

ZONING

CHAPTER 179



**FROM THE CODE OF THE
TOWN OF BREWSTER**

COUNTY OF BARNSTABLE

**COMMONWEALTH OF MASSACHUSETTS
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November 2011 Town Meeting
(with May 2012 and October 2012 Town Meeting amendments
as approved by the Attorney General)**

Chapter 179

ZONING

[HISTORY: Adopted 5-14-1979 Annual Town Meeting. Amendments noted where applicable.]

GENERAL REFERENCES

- Accommodations — See Ch. 56.
- Alcoholic beverages — See Ch. 60.
- Beaches — See Ch. 65.
- Boats — See Ch. 69.
- Building construction — See Ch. 72.
- Camping — See Ch. 77.
- Staff Review — See Ch. 83.
- Dredging and soil removal — See Ch. 89.
- Erosion — See Ch. 93.
- Flooding — See Ch. 100.
- Noise — See Ch. 125.
- Sewers — See Ch. 150.
- Streets and sidewalks — See Ch. 157.
- Swimming pools — See Ch. 160.
- Subdivision rules and regulations — See Ch. 290.

ARTICLE I General Provisions

§ 179-1. Authority; purpose.

- A. The Brewster Zoning Bylaw, adopted in 1960, and all subsequent amendments thereto, hereinafter called "this chapter," is adopted and from time to time amended as authorized by MGL C.40A, as amended, herein called the "Zoning Act," and by Article 89 of the Amendments to the Constitution, the Home Rule Amendment.
- B. In conjunction with the purposes stated in the Zoning Act, this chapter shall provide protection for inland and coastal wetlands, as well as existing and potential watersheds, and shall give direction and effect to the development objectives and recommendations contained in the Brewster Master Plan of 1970, as may be amended from time to time.

§ 179-2. Definitions.

- A. Words used in the present tense indicate the future; the singular number includes the plural and the plural the singular; the words "used" or "occupied" include the words "designed," "arranged," "intended" or "offered to be used or occupied"; the words "building," "structure," "lot," "land" or "premises" shall be construed as though followed by the words "or any portion

thereof," and the word "shall" is always mandatory and not merely directory. [Amended 5-3-1999 ATM, Art. 29; 11-17-2003 FYTM, Art. 16]

B. As used in this chapter, the following terms shall have the meanings indicated:

ABANDONMENT — The visible or otherwise apparent intention of an owner to discontinue a nonconforming use of a building or premises; or the removal of the characteristic equipment or furnishing used in the performance of the nonconforming use, without its replacement by similar equipment or furnishings; or the replacement of the nonconforming use or building by a conforming use or building. When a building is being actively marketed for sale or lease, it is not considered abandoned. [Amended 5-7-12 ATM, Art. 23]

AFFORDABLE ACCESSORY COMMERCIAL DWELLING UNIT (AACDU) — Affordable housing as an accessory use in a commercial district. It shall have a maximum of one bedroom and a maximum of 600 square feet of area. [Added 11-5-2007 FYTM, Art. 20]

AFFORDABLE ACCESSORY SINGLE-FAMILY DWELLING UNIT (AASDU) — Affordable housing, either attached or detached, as an accessory use to a single-family dwelling. It shall have a maximum of two bedrooms and a maximum of 900 square feet of area. [Added 11-5-2007 FYTM, Art. 20]

AFFORDABLE HOUSING — A dwelling unit, controlled by a use restriction in accordance with § 179-42.1, the Affordable Housing Bylaw, and occupied by individuals falling into one of the following categories: [Added 11-5-2007 FYTM, Art. 20]

- (1) Immediate family members of the record owner of the dwelling unit, for example a son, daughter, mother, father, or grandparent.
- (2) Individuals with low or moderate income levels as provided in the Massachusetts Department of Housing and Community Development (DHCD) regulations and verified by the Brewster Housing Authority or other DHCD approved agency.

AFFORDABLE MULTIFAMILY DWELLING UNITS (AMDU) — More than two but no more than four affordable housing units within a building unit. Each affordable housing unit shall have a maximum of two bedrooms and a maximum of 900 square feet of area. [Added 11-5-2007 FYTM, Art. 20]

AGRICULTURAL USE – The commercial raising of agricultural crops and/or livestock, horticultural or floricultural products on the same lot or abutting lots in the same ownership. Necessary structures and storage of equipment used on the premises are included. Certain agricultural uses may be protected under MGL Chapter 40A Section 3. [Added 5-7-12 ATM, Art. 23]

ALTERATION — Any construction, reconstruction or other action resulting in a change in the structural parts or height, number of stories or exits, size, use or location of a building or other structure.

AMUSEMENT ARCADE – A building or part of a building containing four or more video, pinball, or similar player-operated amusement devices, in any combination for commercial use to the general public for a fee. [Added 5-7-12 ATM, Art. 23]

AMUSEMENTS, OUTDOOR COMMERCIAL – The provision of rides, games, or entertainment to the general public for a fee where any portion of the activity takes place outside of a building, including but not limited to miniature golf, merry-go-round, inflatable slides, miniature cars, Ferris wheels, midway-type games, go carts, carousels, fun houses, bumper cars or boats, water flumes, batting cages. Devices such as these, open to the public, by which persons are conveyed or entertained in an unusual manner for diversion, cannot be located within 500 feet of any residential district. [Added 5-7-12 ATM, Art. 23]

ANIMAL HOSPITAL – A place where animals are given medical or surgical treatment by or under the supervision of a veterinarian and boarding is short-term care incidental to hospital use and care. [Added, 11-15-2010, FSTM, Art. 13]

ANTIQUÉ SHOP -- Any premises used for the sale or trading of articles of which 80 percent or more are over 50 years old or have collectible value, irrespective of age. [Added 5-7-12 ATM, Art. 23]

ART GALLERY – Floor space devoted to the production, showing or sale of art including but not limited to paintings, sculptures, handcrafts, and photographs. This definition does not include art museums. An Art Gallery can also accommodate art classes for no more than 10 students per class.

ASSISTED LIVING FACILITY -- A combination of housing, supportive services, personalized assistance, and health care designed to respond to the individual needs of those who need help with activities of daily living. A facility with a central or private kitchen, dining, recreational, and other facilities, with separate bedrooms or living quarters, where the emphasis of the facility remains residential. [Added 5-7-12 ATM, Art. 23]

AUTOMATED AND DRIVE-THROUGH FINANCIAL ESTABLISHMENTS/STRUCTURES — An establishment or structure whose principal business or purpose allows for the deposit or withdrawal of money and whose method of operation includes one or both of the following characteristics: [Added 11-15-1993 FYTM, Art. 19]

- (1) Customers are able to carry out transactions while remaining within a motor vehicle.
- (2) Customers can carry out transactions by using automated teller machines, either contained within a freestanding structure or within and/or integral to a principal use.

BAKERY – An establishment primarily engaged in the preparation and wholesale and/or retail sale of baked products for consumption off-site. Such use may include incidental food service. A bakery where all products are prepared off-site shall be considered a general retail use. [Added, 11-15-2010, FSTM, Art. 13]

BARN — Any building or structure where a farm animal is sheltered or a portion of a building used for this purpose. [Added 5-12-1980 ATM, Art. 38]

BED AND BREAKFAST – A residence where an owner/occupant in its home provides lodging and a morning meal. [Added 5-7-12 ATM, Art. 23]

BUILDING, ACCESSORY — A detached building or structure a) which is used for a purpose which is customarily incidental and subordinate to the use of the principal building, b) which is located on the same lot, and c) which is not a shed as defined in this chapter. [Amended 11-18-2002 FYTM, Art. 19]

BUILDING, ACCESSORY RESIDENTIAL – A detached residential structure, customarily incidental to the existing principal residential structure and located on the same lot with the principal residential structure to which it is accessory. Such structures include but are not limited to guesthouse, shed, boathouse, playhouse, shelter for domestic pets, pool houses, private swimming pools, tennis courts and detached garages. An accessory residential building may or may not contain bedrooms. [Added 5-7-12 ATM, Art. 23]

BUILDING AND CONSTRUCTION TRADES SHOP OR GARAGE — A single structure or up to four separate structures, the combined square footage of which shall not exceed 6,000 square feet, housing up to four building-trade-related businesses, such as construction, electrical, heating or plumbing contracting, but not including excavation or septic installer. All business activities shall be confined to within the structure(s). [Added 5-7-2007 ATM, Art. 24]

BUILDING, PRINCIPAL — The structure in which the primary use of the lot is conducted, including porches, patios, decks, utility buildings and any other attached projections of the structure. The principal structure shall include a structure, whether portable or fixed, wholly or partly enclosed within walls, party walls and roof, built, erected and framed of component structural parts, designed for housing, shelter, enclosure and support of individuals, animals or property of any kind. For purposes of this definition, “roof” shall include an awning or similar covering, whether or not permanent in nature. [Added 5-7-2007 ATM, Art. 26]

BUILDING UNIT — A single building, or a portion of a single building, having the principal means of ingress and egress, separate and distinct from other portions of the same building.

CAMP, CHILDREN’S RECREATION – An establishment for the provision of indoor or outdoor activities for children, including sports, arts and crafts, entertainment, recreation, educational activities, water sports, horseback riding, and associated food service. If incidental to the camp use, camp facilities or structures may be used to provide meeting, accommodations, recreation, or social facilities for a public or private association or group. Can be a day or overnight camp. Can be for-profit or non-profit. To the extent this definition is ever applied to include “child care facilities” as that term is defined in Massachusetts General Laws, Chapter 40A, §3, the exemption provisions of that statute shall prevail. [Added 5-7-12 ATM, Art. 23]

CEMETERY – A Town- or privately-owned place for the interment of human remains or cremated remains, including a burial park for earth interments, a mausoleum for vault or crypt interments, a columbarium for cinerary interments, or a combination thereof. [Added 5-7-12 ATM, Art. 23]

CHURCH OR OTHER RELIGIOUS USE – Any structure or use entitled to the religious exemption set forth in MGL Chapter 40A Section 3. [Added 5-7-12 ATM, Art. 23]

CLINIC, MEDICAL OR DENTAL – A facility employing more than one doctor or dentist or health care provider providing treatment on an out-patient basis. [Added, 11-15-2010, FSTM, Art. 13]

CLUB, COUNTRY, HUNTING, GUN, FISHING, OR GOLF – Clubs or recreational facilities for which a membership charge may be made and which are open only to bona fide members and their guests. [Added 5-7-12 ATM, Art. 23]

CLUSTER RESIDENTIAL DEVELOPMENT — A division of land into lots for use as residential building sites where said lots are arranged into one or more groups having area and yard measurements less than the minimum required in Table 2. [Amended 8-27-1984 STM, Art. 56]

COMMERCIAL VEHICLE – Any self-propelled or towed vehicle used in commerce to transport passengers (other than the driver) or cargo. [Added 5-7-12 ATM, Art. 23]

COMMUNICATION TOWER — A freestanding or guyed vertical structure designed for the purpose of supporting communication antennas, including but not limited to microwave transmitting and/or receiving antennas, microwave reflectors, broadcasting antennas, cellular telephone antennas, pager antennas and cable television antennas. Structures transmitting only visible light are excluded from this definition, and this definition shall not apply to the construction or use of an antenna structure by a federally licensed amateur radio operator. [Added 5-5-1997 ATM, Art. 75]

COMMUNITY FACILITY – A public or private non-profit use established primarily for the benefit and service of the population of the community in which it is located. [Added 5-7-12 ATM, Art. 23]

CONSTRUCTION MATERIALS SALES AND SERVICES – Establishments or places of business primarily engaged in retail or wholesale transaction, from the premises, of the materials used in the construction of buildings or other structures. [Added 5-7-12 ATM, Art. 23]

CONVALESCENT HOME — See NURSING HOME [Amended 5-7-12 ATM, Art. 23]

COTTAGE COLONY — Any group of two or more rental or condominium cottages on a parcel of land. [Amended 5-7-12 ATM, Art. 23]

CREMATORY -- A location containing properly installed, certified apparatus intended for use in the act of cremation. [Added 5-7-12 ATM, Art. 23]

DEICING MATERIALS STORAGE FACILITY – a facility for the storage of de-icing materials that is specifically constructed to prohibit the leaching of the stored material. [Added 5-7-12 ATM, Art. 23]

DRIVEWAY — Any open space, located on a lot, which is not more than 24 feet in width built for access to a garage, or off-street parking or loading space.

DWELLING, MULTIFAMILY — A building containing three or more dwelling units.

DWELLING, ONE FAMILY DETACHED – A single, separate dwelling unit, designed for occupancy by one family. [Added 5-7-12 ATM, Art. 23]

DWELLING, ONE FAMILY SECURITY – One family dwelling unit for owner occupancy or for occupancy by personnel hired by the owner for the protection of property and safe operation of a permitted use. [Added 5-7-12 ATM, Art. 23]

DWELLING UNIT — One or more living and sleeping rooms providing complete living facilities for the use of one or more individuals constituting a single housekeeping unit, with permanent provisions for living, sleeping, eating, cooking and sanitation.

