' (Assessor's Lot 10A02)
- 'Eastville Point' (Assessor's Lot 10A03)
- 'Lagoon Pond' (Assessor's Lot 10B04)

.01 Uses Permitted:

'Harbor' Parcel:

The following permitted uses are applicable to the present 'un-improved' conditions and may be re-defined if the town votes to install structural 'improvements', alter the topography, or change the near shore seabed profile.

Government survey and/or range monuments or markers.

Fisheries (recreational or commercial)

Daylight Hours Only:

Normal beach uses (walking, swimming, sunning, etc.)

Recreational Boating (small craft only)

'Harbor' Parcel, continued

WARNING: DUE TO TRAFFIC ON BEACH ROAD, THE LANDSIDE ACCESS IS HAZARDOUS!

'Eastville Point' Parcel:

The following permitted uses are applicable to the present 'un-improved' conditions and may be re-defined if the town votes to install structural 'improvements', alter the topography, or change the near shore seabed profile.

Government survey and/or range monuments or markers.

Fisheries (recreational or commercial).

07.00 GENERAL REGULATIONS

07.13 LAGOON HARBOR PARK. CONTINUED

.01 Uses Permitted, CONTINUED:

Normal beach use (walking, swimming, sunning, etc.)

Recreational boating (small craft only), provided that the Lagoon Pond Bridge Channel is not obstructed.

WARNING: LANDSIDE ACCESS IS THROUGH THE TOWN OF OAK BLUFFS AND MAY BE RESTRICTED OR REGULATED; ALSO, THE ACCESS/EGRESS POINT AT THE PUBLIC WAY IS HAZARDOUS!

A BIRD SANCTUARY IS LOCATED ADJACENT TO THIS PROPERTY; THE SITE AND ITS PURPOSE SHOULD BE RESPECTED!

'Lagoon Pond' Parcel:

Government survey and/or range monuments or markers.

Boat launching/docking, small craft shore docking, and vehicular (including boat trailer) parking in areas designated and/or arranged for these purposes.

Walking, bicycle paths, scenic landscaping and other similar passive uses as may be provided for in the rules of the Park and Recreation Commission.

.02 Uses Prohibited:

All classes of uses not specifically permitted under Section 07.13.01 are prohibited. The prohibited uses hereinafter listed are representative of use classes (i.e. 'in the nature of' or 'similar to'); prohibitions are not limited to the specific uses enumerated.

'Harbor' Parcel:

Any game or activity involving a free projectile.

07.00 GENERAL REGULATIONS

07.13 LAGOON HARBOR PARK. CONTINUED

.02 Uses Prohibited, continued:

The use of bright lights.

'Harbor' Parcel, continued

Any activity or conduct which would be hazardous to the vehicular traffic on Beach Road.

'Eastville Point' Parcel:

Any game or activity involving a free projectile.

Water skiing, etc. (see Waterways - Coastal and Marine Resource Management Bylaws).

All forms of motor vehicles, unless authorized by the Board of Selectmen.

Obstructing, defacing or interfering with any government monument, marker or aid-to-navigation.

'Lagoon Pond' Parcel:

Any game or activity involving a free projectile.

Any game, activity or use which could reasonably be expected to cause, or begin to cause, injury to grasses, plants, marshes or wetlands.

The use or placement of any form of vehicle in areas not specifically designated and/or arranged for the purpose.

The launching, docking, placement or drawing-up of boats in any place or area not specifically designated or arranged for the purpose.

Uses and activities at or on the sites designated or arranged for boat launching, docking/drawing-up and/or for vehicular parking contrary to any administrative rule or order of the Board of Selectmen; in other areas of this parcel, contrary to the rules established by the Park and Recreation Commission.

07.00 GENERAL REGULATIONS

07.14 FENCING AND BARRIERS FOR Hazards:

Notwithstanding any other provisions in the Zoning Bylaws, the Zoning Board of Appeals may grant a Special Permit for fences or barriers, with or without setbacks and to such heights as the Board determines to be appropriate, where it has identified a significant hazard to public health or safety. Further, the Board may require such fencing or barriers as a conditions of granting a Special Permit.

07.15 MULTIPLE DWELLING UNITS AND STRUCTURES - CONVERSION:

No existent hotel, motel or apartment shall be converted to, used as, occupied for, or advertised as, a different* form of multiple dwelling unit or structure unless it has complied with the current Zoning Bylaw requirements for Multiple Dwelling Units and Structures.

*Different means different than the existent/established hotel, motel or apartment use, including changes to the characteristic use periods and/or from commercial to private in Business or Commercial Districts.