EDUCATIONAL USE – FOR PROFIT – Any building or part thereof, operated by a for-profit entity and designed, constructed or used for education or instruction in any branch of knowledge. Such use shall not include uses entitled to the education exemption set forth in Massachusetts General Laws, Chapter 40A, §3. [Added 5-7-12 ATM, Art. 23]

EDUCATIONAL USE – Any structure or use entitled to the education exemption set forth in MGL Chapter 40A Section 3. [Added 5-7-12 ATM, Art. 23]

EQUIPMENT GARAGE, MUNICIPAL – A facility housing heavy equipment owned and operated by the Town of Brewster. [Added 5-7-12 ATM, Art. 23]

ESSENTIAL SERVICES — Services provided by public utility or governmental agencies through erection, construction, alteration or maintenance of underground or overhead gas, electrical, steam or water transmission or distribution systems and collection, communication, supply or disposal systems. Facilities necessary for the provision of "essential services" include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith. Specifically excluded from this definition are buildings necessary for the furnishing of adequate service by such public utility or governmental agencies for the public health, safety or general welfare.

FAMILY — One or more persons, including domestic employees, occupying a dwelling unit and living as a single, nonprofit housekeeping unit.

FARM ANIMAL — Includes sheep, goats, swine, bovines, horses, ponies, donkeys or mules of any age or sex. [Added 5-12-1980 ATM, Art. 38]

FARM STAND – A building or structure used for the wholesale and/or retail sales of fresh fruits, vegetables, flowers, herbs, or plants. May also involve the accessory sales of other unprocessed foodstuffs, home processed food products such as jams, jellies, pickles, sauces, or baked goods, and home-made handicrafts. The area devoted to the sales of these accessory items shall not exceed 50 percent of the total sales area. No commercially packaged handicrafts or commercially processed or packaged foodstuffs shall be sold at a farm stand. To the extent this definition is ever applied to include facilities entitled to the agricultural exemption set forth in Massachusetts General Laws, Chapter 40A, §3, the exemption provisions of that statute shall prevail. [Added 5-7-12 ATM, Art. 23]

FLOOD LINE — The limits of flooding from a particular body of water caused by a storm with an intensity to be expected once in five years, based on past records, as determined and certified by a registered professional engineer qualified in drainage.

FLOODPLAIN DISTRICT — An overlay district which delineates special flood hazard areas designated on the Town of Brewster Flood Insurance Rate Map as established by the National Flood Insurance Program. [Added 5-13-1985 ATM, Art. 63]

FLOOR AREA, NET — The sum of the areas of the several floors of a building measured from the interior faces of the walls. It does not include cellars, unenclosed porches or attics not used for human occupancy or any floor space in accessory buildings or in the main building intended and designed for the parking of motor vehicles in order to meet the parking requirement of this chapter or any such floor space intended and designed for accessory heating and ventilating equipment.

FREIGHT TRANSPORTATION SERVICES – Establishments primarily engaged in undertaking the transportation of goods for compensation, including commercial distribution services, freight forwarding services and freight agencies. [Added 5-7-12 ATM, Art. 23]

FRONTAGE – See Lot Frontage [Added 5-7-12 ATM, Art. 23]

FUNERAL HOME – A building or part thereof used for human funeral services. Such building may contain space and facilities for (a) embalming and the performance of other services used in the preparation of the dead for burial; (b) the storage of caskets, funeral urns, and other related funeral

supplies; and (c) the storage of funeral vehicles. [Added 5-7-12 ATM, Art. 23]

FUR ANIMAL — Includes mink, sable, ermine, fox and the like. [Added 5-12-1980 ATM, Art. 38]

GIFT SHOP – Retail stores where items such as art, jewelry, books and notions are sold. Shops accessory to a home occupation, pursuant to Section 179-37, shall not be considered gift shops for the purpose of this by-law. [Added, 11-15-2010, FSTM, Art. 13]

GREENHOUSE – Retail or wholesale business whose principal activity is the selling of plants grown on the site and having outside storage, growing, or display. To the extent this definition is ever applied to include facilities entitled to the agricultural exemption set forth in Massachusetts General Laws, Chapter 40A, §3, the exemption provisions of that statute shall prevail. [Added 5-7-12 ATM, Art. 23]

HEALTH CARE PROVIDER -- Any person who is licensed or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, dentistry, optometry, midwifery, osteopathy, podiatry, massage (by a Licensed Massage Therapist), chiropractic, physiotherapy, dental hygiene, psychiatry, or psychology. [Added, 11-15-2010, FSTM, Art. 13]

HEIGHT — The vertical distance from the mean level of the adjacent natural ground to the top of the structure, measured at the highest roof beams of a flat roof or the highest gable or slope of a hip roof. [Amended 5-14-1990 STM, Art. 5; 5-2-2005 ATM, Art. 29]

HISTORICAL ASSOCIATION OR SOCIETY – A not-for-profit organization dedicated to the research of and collection of information on a specific historical subject of interest. May include a display area for public viewing. [Added 5-7-12 ATM, Art. 23]

HOME OCCUPATION — An accessory use to be carried on entirely within a principal building, and/or accessory building(s), residents or the principal building with no more than two nonresident employees, and not in any manner changing the primary residential character of the property. [Amended 5-4-2009 STM]

HOTEL – A building or complex of buildings providing transient lodging in 12 or more rooms, food and other related services within which access to the individual units is provided by common interior corridors. The individual units do not have cooking facilities. [Added 5-7-12 ATM, Art. 23]

INN – See LODGING HOUSE [Added 5-7-12 ATM, Art. 23]

JUNK – Scrap or waste material of any kind or nature collected or accumulated for resale, disposal or storage. [Added 5-7-12 ATM, Art. 23]

JUNKYARD – Any privately owned space more than 200 square feet in area outside of a building, used for storage, keeping, processing, salvaging or abandonment of junk. [Added 5-7-12 ATM, Art. 23]

KENNEL – An establishment where dogs, cats or other small household pets are boarded for compensation. [Added, 11-15-2010, FSTM, Art. 13]

LOADING SPACE — An off-street space used for loading or unloading not less than 12 feet in width, 30 feet in length and 14 feet in height and containing not less than 360 square feet, including

both access and maneuvering area.

LODGING HOUSE — A structure originally designed for single-family use which may be converted to provide rooms (not more than 12) for the use of one or more individuals not living as a single housekeeping unit and may provide a common dining facility. It shall include boardinghouse, tourist homes and rooming houses but does not include motels or hotels.

LOT — An area or parcel of land or any part thereof, not including water area, in common ownership, designated on a plan filed with the administrator of this chapter by its owner or owners as a parcel to be used, developed or built upon as a unit under single ownership or control. Any subsequent subdivision of a "lot" into two or more "lots" shall be subject to and conform to all the regulations of the district. Therefore, for purposes of this chapter, a "lot" may or may not have boundaries identical with those recorded in the Barnstable County Registry of Deeds.

LOT, CORNER — A lot at the point of intersection of and abutting on two or more intersecting streets, the interior angle of intersection of the street lot lines or, in the case of a curved street, extended lot lines being not more than 135°.

LOT FRONTAGE — That part of a lot line abutting a street or way, or continually or contiguously abutting more than one street or way, for the distance required in Table 2, Area Regulations. [Amended 5-7-12 ATM, Art. 23]

LOT LINE, FRONT — The property line dividing a lot from a street right-of-way. On a corner lot, the owner shall designate one street line as the "front lot line."

LOT LINE, REAR — The lot line opposite from the front lot line.

LOT LINE, SIDE — Any lot line not a front or rear lot line.

LOT, NONCONFORMING — A lot lawfully existing at the effective date of this chapter or any subsequent amendment thereto, which is not in accordance with all provisions of this chapter.

LOT, THROUGH — An interior lot, the front and rear lot lines of which abut streets, or a corner lot two opposite lines of which abut streets.

MAJOR RESIDENTIAL DEVELOPMENT — Either of the following: [Added 5-14-1990 STM, Art. 10]

- (1) Land division, whether a subdivision or not, so as to increase the number of buildable lots, unless restricted from residential use, to more than six within any twelve-month period.
- (2) Issuance of building permits for construction of more than eight dwelling units within any twelve-month period.

MANUFACTURING – The mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials. [Added 5-7-12 ATM, Art. 23]

MEMBERSHIP CLUB — A social, sports or fraternal association or organization which is used exclusively by members and their guests, which may contain bar facilities.

MEMBERSHIP ORGANIZATION – An association or organization, including social or sports,

which is used exclusively by members and their guests, which may contain bar facilities. [Added 5-7-12 ATM, Art. 23]

MOBILE HOME — A dwelling unit built on a chassis and containing electrical, plumbing and sanitary facilities and designed to be installed on a temporary or permanent foundation for permanent living quarters.

MORTUARY ESTABLISHMENT – see **FUNERAL HOME** [Amended 5-7-12 ATM, Art. 23]

MOTEL – A building or complex of buildings providing transient lodging accommodations with separate outside entrances for each unit. The individual units may or may not have cooking facilities. [Added 5-7-12 ATM, Art. 23]

MOVIE THEATER – See **Theater, Indoor** [Added 5-7-12 ATM, Art. 23]

MOVIE THEATER, DRIVE-IN – An open-air theater where the performance is viewed by all or part of the audience from motor vehicles. [Added 5-7-12 ATM, Art. 23]

MUSEUM – An institution devoted to the procurement, care, study and display of objects of lasting interest or value. [Added 5-7-12 ATM, Art. 23]

NURSING HOME -- A home for the aged, chronically ill, persons requiring care or incurable persons in which three or more persons, not of the immediate family, are received, kept or provided with food and shelter or care for compensation; including a sanitarium or sanatorium, but not including hospitals, clinics or similar institutions devoted primarily to the diagnosis and treatment of the sick or injured. [Added 5-7-12 ATM, Art. 23]

OFFICE, BUSINESS – Administrative, executive, professional, or similar organizations, provided that no merchandise or merchandising services are sold on the premises, except such as are incidental or accessory to the principal permitted use. [Added 5-7-12 ATM, Art. 23]

OFFICE, MEDICAL OR DENTAL -- A facility employing no more than one doctor or dentist providing treatment on an out-patient basis. Offices of Health Care Providers are also included under this definition. A medical or dental office can be considered a Home Occupation if it meets the requirements of Section 179-37 of this by-law. [Added, 11-15-2010, FSTM, Art. 13]

OWNER — The duly authorized agent, attorney, purchaser, devisee, trustee, lessor or any person having vested or equitable interest in the use, structure or lot in question.

PARKING LOT or STRUCTURE, COMMERCIAL — A lot or a group of lots or a structure, whose purpose is to provide vehicular parking for six or more vehicles for a fee. This definition does not include federal, state or municipal parking lots. The area(s) on a lot whose principal use is not as a parking lot but as a facility for which parking must be provided under the requirements of § 179-22 of the Code of the Town of Brewster shall not be considered a parking facility. [Amended 5-7-12 ATM, Art. 23]

PERSONAL SERVICE ESTABLISHMENT – An establishment providing non-medical services including beauty and barber shops; dry cleaning pick-up stores; shoe repair shops; tanning salons. These uses may also include accessory retail sales of products related to the services provided. [Added, 11-15-2010, FSTM, Art. 13]

PLANNED BUSINESS DEVELOPMENT — The development of a tract of land in single or

consolidated ownership for commercial purposes where the uses shall be contained in more than one building and the development shall be served with common parking areas. [Amended 5-8-1989 ATM, Art. 44]

PLANNED RESIDENTIAL DEVELOPMENT — A mixed use development on a plot of land in single or consolidated ownership, in which a mixture of residential, open space, commercial, recreational and other uses and a variety of building types may be permitted subject to the provisions of § 179-36. [Amended 5-14-1984 ATM, Art. 99]

POULTRY — Includes domestic fowl, such as chickens, turkeys, ducks and geese. [Added 5-12-1980 ATM, Art. 38]

POWER PLANT – Any plant facilities and equipment exclusive of wind energy turbines (§179-40.2) and large-scale ground mounted solar photovoltaic installations (Article XIV) for the purposes of producing, generating, transmitting, delivering or furnishing electricity for the production of power. To the extent this definition is ever applied to include uses or facilities entitled to the public utilities exemption set forth in Massachusetts General Laws, Chapter 40A, §3, the exemption provisions of that statute shall prevail. [Added 5-7-12 ATM, Art. 23]

RECORDED — Recorded in the Barnstable County Registry of Deeds or registered in the Barnstable County Registry of Land Court.¹

RECREATION FACILITY, NON-PROFIT – Recreation facilities operated by public or non-profit entities. [Added 5-7-12 ATM, Art. 23]

RECREATION FACILITY, PRIVATE – Clubs or recreation facilities for which a membership charge is made and which are open only to members and their guests. A private recreational facility may not be open or available to the general public. [Added 5-7-12 ATM, Art. 23]

REPAIR SERVICES – Establishments primarily engaged in the provision of repair services to individuals, households, and businesses, but excluding automotive repair. [Added 5-7-12 ATM, Art. 23]

RESTAURANT, FULL-SERVICE — An establishment in which food is prepared and served and customers' orders are taken and served at dining tables and where customers pay after eating. A restaurant that otherwise satisfies the above noted definition may contain one takeout station. None of this type of establishment shall provide drive-through windows or in-car service or service areas. [Added 11-13-2006 FYTM, Art. 24]

RESTAURANT, LIMITED-SERVICE — A limited-service restaurant is an establishment primarily engaged in providing food services where patrons generally order or select items and pay before eating. Examples of such establishments include: [Added 11-13-2006 FYTM, Art. 24]

- (1) Take-out restaurants a) at which orders are taken and food is prepared, b) at which food is sold to customers to be eaten elsewhere off the premises, and c) does not have an in-car, drive-through service or service area. None of this type of establishment shall provide drive-through windows or in-car service or service areas.