07.16 WIRELESS COMMUNICATIONS FACILITIES (WCF)

.01 PURPOSE:

The purpose of Section 07.16 of the Zoning Bylaw is to accommodate the communication needs of residents and businesses while protecting the public health, safety, and general welfare of the community; to establish guidelines, standards and procedures to regulate the permitting and installation of communication antennae, structures, buildings, and appurtenances in order to:

- a. facilitate the provision of wireless telecommunications services to the residents and businesses of the town;
- b. minimize "adverse visual effects" of towers and antennae through careful design and siting standards;

07.00 GENERAL REGULATIONS

07.16 WIRELESS COMMUNICATIONS FACILITIES (WCF), CONT.

.01 PURPOSE, CONT

- c. avoid potential damage to adjacent properties from tower or other structural failure through structural standards and setback requirements;
- d. maximize the use of existing and approved towers and buildings to accommodate new wireless telecommunications antennae in order to reduce the number of towers needed to serve the community, and
- e. preserve property values and the aesthetic character of Tisbury.

02. DEFINITION:

For the purposes of section 07.16 a wireless communication facility shall mean any tower, mast, antenna or any transmitter or any portion thereof; fixed to any land or structure; freestanding or mobile, together with any guy wires and/or accessory structures used in the provision of wireless communication services.

.03 SPECIAL PERMIT GRANTING AUTHORITY:

The Tisbury Planning Board shall be the Special Permit Granting Authority. The Planning Board may adopt and amend regulations for the implementation of this section, including application procedures and submittal requirements.

In those cases in which the only proposed activity is the construction and operation of the Wireless Communication Facility, no other special permit shall be required under the provisions of this bylaw.

.04 USE REGULATIONS:

Applicants seeking approval for a Wireless Communication Facility (WCF) shall further comply with the following:

07.00 GENERAL REGULATIONS

07.16 WIRELESS COMMUNICATIONS FACILITIES (WCF), CONTINUED

.04 USE REGULATIONS, CONTINUED

- 1) The Wireless Communication Facility Application Procedures as written and approved by the Tisbury Planning Board.
- 2) Any applicant must demonstrate that the proposed WCF facility is necessary in order to provide adequate service to the public.
- 3) Areas prohibited; A WCF is prohibited in residential districts, and shall be located so as to minimize adverse visual effects on the landscape.
- 4) To the extent lawful and feasible, all service providers shall co-locate on a single tower,
- 5) provided, that if this is an existing structure, the applicant shall demonstrate that the additional equipment and/or the installation thereof will not compromise the stability, safety or structural integrity of said structure. The applicant shall submit documentation of the legal right to install and use the proposed facility mount. The applicant shall have the burden of proving that a good faith effort has been made to co-locate, and that it is not feasible to locate on an existing structure. Failure to meet this burden shall be grounds for denial of the application.
- 6) New facilities or structures shall be considered only upon a finding by the Planning Board that

existing or approved facilities or structures cannot accommodate additional wireless communications equipment as proposed.
- 7) New towers specifically built for communications purposes shall be designed to structurally accommodate the maximum number of foreseeable users (within a ten-year period) technically practicable. The applicant is required to document all co-

07.00 GENERAL REGULATIONS

07.16 WIRELESS COMMUNICATIONS FACILITIES (WCF), CONTINUED

.04 USE REGULATIONS, CONTINUED

location tenants and provide a tower design indicating types and location of all facilities.

- 7) Height Limit-- The height limit will be up to forty-five feet above the pre-construction natural grade for all WCF, regardless of zoning district, except that components attached to pre-existing buildings or support structures which are higher than 45 feet and which are otherwise in compliance with this by-

- 7) Height Limit, cont. - -- law may be mounted as high as, but not higher than the pre-existing structure.

- 8) Visibility / camouflage-- WCF facilities shall be camouflaged as follows:

- a) Camouflage of WCF components mounted on or to existing buildings and structures;
When a WCF extends above the roof height of a building lower than 45 feet on which it is mounted, every effort shall be made to conceal every component within or behind existing architectural features to limit its visibility from public view. Any WCF component mounted on a roof shall be stepped back from the front facade in order to limit its impact on the building silhouette.

WCFs that are side mounted shall blend with the existing building's architecture and, if over 5 square feet, shall be painted or shielded with material which is consistent with the design features and materials of the building.

- b) Camouflage by vegetation: If WCFs are not camouflaged from public viewing areas by existing buildings or structures, or are not located on existing structures, they shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective

07.00 GENERAL REGULATIONS

07.16 WIRELESS COMMUNICATIONS FACILITIES (WCF), CONTINUED

.04 USE REGULATIONS, CONTINUED

year round visual buffer. A Ground mounted WCF shall have a vegetation buffer of 50 feet or more in width, and of sufficient height to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both. The applicant shall submit a landscape design determining the types of trees and plant materials and depth of the needed buffer, based on site conditions and the height of the proposed tower. To the extent that any WCF extends above the height of the vegetation immediately surrounding it, it shall be painted in a light gray or light blue hue that blends with sky and clouds.