1. **Editor's Note: The former definition of "restaurant," added 5-1-2000 ATM, Art. 21, which immediately followed this definition, was repealed 11-13-2006 FYTM, Art. 24.**

- (2) Fast-food restaurants a) at which orders are taken and food is prepared, b) at which food is sold to customers to be eaten on premises or elsewhere off the premises, and c) does not have an in-car, drive-through service or service area; pizza delivery services, non-alcoholic beverage bars, ice cream parlors, sandwich shops, carryout cookie shops and bagel shops with on-premises baking are all examples of this category. None of this type of establishment shall provide drive-through windows or in-car service or service areas.

RETAIL STORE – a business usually selling 1 or a combination of 2 or more of the following: dry goods, apparel and accessories, furniture and home furnishings, small wares, hardware, food for home preparation, pharmaceuticals and medical supplies. [Added 5-7-12 ATM, Art. 23]

ROW COMMERCIAL — A structure or structures containing more than one commercial unit, each unit divided from others by fire walls, separation walls or other walls, or by being in a separate building so as to be separate and distinct from each other unit. Each unit contained shall be a permitted use and may be separately owned. [Amended 10-17-1988 STM, Art. 24; 5-8-1989 ATM, Art. 45; 11-13-2006 FYTM, Art. 32]

ROW OR TOWN HOUSE — A single dwelling unit which is not above or below another dwelling unit and whose side walls are separated from other dwelling units by a fire wall or walls. Each unit in the row may be owned by a separate owner.

SEPTAGE — The solid and liquid waste material removed from septic tanks, cesspools and sewage holding tanks. [Added 11-15-1999 FYTM, Art. 22]

SEPTAGE TRANSFER — The process of transferring septage from one wheeled vehicle to another wheeled vehicle for transport to another location or transferring septage from a wheeled vehicle to a holding tank or transferring septage from a holding tank to a wheeled vehicle for further transport. [Added 11-15-1999 FYTM, Art. 22]

SEPTAGE TRANSFER STATION — An indoor or outdoor facility, of any nature or design whatsoever, designed to perform or be the site of septic transfer. [Added 11-15-1999 FYTM, Art. 22]

SEPTIC TANK PUMPING SERVICE — A business that removes septage by using wheeled vehicles with pumping or vacuum systems and transports the septage in the same vehicle to a facility which will accept septage for treatment or processing with no intervening transfer to another wheeled vehicle. [Added 11-15-1999 FYTM, Art. 22, Amended 5-7-12 ATM, Art. 23]

SEWAGE TREATMENT FACILITIES – A facility designed for the collection, removal, treatment, and disposal of waterborne sewage generated within a specific area. [Added 5-7-12 ATM, Art. 23]

SHED — A single-story detached building or structure which has a footprint that does not exceed 120 square feet, which is used for a purpose which is customarily incidental and subordinate to the use of the principal building, and which is located on the same lot. A shed may be located as close as 10 feet from any side or rear property line, but shall conform to the front property line setback, as required by the Town of Brewster Zoning Bylaw. [Added 11-18-2002 FYTM, Art. 19, Amended 5-7-12 ATM, Art. 23]

SIGN — See Article VI, Signs, § 179-19, Definitions.² [Amended 5-14-1990 ATM, Art. 46]

SOLID WASTE FACILITY, MUNICIPAL – A town-owned parcel(s) for the collection, and transfer of municipal solid waste, including but not limited to construction and demolition debris, brush, leaves, composting and recycled materials. To the extent this definition is ever applied inconsistent with the provisions of Massachusetts General Laws, Chapter 111, §§150A and 150A½, and the regulations promulgated there under, the provisions of that statute and those regulations shall prevail. [Added 5-7-12 ATM, Art. 23]

SPECIAL PERMIT — A permit issued by the special permit granting authority to allow an optional use. A "special permit" can only be issued in cases where the Zoning Bylaw specifically allows one to be issued. [Added 5-11-1987 ATM, Art. 84]

STABLE, COMMERCIAL – A structure or land use in or on which equines are kept for sale or hire to the public. Breeding, boarding, or training of equines may also be conducted. To the extent this definition is ever applied to include facilities entitled to the agricultural exemption set forth in Massachusetts General Laws, Chapter 40A, §3, the exemption provisions of that statute shall prevail. [Amended 5-7-12 ATM, Art. 23]

STREET — A way which is dedicated or devoted to public use by legal mapping or by any other lawful procedure. A "street" includes all public ways, a way which the Town Clerk certifies is maintained and used as a public way, a way shown on a plan approved and endorsed in accordance with the rules and regulations governing subdivision of land in Brewster, Massachusetts, and a way having in the opinion of the Brewster Planning Board sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed uses of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. [Amended 5-7-12 ATM, Art. 23]

STREET, ARTERIAL — Highways which connect state or larger population centers and form part of the state or federal highway system.

STREET, COLLECTOR — Streets which receive traffic from arterial streets and distribute it to subareas or smaller population centers in the region.

STREET, MINOR — Streets which primarily serve to provide access to individual land parcels.

STRUCTURE — A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall over four feet in height, tent, reviewing stand, platform, bin, fences over six feet high, sign, flagpole, recreational tramway, mast for radio antenna, or the like. The word "structure" shall be construed, where the context requires, as though followed by the words, "or part or parts thereof," consistent with the Massachusetts State Building Code. [Amended 5-2-2005 ATM, Art. 27, Amended 5-7-12 ATM, Art. 23]

SUBSIDIZED ELDERLY HOUSING — Housing in which 75% or more of the dwelling units are subsidized by the federal or state government under any program to assist the construction of low- or moderate-income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization, with occupancy reserved to persons 62 years of age or older. [Added 12-10-1979 STM, Art. 37]

THEATER, INDOOR – A structure containing as its primary use audience seating, one or more

movie screens, or performance spaces, and a lobby. May or may not have a refreshment stand. [Added 5-7-12 ATM, Art. 23]

TOURIST HOME – see LODGING HOUSE [Added, 11-15-2010, FSTM, Art. 13]

TRAILER — Any vehicle or similar structure which is, has been or may be portable and is arranged, intended, designed or used for dwelling, sleeping, eating or business or is a place in which persons may congregate. It includes a mobile home.

TRAILER, CONSTRUCTION – A vehicle or similar structure to be used for storage of construction material only during construction of a job on the same lot, 3 months on a private dwelling. [Added 5-7-12 ATM, Art. 23]

USE — The purpose for which a structure or lot is arranged, designed or intended to be used, occupied or maintained.

USE, ACCESSORY — A use incidental and subordinate to the principal use of a structure or lot or a use, not the principal use, which is located on the same lot as the principal structure or use. Any use that is not allowed in the underlying district shall not be classified as an accessory use nor permitted as an accessory use. [Amended 11-17-2003 FYTM, Art. 17]

USE, NONCONFORMING — A use lawfully existing at the time of adoption of this chapter or any subsequent amendment thereto, which does not conform to one or more provisions of this chapter.

USE, PRINCIPAL — The main or primary purpose for which a structure or lot is designed, arranged or intended or for which it may be used, occupied or maintained under this chapter. Any other use within the main structure or the use of any other structure or land on the same lot and incidental or supplementary to the "principal use" and permitted under this chapter shall be considered an "accessory use."

VENDING MACHINE -- Any unattended self-service device that, upon insertion of a bill, coin, coins, credit/debit cards or token, or by similar means, dispenses anything of value including food, beverage, goods, wares, merchandise, or services. [Added 5-7-12 ATM, Art. 23]

WATER FILTRATION PLANT – A facility for the treatment of potable water for use in a municipal water system. [Added 5-7-12 ATM, Art. 23]

WHOLESALE TRADE – An establishment or place of business exclusive of farm stands or greenhouses engaged in selling and/or distributing merchandise to retailers, industrial, commercial, institutional or professional business users, or to other wholesalers. [Added 5-7-12 ATM, Art. 23]

YARD — A portion of a lot, upon which the principal building is situated, unobstructed artificially from the ground to the sky, except as otherwise provided herein. [Amended 11-15-2004 FYTM, Art. 19]

YARD, FRONT — A space extending the full width of the lot between the front line of the nearest building wall or structure and the front lot line. [Amended 5-2-2005 ATM, Art. 28]

YARD, REAR — A space, unoccupied except by an accessory structure or accessory use as herein permitted extending for the full width of the lot, between the rear line of the building wall or structure and the rear lot line. [Amended 5-2-2005 ATM, Art. 28]

YARD, SIDE — An unoccupied space extending for the full length of a building between the nearest building wall or structure and the side lot line. [Amended 5-2-2005 ATM, Art. 28]

VARIANCE — Such departure from the terms of this chapter as the Appeals Board, upon appeal in specific cases, is empowered to authorize under the terms of § 179-52 herein.

ARTICLE II
Establishment of Districts

§ 179-3. Districts enumerated.

A. The Town of Brewster, Massachusetts, is hereby divided into zoning districts to be designated as follows:

Residential Rural	R-R
Residential Low Density	R-L
Residential Medium Density	R-M
Commercial High Density	C-H
Village Business [Added 10-17-1988 STM, Art. 26]	V-B
Industrial	I
Municipal Refuse District	MRD
Wetlands Conservancy	WC
Groundwater Protection District [Added 5-9-1994 ATM, Art. 52]	GPD
Floodplain [Added 5-13-1985 ATM, Art. 64]	FPD
Personal Wireless Services Communications Facilities Overlay District [Added 5-5-1997 ATM, Art. 76; amended 5-6-2003 by ATM, Art. 25]	CT

B. A portion of the district known as "Municipal Refuse District (MRD)" is to be zoned Residential Rural (R-R), the location and boundaries of said portion being shown on a map entitled "Supplemental Zoning Map" showing MRD District in Brewster, Massachusetts, made for the Town of Brewster, December 1972, Nickerson & Berger, Inc., Civil Engineers, Orleans, Massachusetts, and placed on file with the Town Clerk.

C. That portion of the C-H Zoning District which is located in the area along Route No. 6A and 400 feet north and 400 feet south of the center line of Route No. 6A and between a line 400 feet west of Bassett Lane and Ellis Landing Road shall now be known as the "Village Business (V-B) District." [Added 10-17-1988 STM, Art. 26]

D. The Corridor Overlay Protection District is a town-wide overlay protection district which is

superimposed over all existing zoning districts. [Added 5-9-1994 ATM, Art. 25]

§ 179-4. Zoning Map established. [Amended 10-17-1988 STM, Art. 26; 5-11-1992 ATM, Art. 34; 11-20-2000 FYTM, Art. 25]

The location and boundaries of the zoning districts are hereby established as shown on the May 1979 Map entitled “Zoning Districts Map of the Town of Brewster, Massachusetts,” which is on file in the Town Clerk’s Office, and which is a part of this chapter.

§ 179-5. Determination of boundaries.

Where any uncertainty exists with respect to the boundary of any district as shown on the Zoning Districts Map, the following rules apply:

- A. Where a boundary is indicated as a street, railroad, watercourse or other body of water, it shall be construed to be the center line or middle thereof or, where such boundary approximates a Town boundary, then to the limits of the Town boundary.
- B. Where a boundary is indicated as following approximately or parallel to a street, railroad, watercourse or other body of water, it shall be construed to be parallel thereto and at such distance therefrom as shown on the Zoning Districts Map. If no dimension is given, such distance shall be determined by the use of the scale shown on the Zoning Districts Map.
- C. Where a dimensional boundary coincides within 10 feet or less with a lot line, the boundary shall be construed to be the lot line.
- D. Where a boundary is indicated as intersecting the center line of a street, railroad, watercourse or other water body, and unless it is otherwise indicated, it shall be construed to intersect at right angles to the tangent to the curve at the point of intersection.
- E. When a district boundary line divides any lot in one ownership of record at the time such line is adopted, a use that is permitted on one portion of the lot may be extended into the other portion, provided that a special permit is granted by the Board of Appeals.
- F. When a lot in one ownership is situated so that a part of it is in Brewster and part is in an adjacent town, the provisions of this chapter shall be applied to that portion of the lot which lies in Brewster in the same manner as if the entire lot were situated therein; i.e., the entire area and frontage shall be considered in determining conformity to the dimensional requirements herein. The use of the portion of the lot in Brewster shall conform to the provisions herein. [Added 5-7-2007 ATM, Art. 27]

§ 179-6. Wetlands Conservancy District.

- A. Purpose. Wetlands Conservancy Districts are intended to preserve and maintain the groundwater table on which the inhabitants of this or other municipalities depend for water supply; to protect the purity of coastal and inland waters for the propagation of fish and shellfish and for recreational purposes; to protect the public health and safety; to protect persons and property from the hazards of flood and tidal waters which may result from

unsuitable development in swamps, ponds, bogs or marshes along watercourses or in areas subject to floods or extreme high tides; and to conserve the natural character of the environment, wildlife and open space for the education and general welfare of the public.

B. Locations and boundaries. [Amended 12-10-1984 STM, Art. 28]

(1) Wetlands Conservancy Districts shall include all bordering vegetated wetlands, freshwater banks, land subject to flooding, land under a freshwater body, land under the ocean, coastal beaches, barrier beaches, rocky intertidal shores, land under salt ponds, fish runs, coastal dunes, coastal banks, salt marshes and land containing shellfish which are subject to the jurisdiction of the Wetlands Protection Act, MGL c.131, § 40, as amended.

(2) Wetlands Conservancy Districts shall also include the following soil types and soil associations, the location and boundaries of which are shown by Overlay Map Sheets 11, 16, 17, 18 and 22 encompassing the Town of Brewster and found in the "Soil Survey of Barnstable County, Massachusetts" issued March 1993 by the United States Department of Agriculture, Soil Conservation Service, which survey is hereby made part of this chapter: Amostown (AmA); Beaches (Bh); Belgrade Silt Loam (BlB); Berryland (BmA); Boxford (BoA) (BoB); Deerfield (DeA); Dune Land (Dn); Freetown (Fm, Ft); Freetown and Swansea (Fs); Hooksan (HoC, HoD, HxC); Ipswich, Pawcatuck and Matunuck (ImA); Maybid (MaA, MbA); Pipestone (PeA); Scitico (ScA); Sudbury (SdA); and Walpole (WvA). Soil descriptions as well as their land uses and limitations are found in this survey. Any parcels of land under this section too small to show on the aforementioned map sheets but containing soil types and associations described in the above survey shall be subject to this chapter. Disturbed areas may be accorded Wetlands Conservancy District status if an on-site investigation determines that the filled area covers a Conservancy District soil or soil association. [Amended 5-9-1988 ATM, Art. 95; 5-8-1989 ATM, Art 46; 10-15-1990 STM, Art. 4; 11-19-2001 FYTM, Art. 17]

C. Prohibited uses. The following uses are prohibited within the Wetlands Conservancy Districts as defined in this chapter:

(1) Residential or commercial structures.

(2) Dumping of filling with refuse, trash, rubbish or debris.

(3) Any sewage disposal systems, storage areas, tanks for chemicals or petroleum products, or other potential sources of substantial pollution.

D. Permitted uses. Except as provided in Subsection E below, buildings, structures and premises in Wetlands Conservancy Districts may be used only for the following purposes, so long as no dredging or filling is involved.

(1) Fishing and shellfishing, including the raising and cultivation of fish and shellfish.

(2) Forestry, grazing and farming, nurseries, truck gardening and harvesting of crops, including but not limited to such crops as cranberries, marsh hay, seaweed, berries and shrub fruits and trees, and work incidental thereto.

(3) Conservation of soil, water, plants and wildlife.

- (4) Outdoor activities, including hiking, swimming, boating, nature study, fishing, trapping and hunting.
 - (5) Drainage works which are part of the local flood and mosquito control conducted by an authorized public agent.
 - (6) Such other agricultural, horticultural, floricultural, religious and educational uses as are exempted from prohibition by MGL c. 40A, § 3.
 - (7) Uses accessory to residential or other primary uses, such as flower or vegetable gardens, lawns, pastures or forestry areas.
 - (8) The building and use of footbridges, constructed or fabricated trails and walks, stairways, docks and landings. [Added 11-18-2002 FYTM, Art. 20]
 - (9) Notwithstanding the prohibition against any land filling or dumping of any soil, peat, sod, gravel, rocks or other mineral substances in Subsection E(4) below, land filling or dumping of any gravel, rocks, sand or other mineral substance is permitted for property owners for the sole purpose of repairing or re-nourishing of bay front beaches after storm damages. [Added 11-13-2006 FYTM, Art. 23]
- E. Uses permitted by a special permit. The Board of Appeals may issue a special permit for the following uses and structures in accordance with the provisions of § 179-51 of this chapter. Before issuing a special permit under this section, the Board of Appeals shall consider whether or not the proposed use will be detrimental to the environmental quality of both the subject and contiguous lands. The Board of Appeals may, as an alternative to a denial of a special permit under this section, impose such conditions as it deems necessary to contribute to the protection and preservation of subject land in accordance with the purposes of this chapter. Before issuing a special permit under this section, the Board of Appeals shall forward a copy of the application for the special permit to the Conservation Commission, and the Conservation Commission shall, within 35 days of receipt of a copy of such application, make recommendations to the Board of Appeals concerning the application for a special permit. The Board of Appeals shall not grant any special permit under this section until the report of the Conservation Commission has been received and considered or until 35 days from delivery of the application copy for the special permit to the Conservation Commission has elapsed without the receipt or the report from the Conservation Commission. Any report of the Conservation Commission to the Board of Appeals under this section shall be an advisory report only. The following uses shall be permitted by a special permit only:
- (1) Nonresidential buildings or structures to be used only in conjunction with fishing, shellfishing, the growing and harvesting and storage of crops raised on the premises and boathouses.
 - (2) Dams, changes in watercourses or other drainage works, only as part of an overall drainage plan constructed or authorized by a public agency as stated in Subsection D above.

- (3) ³Appropriate municipal uses, such as waterworks, pumping stations and parks.
- (4) Any landfilling or dumping of any soil, loam, peat, sand, gravel, rocks or other mineral substances.
- (5) Any draining, damming, dredging, altering or relocating any watercourse or the removal from Wetlands Conservancy Districts of loam, peat, sod, gravel, rocks or other mineral substances.
- (6) Certain accessory uses related to scientific research or development, as and to the extent mandated in MGL c. 40A, § 9.

F. Emergency action. Any special permit required by § 179-6 of this chapter shall not apply to emergency projects necessary for the protection of health and safety of the citizens of Brewster. "Emergency projects" shall mean any project certified to be an emergency by the Commissioner of the Department of Natural Resources (Department of Environmental Protection) and the Conservation Commission, if this chapter and MGL c. 131, § 40, are both applicable, or by the Conservation Commission alone, if only this chapter is applicable. In no case shall any filling, dredging or altering commence prior to any emergency certification, or extend beyond the time necessary to abate the emergency. Emergency action may be performed by: [Amended 5-11-1992 ATM, Art. 39]

- (1) An administrative agency of the commonwealth or Town.
- (2) A property owner, if emergency approval has or will be granted under the provisions of this Subsection F above and the Building Commissioner deems the action necessary to protect or prevent further damage to an approved and permitted building or structure. Corrective action is to be limited to protection only, and not to complete replacement.

§ 179-7. Floodplain District. [Added 5-13-1985 ATM, Art. 65; amended 5-11-1992 ATM, Art. 37; 11-17-2003 FYTM, Art. 22]

The Floodplain District is established as an overlay district. All uses otherwise permitted in the underlying district are allowed, provided that they meet the following additional requirements, as well as those of the Massachusetts State Building Code dealing with construction in floodplains and coastal high hazards.

A. Statement of purpose. The purposes of the Floodplain District are to:

- (1) Regulate development in areas subject to coastal storm flowage, particularly high hazard velocity zones in order to minimize threats to public safety, potential loss of life, personal injury, destruction of property, and environmental damage inevitably resulting from storms, flooding, erosion and relative sea level rise.
- (2) Enable safe access to and from coastal homes and buildings for homeowners and emergency response personnel, such as police, fire and rescue departments or other emergency response officials.

3. Editor's Note: Former Subsection E(3), amended 5-3-1999 ATM by Art. 31, which permitted footbridges, constructed or fabricated trails and walks, docks and landings, was repealed 5-6-2002 ATM by Art. 20. Said Art. 20 also renumbered former Subsection E(4) through (7) as Subsection E(3) through (6).

- (3) Reduce or prevent public health emergencies resulting from surface and ground water contamination from inundation of or damage to sewage disposal systems and storage areas for typical household hazardous substances.
- (4) Minimize monetary loss and public health threats resulting from storm damage to public facilities (water and gas mains, electric, telephone lines, streets, bridges, etc.). Avoid the loss of utility services which, if damaged by flooding, would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding.
- (5) Eliminate costs associated with the response to and cleanup of flooding conditions.
- (6) Reduce damage to public and private property resulting from flooding waters.

B. Definitions. As used in this section, the following words shall have the meanings specified herein:

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community, subject to a one-percent or greater chance of flooding in any given year. The area may be designated on a FIRM as Zone A, A1-30 or V1-30.

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

COASTAL HIGH HAZARD AREA — The area subject to high-velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone V1-30.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, construction, mining, extraction, dredging, filling, grading, paving, excavation or drilling activity or operation.

DISTRICT — Floodplain District.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be fixed (including, at minimum, the installation of utilities, the construction of streets, and either final site grading or pouring of concrete pads) is completed before the effective date of this section.

EXPANSION TO AN EXISTING MANUFACTURED HOMEPARK OR SUBDIVISION — The preparation of additional sites by the construction of facilities for servicing lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or pouring of concrete pads).

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) — Administer's the National Flood Insurance Program (NFIP). FEMA provides a nationwide flood hazard mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of a community on which FEMA has delineated both areas of special flood hazard and risk premium zones applicable to the community.

FLOOD INSURANCE, STUDY — An examination, evaluation, and determination of flood hazards,

and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

LAND SUBJECT TO COASTAL STORM FLOWAGE — Land subject to inundation caused by coastal storms up to and including the one-hundred-year flood, surge of record, or flood of record, whichever is greater. The one-hundred-year flood (or base flood as it is also referred to) means the flood having a one-percent chance of being equaled or exceeded in any given year. The seaward limit is mean low water.

LOWEST FLOOR — The lowest floor of the lowest enclosed areas (including basement or cellar). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of NFIP Regulations 60.3.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For purposes of the application of this Floodplain District Bylaw, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NATIONAL FLOOD INSURANCE PROGRAM (NFIP) — Is administered by the Federal Emergency Management Agency (FEMA).

NEW CONSTRUCTION — For purposes of the application of this Floodplain District Bylaw, "new construction" shall mean structures for which the start of construction commenced on or after the effective date of this Floodplain District Bylaw. For the purpose of determining insurance rates, "new construction" means structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

NEW MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this Floodplain District Bylaw.

ONE HUNDRED YEAR FLOOD — See "base flood."

REGULATORY FLOODWAY — See "floodway."

SPECIAL FLOOD HAZARD AREA — An area having special flood and/or flood related erosion hazards, and shown on a FIRM as Zone A, A1-30, V1-30.

START OF CONSTRUCTION — Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, or floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE — For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. For NFIP insurance coverage purposes, "structure" means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed.

ZONES

- (1) **ZONE A** — The one-hundred-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.
- (2) **ZONE A1-A30** — The one-hundred-year floodplain where the base flood elevation has been determined.
- (3) **ZONES B and C** — Areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard.
- (4) **ZONE V1-V30** — Special flood hazard areas along a coast subject to inundation by the one-hundred-year flood with additional hazards due to velocity (wave action). Base flood elevations have been determined.

C. Floodplain District boundaries and base flood elevation and floodway data.

- (1) The floodplain District is herein established as an overlay district. The Floodplain District includes all special flood hazard areas designated on the Town of Brewster FIRM issued by FEMA for the administration of the NFIP dated May 17, 1993, as ZONES A, A1-30, and V1-30 which indicates the one-hundred-year regulatory floodplain. The exact

boundaries of the District may be defined by the one-hundred-year base flood elevations shown on the, FIRM and further defined by the Flood Insurance Study Booklet dated December 19, 1998. The FIRM and Flood Insurance Study booklet are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Commissioner and Conservation Commission.

- (2) Floodway data. In Zone A and A1-30 along watercourses that have not had a regulatory floodway designated, the best available federal, state, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (3) Base flood elevation data. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres; whichever is the lesser, within unnumbered A zones.
 - (a) Within Zone A, where the base flood elevation is not provided on the FIRM, the applicant shall cause a qualified professional to provide any existing base flood elevation data, which data shall be reviewed by the Building Commissioner/Zoning Agent for its reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.
 - (b) The Wetlands Protection Act may require applicants to determine base flood elevation information by engineering calculations using whichever specified methodology is most accepted by the Brewster Conservation Commission.

D. Notification of watercourse alteration. In a riverine situation, the property owner and/or applicant shall notify the following of any alteration or relocation of a watercourse:

- (1) Adjacent communities.
- (2) NFIP State Coordinator
Massachusetts Office of Water Resources
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104
- (3) NFIP Program Specialist
FEMA Region I, Rm. 462
J. W. McCormack Post Office & Courthouse
Boston, MA 02109

E. Use regulations.

- (1) All provisions of the Code of the Town of Brewster, Chapter 179, shall remain applicable within the Floodplain District; provided, however, where the Floodplain District Bylaw imposes additional or conflicting regulations, the more stringent local regulations shall prevail. All development in the Floodplain District, including structural and nonstructural activities, whether permitted by right or by special permit, must be in compliance with (Chapter 131, Section 40, of the Massachusetts General Laws and with the following:

- (a) Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 3107.0. Flood Resistant Construction)
 - (b) Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00).
 - (c) Inland Wetlands Restriction, IMP (currently 310 CMR 13.00).
 - (d) Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00).
 - (e) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Tile 5).
 - (f) Brewster Wetlands Protection Bylaw (currently Chapter 172, Brewster Town Code).
 - (g) Brewster Wetlands Conservancy District (currently Chapter 179, Article II, § 179-6, Brewster Town Code).
- (2) Any departure from the provisions and requirements of the above-referenced state or local regulations may only be granted in accordance with the required variance procedures of these state or local regulations.
- F. Recommended uses. The following uses, which present low flood damage potential and are unlikely to cause obstructions to flood flows, are encouraged, provided they are permitted in the underlying district and do not require structures, fill, or the storage of either materials or equipment.
- (1) Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
 - (2) Forestry and nursery uses.
 - (3) Outdoor recreational uses, including play areas, nature study, boating, fishing and hunting where otherwise legally permitted.
 - (4) Conservation of water, plants and wildlife.
 - (5) Wildlife management areas, foot, bicycle, and/or horse paths and bridges provided such uses do not affect the natural flow pattern of floodwaters or of any watercourse.
 - (6) Temporary nonresidential structures used in connection with fishing, hunting, bird watching, growing, harvesting, storage, or sale of crops raised on the premises.
 - (7) Buildings and uses lawfully existing prior to the adoption of these provisions.
- G. Use limitations.
- (1) Man-made alteration of sand dunes within Zones V1-30 increase potential flood damage is prohibited.
 - (2) All new construction within Zones V1-30 is required to be located landward of the reach of mean high tide.