- 9) Strength of structure-- Any WCF structure or component shall be able to withstand sustained winds of 140 miles per hour.
- 10) Setbacks and fencing -- The minimum setback from a tower or mast to the nearest lot line shall be the height of the tower or mast plus fifty feet. A WCF must be at least 300 feet from any residence or wetland, and must be at least 1000 feet from any historic district, school, and playground or recreation center. Any guy wires, anchors or any part of the structure will be considered as part of the WCF and must meet the setbacks. All ground level components including, but not limited to, antenna support structures, equipment enclosures and backup power supplies shall have an eight-foot high secure fence surrounding the perimeter of the antenna support structure, which fence shall also be included in the setbacks. Access shall be through a locked gate.
- 11) Lighting-- Towers or masts shall not be illuminated except as required by the FAA or other applicable Federal or State agencies.

07.00 GENERAL REGULATIONS

07.16 WIRELESS COMMUNICATIONS FACILITIES (WCF), CONTINUED

.04 USE REGULATIONS, CONTINUED

- 12) An approval letter issued by the Massachusetts Department of Public Health stating compliance of the proposed WCF with maximum radio frequency emission standards must be received directly by the Town of Tisbury before any permit may be issued under this by-law.
- 13) Testing -- All WCFs shall be tested bi-annually at the owner's expense by an independent professional technician appointed by the Town. The results of the test shall be completed and submitted to the Board of Health no later than the anniversary of the date of the initial permit approval. All test results as required by the FCC or the State of Massachusetts shall be sent to the Board of Health. In the event that state and federal standards are not met, including but not limited to FCC guidelines and Massachusetts Department of Public Health Regulations (105 CMR
- 13) Testing, cont. - 122.015) the WCF shall cease to operate immediately and until such time as such WCF passes such standards, as detailed in a subsequent written report of the independent professional technician.
- 14) Noise -- No WCF shall emit noise greater than 50 *decibels* as measured from the base of the facility. Any violation of this excessive noise provision must be corrected within 5 business days of notice to the provider. The building inspector shall immediately report any failure to correct such excessive noise violation to the Planning Board.
- 15) Any additions and alterations affecting permits issued under the terms of this bylaw shall be subject to review by the permit granting authority and shall require an amendment to the special permit, pursuant to a public hearing.

07.00 GENERAL REGULATIONS

07.16 WIRELESS COMMUNICATIONS FACILITIES (WCF), CONTINUED

.04 USE REGULATIONS, CONTINUED

16) Term -- All permits issued under this bylaw shall be for a term not exceeding ten years. A permit issued under this section may be renewed upon application to the Planning Board prior to the date upon which the permit would expire.

17) Abandonment and Disassembly -- Any WCF which becomes damaged to the extent of becoming a public hazard, and/or for which a permit has expired or been revoked, or which ceases to operate for a year or more shall be considered abandoned and must be disassembled and the site fully restored to its former condition, excepting vegetation, at the direction of the Town and at the expense of the owner/operator. Every owner/operator of a WCF shall be required to post and maintain a bond with the Town of Tisbury in the amount of \$10,000.00 to cover such costs.

18) Exceptions -- This bylaw shall not apply to:

01. An amateur radio or television antenna not licensed for any commercial purpose.

02. A tower or antenna erected by the Government, Commonwealth of Massachusetts, or Town of Tisbury for a public safety communications purpose.

05. WAIVERS FROM THESE REGULATIONS:

01. If an applicant proves that the height limitations provided for existing structures or for new construction prohibit the provision of Personal Wireless Services the Board may consider a waiver of this condition up to 150 feet.

02. If an applicant can demonstrate that the absence of allowable locations in residential districts results in an effective prohibition of wireless services, the Board may consider a waiver of location to allow for such installations

07.00 GENERAL REGULATIONS

07.16 WIRELESS COMMUNICATIONS FACILITIES (WCF), CONTINUED

.05. WAIVERS FROM THESE REGULATIONS, CONTINUED

provided that, to the extent possible these are concealed in existing buildings or structures (i.e. steeples, flag poles, light poles or transmission poles).

.03 The Board may hire its own Radio Frequency Engineer, at the expense of the applicant to review applicant's findings supporting their request for a waiver(s) under this subsection of the bylaw.

(Adopt Section 07.16: April 11, 2000 - Acting on Article 17;
Replaced Text in Section 07.16: April 9, 2002 - Acting on
Article 13)