- (3) All subdivision proposals shall be reviewed to assure that:
 - (a) Such proposals minimize flood damage;
 - (b) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - (c) Adequate drainage is provided to reduce exposure to flood hazards.
- (4) Existing contour intervals of site and elevations of existing structures must be included on plan proposals.

H. Administration.

- (1) There shall be established a routing procedure which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Town Engineer and Building Commissioner for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.
 - (2) The Building Inspector shall require the applicant to cause a qualified professional to provide records of elevation and floodproofing levels for new construction or substantial improvement within the flood district.
- I. Severability. If any provision of this section should be disapproved by the Attorney General or invalidated by a court of competent jurisdiction, the remainder of the section shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this § 179-7 shall not affect the validity of the remainder of the Town of Brewster's Zoning Bylaw.

ARTICLE III
Interpretation and Application

§ 179-8. Interpretation.

The provisions of this chapter shall be interpreted to be the minimum requirements adopted for the promotion of the health, safety, morals or the general welfare of the Town of Brewster, Massachusetts; and except for the Brewster Zoning Bylaw, dated 1960, and all amendments thereto, the provisions of this chapter are not intended to repeal or in any way impair or interfere with any lawfully adopted bylaw, regulation or rule. Whenever the regulations made under the authority hereof differ from those prescribed by any bylaw or other regulations, that provision which imposes the greater restriction or the higher standard shall govern.

§ 179-9. Application.

Except as herein provided, or as specifically exempted by the Zoning Act, the provisions of this chapter shall apply to the erection, construction, reconstruction, alteration or use of buildings and structures or use of land. Except as herein provided, any existing conforming use, structure or lot shall not by any action become nonconforming, and any existing nonconforming use, structure or lot shall not become further nonconforming.

ARTICLE IV

Use Regulations

§ 179-10. Applicability of use regulations.

Except as provided in the Zoning Act or in this chapter, no building, structure or land shall be used except for the purposes permitted in the district as described in this section. Any uses not listed shall be construed to be prohibited.

§ 179-11. Table of Use Regulations.

- A. In the following Table of Use Regulations, the uses permitted by right in the district shall be designated by the letter "P." Those uses that may be permitted by special permit in the district, in accordance with § 179-51, shall be designated by the letter "S." Uses designated "-" shall not be permitted in the district.
- B. See the table on accompanying pages which is declared to be a part of this chapter.⁴

§ 179-12. Uses permitted by right.

Uses permitted by right or granted special permits shall be subject, in addition to use regulations, to all other provisions of this chapter.

§ 179-13. Regulations effective in all districts.

- A. No premises in the Town of Brewster shall be used for the following purposes: residing in (i.e., occupying) any tents, trailers, mobile units, except in commercial trailer parks or camps.
- B. No lot in the Town of Brewster shall be used for residential building purposes unless there is at least 60,000 square feet of contiguous buildable uplands as defined in the Zoning Bylaw or unless the lot existed as a lot on May 1, 1986, and satisfied the May 1, 1986, requirements for a buildable lot. June 30, 1987, shall be set as the effective date for all aspects of this subsection. [Amended 5-12-1986 ATM, Art. 34; 5-11-1987 ATM, Art. 83]
- C. No lot in Brewster shall be used for septage transfer, whether septage transfer would be a principal use or an accessory use, nor shall any lot in Brewster be used for a septage transfer station, whether such use would be a principal use or an accessory use. [Added 11-15-1999 FYTM, Art. 24]
- D. When two lots are in common ownership, any new, altered or extended structure proposed after the effective date of this by-law, that encroaches on a setback on either lot shall seek a variance from the Board of Appeals. In a case where any new, altered or extended structure proposed after the effective date of this by-law is proposed to be constructed over a lot line common to both lots, the two lots shall be combined by plan or deed, and such plan or deed shall be recorded at the Barnstable County Registry of Deeds. Copies of the recorded information shall be submitted with any building permit application. [Added 5-3-2010 ATM, Art. 28]

§ 179-14. (Reserved)⁵

4. Editor's Note: Table 1, Use Regulations, is included at the end of this chapter.
08-2012

ARTICLE V
Area and Bulk Regulations

§ 179-15. Applicability of regulations.

The regulations for each district pertaining to minimum lot area, minimum lot frontage, maximum height of buildings, maximum number of stories, minimum front yard depth, minimum side yard width, minimum rear yard depth and minimum residential net floor area shall be as specified in this section and set forth in the Table of Area Regulations and Height and Bulk Regulations and subject to the further provisions of this section. A fence, wall or other enclosure is not regulated except as provided in § 179-17 below.

§ 179-16. Tables of regulations.

See tables on accompanying pages, plus attached notes, which are declared to be a part of this chapter.⁶

§ 179-17. Fences, walls and other enclosures.

- A. A fence, hedge, wall or other enclosures may be maintained on a corner lot, provided that no structure or vegetation shall be over 3.5 feet in height within the sight triangle.
- B. The "sight triangle" is defined as the area within a triangle formed by two lines measured along the center of the nearest lane of the traveled way of intersecting streets from the point of intersection for a distance of 25 feet and a third line connecting the points on the two legs. The height restrictions shall designate the distance above each point in the plane of the sight triangle.

ARTICLE VI

Signs

[Amended 5-11-1982 ATM, Art. 82; 5-14-1984 ATM, Art. 107; 5-14-1984 ATM, Art. 108; 5-14-1984 ATM, Art. 109; 5-13-1985 ATM, Art. 70; 1-13-1986 STM, Art. 15; 5-9-1988 ATM, Art. 93; 10-17-1988 STM, Art. 26; 5-14-1990 ATM, Art. 44]

§ 179-18. Intent.

This Article establishes the comprehensive regulations and conditions under which signs are permitted within the Town of Brewster in accord with the powers set forth in MGL C. 40A and MGL C. 93, § 29. It is intended that these regulations shall act as guidelines for the protection of the visual environment of the Town and for the safety, convenience and welfare of the public and to help protect our businesses and encourage their successful growth and development.

§ 179-19. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

5. Editor's Note: Former § 179-14, R-R District moratorium, added 5-13-1985 ATM, Art. 60, last amended 10-19-1992 FYTM, Art. 13, was repealed 5-9-1994 ATM, Art. 23.

6. Editor's Note: Table 2, Area Regulations Minimum Required Lots, and Table 3, Height and Bulk Regulations, are located at the end of this chapter.

ABANDONED SIGN — A sign which identifies or advertises a business, service, product, activity or lessor which no longer exists at that location and/or for which no legal owner can be found.

ACCESSORY SIGN — A sign which does not identify a business; i.e., "Open," "Closed," "Vacancy," "Hours of operation," etc.

A-FRAME SIGN — See "sandwich sign."

ANIMATED SIGN — Any sign which uses actual movement or the illusion of the movement.

AREA OF A SIGN — An area determined by multiplying the extreme width by the extreme height, including borders, but excluding supports which do not bear advertisement. Where a sign consists of individual letters or symbols, the area shall be considered to be the smallest rectangle which encompasses all the letters or symbols. Only one face of a double-faced sign shall be used in computing the area of that sign.

AWNING SIGN — A sign attached to or printed upon textile or fabric material supported by framing and which is attached to a building.

BANNER — A piece of cloth, plastic or similar material attached, at one or more points, to a pole, staff or other support.

CHANGEABLE-COPY SIGN — A sign that is designed so that characters, letters, plaques or illustrations can be changed or rearranged without changing the design of the sign.

CONSTRUCTION SIGN — A temporary sign identifying an architect, builder, contractor, subcontractor, material supplier or others participating in the construction, alteration or maintenance on the property on which the sign is located.

DIRECT/EXTERNAL LIGHTING — Illumination by means of a light source that is external to the sign being lit.

DIRECTIONAL OR TRAFFIC SAFETY SIGN — An on-premises sign marking entrances, exits, parking areas or other operational features of the premises and providing directions for the safe and/or efficient flow of traffic. Off-premises "directional or traffic safety signs" within public roadway layouts are governed by the Massachusetts Department of Transportation and Highways Manual on Uniform Traffic Control Devices. [Amended 5-9-1994 STM, Art. 5]

DOOR SIGN or WINDOW SIGN — Any sign placed inside a window or door facing the outside with characters that exceed two and one-half (2 1/2) inches in height and which is intended to be read from a public way.

DOUBLE-FACED SIGN — A sign lettered on both sides.

FLASHING SIGN — A sign which is illuminated by an intermittent or sequential light source.

FREESTANDING SIGN — A sign supported upon the ground by poles or braces and not attached to any building.

FRONTAGE — The horizontal distance measured along the front lot line between the points of intersection of the side lot lines with the front lot line.

GOVERNMENT SIGN — Any temporary or permanent sign erected and maintained by a duly

constituted government.

HEIGHT OF A SIGN — The vertical distance measured from the highest point of a sign to the mean ground grade beneath the sign.

INFORMATIONAL SIGN — An on-premises sign which identifies the premises or the activity or the business conducted upon the premises. [Added 5-9-1994 STM, Art. 5]

INTERNAL LIGHTING (INDIRECT LIGHTING) — Illumination by means of a concealed light source, whereby all incandescent, fluorescent or neon devices are shielded from view by opaque or translucent materials.

INTERPRETIVE DISPLAYS — Boards or exhibits proposed by a Town governmental body or a nonprofit educational organization to convey environmental regulations or explain the environmental significance and public purpose of a program or policy, such as resource protection, at a public or private nonprofit site. [Added 5-9-1994 STM, Art. 5]

LADDER SIGN — A freestanding sign with two vertical supports and two or more crosspieces serving as individual signs.

NONCONFORMING SIGN — A sign which was erected legally but which does not comply with subsequently enacted regulations.

OFF-PREMISES SIGN — A sign identifying a business or residential use, facility or service which is not located on the premises where such activity is located.

ON-PREMISES SIGN — A sign identifying a business or residential use, facility or service which is located on the premises where such activity is located.

PLAQUE SIGN — One or more signs affixed to a common background.

POLITICAL SIGN — A temporary sign associated with the elective process.

PROJECTING SIGN — A sign which extends from a wall of a building.

PUBLIC WAY — Any way, public or privately owned, over which the public has a right to pass.

QUARTERBOARD SIGN — A sign designed to imitate a sign such as might be found attached to the stern of a vessel.

REAL ESTATE SIGN — A temporary sign which advertises property as being for sale, rent or lease.

REGULATORY OR SAFETY SIGN — An on-premises sign which provides directions or regulations for the safe and legal conduct of activities on the premises. [Added 5-9-1994 STM, Art. 5]

ROOF SIGN — Any sign erected upon or above a roof or parapet wall of the building on which it is partially or wholly supported.

SANDWICH SIGN — A self-supporting, double-paneled, temporary sign, which panels are not parallel but which are connected along one edge and separated along the opposite edge. If connected on a vertical edge, it is a V-shaped sign. If connected at the top, it is an A-frame sign.

SIGN — Any permanent or temporary structure, device, letter, word, model, banner, pennant,

insignia, trade flag or other such device which is used for advertising purposes or to inform the public.

SIGN COMMISSIONER — In the absence of an appointed Sign Commissioner, the Building Commissioner shall serve as the person responsible for the enforcement of this Article VI and shall be referred to as the Sign Commissioner throughout the provisions of this Article VI. [Amended 5-3-1999 ATM, Art. 28]

SPECIAL EVENT SIGN — A temporary sign advertising or pertaining to a civic, patriotic, educational or other event taking place within the Town.

SUBDIVISION IDENTIFICATION SIGN — A freestanding or wall sign identifying a subdivision, condominium complex or residential development.

SUBDIVISION LOT PLAN SIGN — A sign depicting the lot plan of a subdivision.

SUBSIDIARY SIGN — A small sign attached to another sign, naming a business or giving other information.

TEMPORARY SIGN — A sign intended for limited term use.

V-SHAPED SIGN — See "sandwich sign."

WALL SIGN — A single-faced sign attached parallel to or painted on a vertical exterior wall not projecting more than 12 inches beyond the wall surface to which the sign is attached and not extending beyond the edges of the wall to which the sign is attached.

“WELCOME TO BREWSTER” SIGNS — Town-owned signs which will be placed at key entrances to the Town, welcoming people to the Town. [Added 11-19-2001 FYTM, Art. 18]

WINDOW SIGN — See "door sign."

§ 179-20. Signs permitted in residential districts.

A. Residential uses (no permit required):

- (1) One sign per street frontage which displays the name of the house or the name of the people residing therein, not to exceed two square feet in area on each side;
- (2) Two signs not to exceed two square feet in area placed on either side of an entrance drive; or
- (3) One quarterboard sign, attached to a building or fence, not to exceed six square feet.
- (4) One subdivision identification sign to identify the name of a residential subdivision or associated neighborhood, freestanding or attached to a permitted structure, fence, wall or a rock, not to exceed nine square feet in area. [Added 5-7-2007 ATM, Art. 25]

B. Signs identifying nonconforming uses and uses permitted by right or special permit.

- (1) One double-faced sign which displays the name of the activity or business conducted therein, said sign not to exceed four square feet on each side; or
- (2) A quarterboard sign or other sign attached to a building, said sign not to exceed six

square feet in area.

- C. One nonilluminated sign for a home occupation business not to exceed four square feet in area.
- D. One freestanding sign for each town-owned community facility or other nonprofit facility not to exceed 12 square feet and one wall, projecting, or roof sign not to exceed six square feet.
- E. One freestanding sign for each public road frontage of a Town Conservation Area, not to exceed six square feet.
- F. A sign denoting the name of a way may be placed at the intersection of a public way and a private way and/or at the intersection of two unposted private ways. Said sign shall not exceed six inches by 36 inches in area and shall be of a reflective background, and, if more than one sign is necessary at such intersections, then all such signs shall be affixed to a single signpost, frame structure, or other support. (No permit required.)
- G. Permitted antique shops are allowed a sign not to exceed four square feet in area.

§ 179-20.1. Signs in business districts.

- A. C-H Commercial High-Density District and V-B Village Business District.
 - (1) Any sign permitted in the Residential Districts (R-R, R-L and R-M) and subject to the same provisions.
 - (2) In general, two signs are permitted for each business in a commercial zone. For businesses that have frontage on more than one public way, one additional freestanding sign of not more than 1/2 the square foot area of the first freestanding sign is permitted, but must be placed at least 200 feet away from the first sign.
 - (3) A single business on a single lot is permitted one freestanding sign, not to exceed eight square feet, and either one wall, projecting, roof or awning sign not to exceed six square feet. If a freestanding sign is not used, then the total square foot area of the other sign shall not exceed 14 square feet.
- B. Signs permitted for row commercial and planned business developments (more than one business on a single lot):
 - (1) Multiple businesses or activities on a single lot may establish one freestanding sign for the complex according to the following table:

(a) Table

Frontage(feet)	Signage (square feet)
Up to 160	12
Over 160	16

- (b) On lots with 320 feet frontage and over, two freestanding signs not less than 160 feet apart, each not to exceed 16 square feet, are permitted.

- (2) Each business is permitted one wall, projecting, roof or awning sign. The square foot area of said sign shall be dependent upon its distance from the center line of the nearest public way as follows:
 - (a) Less than 50 feet: six square feet is permitted.
 - (b) More than 50 feet: eight square feet is permitted.
 - (c) More than 100 feet: 10 square feet is permitted.

§ 179-20.2. Signs permitted in Industrial (I) Zone. ⁷ [Added 5-13-1991 ATM, Art. 36]

A. The following signs are permitted:

- (1) One wall sign for each building unit, provided that it shall be attached to a main wall of a building; it shall project horizontally not more than 12 inches there from; it shall be erected at a height of not less than eight feet and not more than 20 feet above the ground; and it shall not exceed 20 square feet in surface area or 10% of the surface area of the wall, whichever is the lesser.
- (2) One projecting sign for each building, provided that it shall be attached to a main wall of a building; it shall project horizontally not more than six feet there from; it shall be erected at a height of not less than 10 feet nor more than 20 feet; and it shall not exceed 20 square feet in surface area on each side of a double-faced sign.
- (3) One ground sign for each building, provided that it shall not exceed 20 square feet in surface area on each side of a double-faced sign, and it shall be set back at least 1/2 the depth of the required front yard.

B. An industrial park or complex may have one ground identification sign located at the entrance to the park or complex containing only the name of the park or complex and/or the names or logos of the businesses located therein, provided that it shall not exceed 20 square feet in surface area on each side of a double-faced sign. The sign must be located within the confines of the park or complex at a location approved by the Sign Commissioner, but may be located within the two-hundred-foot green belt area.

C. Signs shall be limited in use to identification and business signs only.

§ 179-20.3. Off-premises signs.

- A. A sign denoting the name of a way may be placed at the intersection of a public way and a private way and/or at the intersection of two unposted private ways. Said sign shall not exceed one square foot in area and, if more than one sign is necessary at such intersections, then all such signs shall be affixed to a single signpost, frame structure or other support.
- B. Signs indicating the name of a resident or activity are not permitted.
- C. Signs permitted at certain intersections.

7. Editor's Note: Pursuant to 5-13-1991 ATM, Art. 37, former §§ 179-20.2 through 179-20.5 were renumbered as §§ 179-20.3 through 179-20.6, respectively.

- (1) Signs are permitted at the following intersections of public ways which service commercial areas, preexisting businesses or town-owned community facilities:
 - (a) Route No. 6A and Thad Ellis Road.
 - (b) Route No. 6A and Underpass Road.
 - (c) Route No. 137 and Underpass Road.
 - (d) Route No. 137 and Freeman's Way.
 - (e) Route No. 124 and Route No. 6A.
 - (f) Route No. 39 and Freeman's Way.
 - (g) Route No. 124 and Route No. 137. [Added 5-10-1993 STM, Art. 3]
- (2) Regulations.
 - (a) Signs shall be of a uniform design with a dark green background (dark green glossy, as in Town signs, or equal) and white letters, all in a non-Day-Glo paint, and shall be supported by unpainted ground, treated four-by-four posts.
 - (b) Signs shall not exceed 12 square feet in area and three feet in width between the support posts nor be more than six feet in height.
 - (c) Signs shall be constructed of a series of horizontal panels six inches in height and shall be constructed in a manner that as many as eight panels may be placed one above the other and be separately removable.
 - (d) The subject matter of a sign shall be generic in nature, such as "drug store," identifying an activity or service, not a specific business name.
 - (e) Each six-by-thirty-six-inch panel can identify several activities depending upon lettering requirements, and all lettering shall be of uniform character.
 - (f) A sign may be installed by a single business or group of businesses, and, whether one or several, it shall be the responsibility of the party or parties whose name(s) appear on the permit application(s) to ensure that the sign is maintained in good repair and appearance.
 - (g) The lettering on the sign shall be simple block lettering as in the manner of recent signs installed by the Town with letters not more than 3 1/2 inches in height.
 - (h) If the sign is to be placed on a state highway, a permit from the state shall be obtained by the applicant before application is formally made to the Sign Commissioner in accordance with MGL C. 93, § 29. Said permit shall form part of the application.
 - (i) If the sign is to be placed upon private property, written authorization therefor shall be obtained from the owner before application is formally made to the Sign Commissioner. Said authorization shall form a part of the application.
 - (j) The location of all signs shall be selected by the Sign Commissioner with the advice of the Traffic Management Advisory Committee or successor to assure traffic safety.

- (k) There shall be no more than one sign at any intersection.
- (l) When the public convenience and necessity require it, the Board of Appeals may grant a special permit for signs at other intersections providing directions to scenic areas, nonprofit institutions other than educational or similar activities of a predominantly nonprofit nature.
- (m) Any traffic or directional sign owned and installed by a governmental agency shall be permitted.

§ 179-20.4. Height.

No freestanding sign shall be in excess of 10 feet in height. No sign shall be constructed in a manner that obstructs public passage or motor vehicle visibility.

§ 179-20.5. Regulations for specific types of signs.

- A. Changeable-copy signs. When necessary to inform the public of changing events, activities, dates, times and other matters of important interest, the Sign Commissioner may issue a permit for a changeable-copy sign not to exceed eight square feet in area. Signs must be legible.
- B. Accessory signs. Accessory signs are permitted. Total area cannot exceed one square foot.
- C. Directional or traffic safety signs. In addition to other permitted signs, directional, warning or traffic signs necessary for the public safety and convenience of customers, employees, visitors and the public are permitted in all areas. Signs shall not exceed one square foot in area, and a maximum of four will be allowed per site. The Sign Commissioner may grant exceptions to this subsection on a case-by-case basis if he/she finds that the site requires more or larger signs. [Amended 5-9-1994 STM, Art. 4]
- D. Political signs. Political signs are permitted in all districts on private property with the approval of the property owner and shall not exceed four square feet in area and shall be removed within seven days of the event to which it refers. (No permit required.)
- E. Temporary signs. Temporary signs cannot be used for more than 12 months but are permitted in all zones. Some may require a permit from the Sign Commissioner. The sign shall be removed at the end of this period unless a renewal application has been approved. The Sign Commissioner shall ensure that signs shall be legible.
 - (1) Construction signs and real estate signs. (No permit required.)
 - (a) Signs are permitted in all zones.
 - (b) Not more than one sign is permitted on a single site.
 - (c) Signs may not exceed four square feet in area.
 - (d) Signs must be placed on the site.
 - (e) Signs shall be removed within seven days of issuance of occupancy permit or transfer of ownership.

- (2) Subdivision lot plan signs. These are permitted if not in excess of 12 square feet on any subdivision with eight lots or more, provided that no "for sale" signs are placed on the individual lots. The sign shall be placed within the subdivision and not easily visible from the abutting way. Individual lot number signs not in excess of one square foot may be placed on each lot.
 - (3) Window signs. Window signs are permitted as long as the total area of all such signs does not exceed 25% of all window area on which the signs appear. (No permit required.)
 - (4) Special event signs. When an activity is to be opened in a nonresidential district, the owner may put up an informational sign not in excess of 12 square feet in area, which may remain in place for not more than 15 days.
 - (5) Town and community event signs. Up to one month in advance of and during Town-wide and Community events, signs, banners and flags not exceeding 20 square feet may be displayed as a means of publicizing the event or events, provided that their image and/or content relates to the declared event. Town and community event signs may be displayed on Town-owned property, including a location separate from the event itself, if approved by a majority vote of the Board of Selectmen. Town-wide and community events shall include Brewster in Bloom, Christmas Prelude, festivals, fairs, exhibitions, fundraisers and special entertainment events that have been declared by the Board of Selectmen or by vote of Town Meeting. A certificate of appropriateness shall be required from the Old King's Highway Regional Historic District Commission if the sign, banner, or flag is proposed to be displayed within the historic district. [Added 11-18-2002 FYTM, Art. 22; amended 5-1-2006 ATM, Art. 26; 11-5-2007 FYTM, Art. 15]
- F. Illumination of signs. If signs are illuminated, it shall be done so by a direct or external light source. Light bulbs or tubes shall not be visible to the motoring public from a public way. Directional signs, internally lit, are permitted when not in excess of one square foot in area.
 - G. Animated signs. Animated signs are prohibited.
 - H. Mailboxes. Numerals identifying street numbers and/or letters naming the occupant of a building may be placed on both sides of a mailbox or on the door, with letters not to exceed 2 1/2 inches in height, and numerals not to exceed four inches in height. Advertising on mailboxes is not permitted.
 - I. Banners or flags to call attention to a business or activity are prohibited. Banners used for Town festivals are permitted.
 - J. Informational signs specific to a public or private nonprofit purpose, such as handicapped accessible, public rest rooms, public phone or tourist and visitor information, shall be permitted on private and nonprofit premises. Such signs shall not exceed one square foot in area, and no more than one sign shall be permitted per premises except as required by the Massachusetts Architectural Access Board or the Federal Americans with Disabilities Act. International sign code symbols shall be used where possible. [Added 5-9-1994 STM, Art. 4]
 - K. Regulatory or safety signs, including those conveying regulations related to a public purpose or resource protection program. [Added 5-9-1994 STM, Art. 4]
 - (1) The Sign Commissioner shall hold an advertised public hearing prior to granting such a

sign permit. The Sign Commissioner may waive the requirement for a public hearing for immediate posting of temporary environmental protection signs or temporary warning signs not exceeding one square foot in area for the protection of property or for the public health or safety.

- (2) Regulatory or safety signs shall be consolidated and coordinated in content and appearance to the greatest extent possible with any existing signs in order to eliminate visual clutter and confusion. International Sign Code Symbols shall be used where possible to eliminate text. Lettering shall be no more than two inches in height, and sign area is to be minimized to the greatest extent possible without reducing legibility.
 - (a) Vertical signs. Regulatory or safety signs shall not exceed six square feet in area, and a maximum of two will be allowed per site. Maximum height after installation shall be eight feet from ground level.
 - (b) Angled signs. Regulatory or safety signs exceeding 10 square feet in area shall be installed angled 20° from the horizontal plane so as to reduce visual obstruction. Angled signs shall have a headboard labeling the nature of the information contained on the sign, such as "Beach and Landing Regulations," "Shellfish Regulations," etc. The height of the top of the headboard shall not exceed 48 inches from the ground. Parking shall be restricted so as to eliminate the obstruction of said signs.
- L. Interpretive displays proposed by a Town governmental body or a nonprofit educational organization to convey environmental regulations and explain environmental significance and public purpose of a program or policy, such as resource protection, at a public or private nonprofit site. [Added 5-9-1994 STM, Art. 4]
 - (1) A maximum of four such signs shall be permitted per site. The maximum area of a single such sign shall not exceed 24 square feet, provided that said sign is not visible from the vantage point of any other such sign. In situations where signs are to be visible from one another, signs shall not exceed six square feet in area, and the highest point after installation shall not exceed 48 inches.
 - (2) Signs in excess of six square feet shall be installed angled 20° from the horizontal plane so as to reduce visual obstruction. The highest point of the sign after installation shall be 36 inches from the ground. Signs shall not block or obstruct a scenic view or visual corridor. The Sign Commissioner may further restrict the size, number, location and visual appearance of these signs on a case-by-case basis if he/she finds after a public hearing that the proposed sign or signs would significantly detract from an area's natural character.
- M. Visitor information signs. Not-for-profit organizations providing visitor information to the general public are permitted to erect one sign not exceeding six square feet in size to advise the public of this service. One visitor information sign will be permitted in Brewster at a location designated by the Board of Selectmen. This sign is allowed in addition to any other signs allowed by the Brewster Sign Code at the site. [Added 5-9-1994 STM, Art. 6]
- N. "Welcome to Brewster" signs. Welcome signs may be permitted at key entrances to the Town. No more than eight of these signs shall be permitted Townwide. Signs must be Town-owned

and will state “Welcome to Brewster; twinned with Budleigh Salterton, England.” These signs may contain an insignia and the Town’s date of establishment. Signs shall not exceed 10 square feet and the top of said sign shall be no higher than six feet above ground level. The sign color shall be consistent with other Town facility or regulatory signs. Four signs will be installed at the following locations: [Added 11-19-2001 FYTM, Art. 18; amended 5-6-2002 ATM, Art. 22]

- (1) On Route 6A at the Orleans-Brewster Town line on the parcel of land identified on Assessors’ Map No. 30, Parcel No. 33.
 - (2) On the southeast side of Slough Road in the vicinity of the intersection with Satucket Road.
 - (3) On the Cape Cod Rail Trail at the Orleans-Brewster Town line.
 - (4) On the east side of Route 124 in the vicinity of the Cape Cod Rail Trail and the Harwich-Brewster Town line.
- O. Intersection island signs. Any individual, for-profit organization or not-for-profit organization that volunteers to maintain and/or landscape an intersection island is permitted to erect one sign not to exceed one square foot in size upon said island. No direct, external, or internal lighting shall be permitted. The sign must be promptly removed when the individual, for-profit or not-for-profit organization ceases to maintain and/or landscape the intersection island. [Added 11-5-2007 FYTM, Art. 14]

§ 179-20.6. Enforcement; maintenance; abandoned signs; appeals.

A. Enforcement, permits and penalty:

- (1) The Sign Commissioner is hereby authorized to enforce this Article.
- (2) Permits and certificates of appropriateness.
 - (a) All signs regulated by this Article require a sign permit issued by the Sign Commissioner with exception of §§ 179-20A and F, 179-20.5C, E(1) and (3).
 - (b) All signs which require a sign permit shall be marked with an identification sticker supplied by the Sign Commissioner. All signs which require a sign permit and lie within the jurisdiction of the Old King's Highway Regional Historic District (OKHRHD) must first obtain a certificate of appropriateness from the OKHRHD Committee. A sign without a permit is illegal.
- (3) Fees. Fees for sign permits shall be set by the Board of Selectmen.
- (4) The Sign Commissioner is authorized to order the repair or removal of any sign and its supporting structure which the Sign Commissioner judges to be dangerous or in disrepair or erected or maintained contrary to this Article.
- (5) The Sign Commissioner is authorized to issue citations for violations of these regulations by the method provided in MGL c. 40, § 21D.
- (6) Failure to respond to a properly issued citation within 21 days will make the person, trust

or other enterprise exhibiting a sign not in compliance with this article, unless afforded protection under Article VIII of this chapter, and subject to the following penalty:

- (a) First offense: warning.
- (b) Second offense: fine of \$25.
- (c) Third offense: fine of \$50.
- (d) Fourth and subsequent: fine of \$200 starting on the 31st day after issuance of said citation.

B. Signs not complying with this article:

- (1) Signs without a valid permit shall be removed within 60 days of passage of this article.
- (2) Signs with valid permits:
 - (a) A sign with a valid permit issued prior to enactment of this article must remain in compliance with the requirements and conditions that enabled the valid permit to be originally issued.
 - (b) Where a sign identifying a business has approved subsidiary signs, the subsidiary signs may be replaced, provided that they remain in compliance with the requirements and conditions that enabled the valid permit to be originally issued.
 - (c) Failure of compliance will result in automatic revocation of the prior issued valid permit and require compliance with this Article for issuance of a current valid permit.

C. Maintenance. A sign shall be maintained in a safe and secure manner and in a good state of repair, including paint. If the Sign Commissioner finds that a sign does not comply with this maintenance section of this Article, written notice of noncompliance and the reasons therefor shall be sent, by certified mail, return receipt requested, to the person or persons to whom the permit was issued. If the specified defects in the sign have not been corrected or the sign removed within 30 days, the Sign Commissioner shall revoke the permit and shall notify the person(s) to whom the permit was issued that the sign is now in violation of this Article and must be removed.

D. Abandoned signs. When the Sign Commissioner finds that a sign has been abandoned, whether or not a permit has been issued, written notice ordering its removal shall be sent by certified mail, return receipt requested to the owner of the property on which the sign is located and to the person to whom the permit was issued if not the owner.

E. Removal of abandoned signs or signs in violation of this Article. If sign on public property is not removed within 30 days of the issuance of an order, the Sign Commissioner shall remove or arrange for the removal of the sign. The sign shall be stored by the Sign Commissioner in a safe location for 60 days, after which time it may be appropriately disposed of. Any costs incurred shall be borne by the sign owner.

F. Appeals. Any individual aggrieved by a decision of the Sign Commissioner may appeal to the Brewster Board of Appeals as provided under MGL C. 40A of the Commonwealth of

Massachusetts except that no variances may be granted for off-premises signs.

ARTICLE VII
Off-Street Parking and Loading

§ 179-21. General requirements.

- A. If any structure is constructed, enlarged or extended, and any use of land established, or any existing use is changed, after the effective date of this chapter, off-street parking spaces shall be provided in accordance with Table 4. An existing structure which is enlarged or an existing use which is extended after the effective date of this chapter shall be required to provide off-street parking spaces in accordance with the following table for the entire structure or use, unless the increase in units or measurements amounts to less than 25%, whether such increase occurs at one time or in successive stages.
- B. In any district, if any structure is constructed, enlarged or extended and any use of land established or any existing use is changed, after the effective date of this chapter, off-street loading spaces shall be provided in accordance with Table 5. An existing structure which is enlarged or an existing use which is extended after the effective date of this chapter shall be required to provide off-street loading spaces in accordance with Table 5 for the entire structure or use, unless the increase in units or measurements amounts to less than 25%, whether such increase occurs at one time or in successive stages.

§ 179-22. Parking and loading requirement tables.

- A. Parking and loading spaces being maintained in any district in connection with any existing use on the effective date of this chapter shall not decrease so long as said use remains, unless a number of parking or loading spaces is constructed elsewhere, such that the total number of spaces conforms to the requirements of the following tables, provided that this regulation shall not require the maintenance of more parking or loading spaces than is required according to the tables.

**Table 4
Minimum Off-Street Parking Regulations**

Use	Number of Off-Street Parking Spaces Per Unit
Housing for the elderly [Added 12-10-1979 STM, Art. 37]	1 per dwelling unit
Other dwellings [Amended 12- 10-1979 STM, Art. 37]	2 per dwelling unit
Lodging house, motel or hotel	1 per rental unit, plus 1 for each 400 square feet of public meeting area and restaurant space
Automotive, retail and service establishment and other retail and service establishments utilizing extensive display area, either indoor	1 per 800 square feet of gross floor space; in the case of outdoor display areas, 1 for each 1,000 square feet of lot area in such use

or outdoor, which are unusually extensive in relation to customer traffic

Gift and antique shops, whole- sale establishments, service, finance, insurance or real estate establishments

1 per 250 square feet of gross floor space

Other retail establishments

1 per 200 square feet of gross floor space

Manufacturing or industrial establishments

1 for each employee of the combined employment of the 2 largest successive shifts or 1 per 600 square feet of gross floor area, whichever is larger

Theater, restaurant, auditorium, church or similar place of public assembly with seating facilities

1 for each 3 seats of total seating capacity

Hospital or nursing home

1 1/2 per bed at design capacity

School

2 per classroom in an elementary and junior high school and 4 per classroom in a senior high school, plus 1 space for every 4 seats of total seating capacity of the auditorium or gymnasium, whichever has the larger capacity

Other community facility (town building, recreation, etc.,) or public utility

1 per 300 square feet of gross floor space

Medical center or clinics
[Amended 2-18-1999 FYTM, Art. 18]

4 spaces per 800 square feet of gross floor space and 1 per each 2 employees

**Table 5
Off-Street Loading Regulations**

Use	Number of Loading Spaces Per Unit
Retail trade, manufacturing and hospital establishment with over 5,000 square feet of net floor area	1 per 20,000 square feet or fraction thereof of net floor area up to 2 spaces; 1 additional space for each 60,000 square feet or fraction thereof of net floor area over 40,000 square feet
Business services, other services, community facility (school, church, Town building, recreation, etc.) or public utility establishment with over 5,000 square feet of net floor area	1 per 75,000 square feet or fraction thereof of net floor area up to 2 spaces; 1 additional space for each 200,000 square feet or fraction thereof of net floor area over 150,000 square feet

- (1) The establishment of one or more commercial parking lots or parking structures, as defined in § 179-2.B. shall be construed as a change of use under §179-64 of Article XII, Site Plan Review and shall be allowed only if it is approved under that Article. The

requirements of §179-23 shall apply, except the special permit granting authority may for good reason, reflected in the record, allow a permeable surface. [Added 11-15-2004 FYTM, Art. 18] [Amended 5-2-2011 ATM Article 31]

- B. The parking spaces required for the uses listed in Table 4 shall be on the same lot as the use they are intended to serve, or when practical difficulties prevent their establishment upon the same lot, they shall be established no further than 300 feet from the premises to which they are appurtenant. In no case shall the required parking space be part of the area used to satisfy any loading requirements of this chapter.
- C. In a C-H or V-B District, off-street parking requirements may be fulfilled by one of the common off-street parking areas so long as the common area is located no further than 100 feet from the use it is intended to serve and that the total off-street parking provided is equal to that which would be required by normal application of Table 4. [Amended 10-17-1988 STM, Art. 26]
- D. The loading spaces required for the uses listed in Table 5 shall in all cases be on the same lot as the use they are intended to serve. In no case shall the required loading spaces be part of the area used to satisfy the off-street parking requirements of this chapter.

§ 179-23. Parking and loading lot standards.

- A. All parking or loading areas containing over five spaces, including automobile service and drive-in establishments, shall be either contained within structures or subject to the following, unless otherwise waived by the Planning Board in accordance with the provisions of Article XII of the Zoning Bylaws, Site Plan Review, and only to the extent waived thereunder. [Amended 5-8-1989 ATM, Art. 49; 11-17-2003 FYTM, Art. 25] [Amended 5-2-2011 ATM Article 31]
 - (1) The area shall be effectively screened on each side which adjoins or faces the side or rear lot line of a lot situated in any R District. The screening shall consist of a solid fence or wall not less than three feet nor more than six feet in height or shrubbery planted not more than three feet apart on center, at least two feet from the lot line, and all maintained in good condition. The screening required by this subsection shall be set back 15 feet from each street lot line.
 - (2) Driveways leading to or from a street or from a single area shall be surfaced with bituminous or cement concrete material and shall be graded and drained so as to dispose of all surface water runoff. Despite the provisions of the preceding sentence, parking or loading areas containing nine or fewer spaces may be graded with a four-inch layer of aggregate or processed stone material. Parking and loading areas containing 10 or more spaces shall be surfaced with bituminous concrete or cement concrete material and contain a drainage system design based upon the rational method using a ten-year design storm. The computations used to arrive at the design shall be made available to the Building Department.
 - (3) A substantial bumper of masonry, steel or heavy timber or a concrete curb or berm curb which is backed shall be placed at the edge of surfaced areas, except driveways, in order to protect abutting structures, properties and sidewalks.
 - (4) Any fixture used to illuminate any area shall be so arranged as to direct the light away from the street and away from adjoining premises used for residential purposes.

- (5) Any repair or service facility, such as gas, oil or water, for use by vehicles, shall not be less than 25 feet from any lot line.
- B. Any parking or loading area shall be also subject to the following:
- (1) There shall not be any motor vehicle parked within five feet of any side or rear lot line.
 - (2) There shall not be any vehicle repair facilities or any repair made to any motor vehicles within the required parking or loading areas.
 - (3) There shall not be storage of materials or equipment or display of merchandise within the required parking or loading areas.
 - (4) Parking shall not be permitted closer than 15 feet to any street lot line in any R, C-H, V-B or I District. [Amended 10-17-1988 STM, Art. 26]⁸
 - (5) Parking and loading spaces shall be so arranged as not to permit backing of automobiles onto any collector or arterial street.
 - (6) Any portion of a driveway for a parking or loading area associated with a nonresidential use, which enters or leaves an arterial street, shall be at least 75 feet from any street intersection.
 - (7) Any two driveways leading to or from a street or from a single area shall not be within 50 feet of an arterial street as measured between their nearest edges at their intersections with the front line. For collector and minor streets, the distance shall be 20 feet.

ARTICLE VIII
Nonconforming Uses, Structures and Lots

§ 179-24. Applicability.

The provisions of this section apply to nonconforming uses, structures and lots so created by the initial enactment of this chapter or by any subsequent amendment.

§ 179-25. Extensions and alterations.

- A. As provided in MGL C. 40A, § 6, a nonconforming single- or two-family dwelling may be altered or extended, provided that the Inspector of Buildings determines that doing so does not increase the nonconforming nature of said structure.
- B. Other pre-existing nonconforming structures or uses may be changed, extended or altered on special permit from the Board of Appeals, if the Board of Appeals finds that such change, extension or alteration will not be substantially more detrimental to the neighborhood than the existing nonconforming use.
- C. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.

§ 179-26. Residential lots of record.

8. **Editor's Note: This subsection was further changed by the removal of the C-L District at the request of the Town.**
08-2012

- A. One single-family dwelling may be erected on any lot, regardless of a common ownership with that of adjoining land located in the same residential district which, as of May 7, 1973, contained at least 15,000 square feet and had a minimum frontage of 100 feet and complied with the rules and regulations of the Planning Board, if any, in effect at the time of endorsement and provided, further, that the proposed structure is to be located on such lot so as to conform to the minimum requirements of front, rear and side yard setbacks and to all other requirements for such structures in effect at the time of plan endorsement; provided, however, if there are no applicable setbacks, the front yard setback shall be 30 feet and the side and rear yards setbacks shall be 20 feet. [Amended 5-2-2005 ATM, Art. 26]
- B. Certain lots are exempted from current dimensional requirements by MGL c. 40A, § 6. In addition, any increase in lot area, width, depth, yard or frontage requirements shall not apply to erection, extension or alteration or moving of a structure on a lot not meeting current dimensional requirements, provided that, as of June 25, 1978, such lot was a legal building lot and had lot area of at least 5,000 square feet and street frontage of at least 50 feet. Any structure proposed to be to be located on such lot shall conform to the setback requirements in effect at the time of the recording or endorsement of the deed or plan creating the lot; provided, however, that if there are no applicable setbacks, the front yard setback shall be 20 feet and the side and rear yards setbacks shall be 10 feet. [Amended 5-2-2005 ATM, Art. 26]
- C. Certain lots are exempted from current dimensional requirements by MGL c. 40A, § 6. [Added 9-22-1986 STM, Art. 34]
 - (1) In addition, one single-family dwelling may be erected on any lot, regardless of common ownership with that of adjoining land, provided that such lot is:
 - (a) Shown on a plan approved and endorsed in accordance with the Subdivision Control Law and the roads shown on such plan have been installed according to Planning Board requirements as set forth at the time of approval of such plan and a release from covenant or other security has been obtained; or
 - (b) Shown on a plan endorsed "Approval Under the Subdivision Control Law Not Required" and the lot complied with all the applicable provisions of the Zoning Bylaw in effect at the time of endorsement of such plan.
 - (2) In either case, the lot must have been created after June 25, 1978, and must be buildable under other applicable non-zoning provisions of the law, and any structure to be located on such lot must conform to the setback requirements in effect at the time of plan endorsement.
- D. Preexisting lots of record lacking street frontage. [Added 10-17-1988 STM, Art. 23]
 - (1) Certain lots of record existed before the effective date of this subsection and now lack any frontage as that term is defined in this chapter. When a lot possesses no frontage, as defined, one single-family dwelling may be constructed on the lot:
 - (a) If it is determined that the lot satisfies the other requirements of this chapter.
 - (b) If the lot possesses at least five acres of area.
 - (c) If the Planning Board determines that physical access to the lot is reasonably

guaranteed, that physical access is suitable for the needs of vehicular traffic likely to be generated by the proposed residential use and that physical access is adequate for the installation of all Town or municipal services likely to be needed for the reasonable use of the lot. [Amended 11-13-2006 FYTM, Art. 28]

- (d) If the Planning Board issues a special permit which will authorize construction on the lot despite its lack of cognizable frontage.
- (2) Before the Planning Board can act favorably on an application for a special permit under this subsection:
- (a) The Fire Chief must certify to the Planning Board that, in his opinion, the way providing access to the lot is physically adequate throughout the year for use by fire apparatus, ambulances and rescue vehicles. [Amended 11-13-2006 FYTM, Art. 28]
 - (b) The Police Chief must certify to the Planning Board that, in his opinion, the way providing access to the lot is physically adequate throughout the year for use by police vehicles and inspection vehicles. [Amended 11-13-2006 FYTM, Art. 28]
 - (c) The Superintendent of the Department of Public Works must certify to the Planning Board that, in his opinion, the way providing access to the lot is safe and physically adequate for its present and proposed use and is unlikely to deteriorate significantly for at least five years. [Amended 11-13-2006 FYTM, Art. 28]
 - (d) The Inspector of Buildings must certify to the Planning Board that, in his opinion, the lot satisfies the other requirements of the Town of Brewster Zoning Bylaw.
 - (e) The Board of Water Commissioners must certify to the Planning Board that the proposed use of the lot, in combination with uses already existing or ongoing, will not likely impact adversely upon the water supply or the quality of the groundwater supply of the Town, and, before making this determination, the Commissioners may require the applicant to prepare and present all necessary groundwater studies.
 - (f) The applicant must present to the Planning Board a statement of his or her plans and ability to ensure, free of charge to the Town, the provision of all needed municipal or Town services for the lot and the maintenance of the way providing access to the lot so that the way will not over time significantly deteriorate from its present condition or become impassable because of flooding or snowfall.
- (3) Before the Planning Board grants a special permit, it shall require the applicant and the owner of record to execute and record a covenant running with the land covered by the special permit which shall ensure the proper and continuing maintenance of municipal services and the proper and continuing maintenance of the way in order to provide adequate physical access for the applicant and for the Town vehicles throughout the year. This covenant shall be executed in such a form that it may be specifically enforced. This covenant shall also provide that, in the event that the recipient of the special permit fails to maintain the way and the Town, in order to maintain access and municipal services, expends labor and materials to maintain the way, the Town shall be fully reimbursed for all labor and material costs incurred and for any legal costs incurred either in enforcing the covenant, maintaining the way or maintaining municipal services. Until these costs

and expenses are paid, they shall constitute a lien upon the property. [Amended 11-13-2006 FYTM, Art. 28]

- (4) The Planning Board shall decide each special permit application upon its individual merits, and the Board's decision for any application shall not prejudice its independent judgment on any subsequent application, despite the proximity of the lots. As a condition for its approval, the Planning Board may impose such conditions, safeguards and limitations as it deems necessary and proper to ensure the safety, convenience and welfare of the inhabitants of the Town, and the Board may require the execution and recording of a covenant which shall run with the land.

§ 179-27. Reduction or increase.

- A. Nonconforming lots with no structures located thereon may be changed in size or shape without losing exemptions of § 179-26, so long as the change does not increase the actual or potential number of building lots.
- B. Nonconforming lots with conforming or nonconforming structures located thereon may be changed in shape by right without losing exemptions of Section 179-25, 179-26, and Sections 179-28 through 179-32, inclusive, so long as the change does not increase the actual or potential number of building lots and does not increase the setback non-conformance of any structure. [Added 5-7-12 ATM, Article 27]
- C. Notwithstanding paragraphs A and B above, if such change in size or shape will result in a net change in lot area to either lot or will increase a setback nonconformance of any structure, such change will require a special permit from the Board of Appeals. [Added 5-7-12 ATM, Article 27]
- D. Any off-street parking or loading spaces, if already equal to or less than the number required to serve their intended use, shall not be further reduced in number.

§ 179-28. Change of nonconforming uses.

- A. Any nonconforming use of a structure may be changed to another nonconforming use, provided that the changed use is not a substantially different use, except as provided in Subsection B below, and approval for the change is granted by a special use permit for an exception by the Board of Appeals. For purposes of this section, a "substantially different use" is a use which, by reason of its normal operation, would cause readily observable difference in patronage, service, sight, noise, employment or similar characteristics from the existing nonconforming use or from any permitted use in the district under question.
- B. Any nonconforming use, which has been once changed to a permitted use, or another nonconforming use, which is not a substantially different use, shall not again be changed to another nonconforming use.

§ 179-29. Rebuilding and restoration.

Any nonconforming structure, totally destroyed by fire or other cause, may be rebuilt within one year but shall not be rebuilt to be nonconforming to a greater degree than the original.

§ 179-30. Abandonment.

Any nonconforming use of a structure or lot which has been abandoned or not used for a continuous period of two years or more shall not be used again, except for a conforming use.

§ 179-31. Moving.

Any nonconforming structure shall not be moved to any other location on the lot, or any other lot, unless every portion of such structure, the use thereof and the lot shall be conforming.

§ 179-32. Unsafe structures.

Any structure determined to be unsafe may be restored to a safe condition. Such work on any nonconforming structure shall not place it in greater nonconformity. If the cost to restore any structure shall exceed 50% of its physical replacement value, it shall be reconstructed only as a conforming structure and used only for a conforming use.

ARTICLE IX

Special Regulations

§ 179-33. General provisions. [Amended 5-14-1984 ATM, Art. 110]

The regulations which follow shall apply to the particular use or activity, whether it is permitted by right or by special permit as an exception. In addition, the Planning Board, prior to the granting of a special permit, may also impose such additional conditions as it finds reasonably appropriate to safeguard the neighborhood, or otherwise serve the purposes of this chapter, including but not limited to the following: front, side or rear yards greater than the minimum required by this chapter, screening, buffers or planting strips, fences or walls, as specified by the Board; modification of the exterior appearance of the structures; limitation upon the size, number of occupants, method and time of operation or extent of facilities, regulation of number and location of driveways or other traffic features and off-street parking or loading or other special features beyond the minimum required in this chapter.

§ 179-34. Multifamily dwellings.

- A. Multifamily structures and accompanying lots shall not comprise more than 35% of the total land area of each C-H District in which they are located.
- B. Multifamily structures shall not occupy more than 25% of the lot on which they are built.
- C. A minimum of 20% of every lot, regardless of size, shall be reserved for green areas. Such areas shall not be paved or hardtop surfaced and shall be used for landscaping and storm drainage only. All standing trees of four inches or more in diameter shall be preserved in these green areas for future growth. Green areas shall be designated on a site plan. A plan for development of the entire tract shall be submitted to the Planning Board for advice, recommendation and approval. This plan shall be prepared by a registered architect and a registered professional engineer. The development plan shall include the following: [Amended 5-14-1984 ATM, Arts. 111 and 112]
 - (1) The location and acreage of areas to be devoted to specific uses.

- (2) Plans showing all roads, parking areas, structure locations, streetlighting and any proposed amenities.
 - (3) Maps to a scale of one inch equals 100 feet, including the tract and surrounding areas within 200 feet.
- D. The developer shall provide, within multifamily developments, including row houses, an internal sewage collection system which shall be of sufficient size and design to collect all sewage from all present and probable structures in the development. The developer shall also provide a communal sewage treatment and disposal system, which must be approved by Title V of the Massachusetts Department of Environmental Quality Engineering Regulations filed May 20, 1977, as amended, and the Brewster Board of Health, which is of sufficient size to dispose of all sewage from all present and probable structures in the development. The developer shall provide within multifamily developments, including row houses, a storm drainage system which shall be of sufficient size and design as will collect, carry off and dispose of all surface water runoff within the development determined by the rational method, for a ten-year design storm, and shall be so constructed as to conform to the regulations of the Town of Brewster and the Commonwealth of Massachusetts. The developer shall provide within multifamily developments, including row houses, a water distribution system which shall be approved by the Brewster Water Department and shall be of sufficient size and design to supply potable water to each of the structures to be erected in the development. This distribution system must be connected to and served by the public water supply system of the Town. [Amended 5-14-1984 ATM, Art. 113]
- E. Miscellaneous provisions. [Amended 5-14-1984 ATM, Art. 114]
- (1) Except for legal access, 50 feet from the roadway, 15 feet from each sideline and 30 feet from the rear line shall be left as undisturbed yard (yard as defined in § 179-2, Definitions, of this chapter, effective May 14, 1979).
 - (2) Building and parking areas shall be set back at least 150 feet from any existing roadway and at least 200 feet from any R District boundary line.
 - (3) Dwelling and/or attached buildings shall be separated from each other by at least 25 feet.
 - (4) Buildings shall have maximum gross floor space area of 30,000 square feet, excluding basement storage area.
 - (5) No permits for multifamily dwellings, including row houses, may be issued by the Inspector of Buildings until all site plans are approved by the Planning Board.

§ 179-35. Cluster Residential Development. [Amended 8-27-1984 STM, Art. 60]

- A. The cluster residential development is intended to allow flexibility in lot sizes and building arrangements for property owners in meeting the basic intent of the dimensional requirement of Article V, while at the same time maintaining the existing character of the Town. Specifically, the plan of the cluster residential development must be superior to that of a conventional layout in preserving the natural landscape in large open areas; in utilizing the natural features of the land so as to avoid extensive topographical change or development on geographically unsuitable land; in preserving scenic views; in providing for fewer street and driveway

openings onto through streets; in the provision for utilities and other public services; and must be at least equal to a conventional plan in all other respects. In addition to the plan filing requirements specified in the Subdivision Rules and Regulations,⁹ an applicant for a cluster residential development shall submit a rendering, prepared by a landscape architect, registered in the Commonwealth of Massachusetts, depicting the cluster subdivision, including roads, landscape and appropriate locations of dwellings at full build-out. The rendering shall be considered an integrated element of the applicant's submission and if the plan is approved and a special permit granted, said rendering shall be included in the Planning Board's decision regarding the subdivision plan and special permit. [Amended 5-1-2000 ATM, Art. 22]

- B. Any parcel of at least 10 acres in size in the R-R, R-L and R-M Districts may be used for a cluster development and divided into lots, and such lots may be built upon for a single-family residential use under the following alternative frontage and lot area regulations, rather than those otherwise applicable, provided that the Planning Board authorizes such division by special permit. Such special permit shall be granted only upon Planning Board determination that the following requirements have been met and that such alternative development better serves district intent and better serves the neighborhood of the land being developed (Articles II and III) and bylaw purposes (as stated in MGL C. 40A) than would development under otherwise applicable rules:
- (1) Number of dwelling units. The basic number of dwelling units allowed in the development within an R-R, R-L or R-M District shall not exceed the number of units which could be developed under normal applications of the R-R, R-L or R-M Districts, respectively. [Amended 11-17-2008 FSTM, Article 19]
 - (2) Documentation. All lots upon which dwellings are to be constructed under § 179-35 shall be on a plan to be recorded which indicates that § 179-35 applies and that no additional building lots are to be created through future land division within the cluster residential development.
 - (3) Lot frontage. The minimum frontage of any lot shall be not less than 50 feet, except that the minimum frontage for lots having frontage on an existing street shall not be less than 115 feet, and the average frontage for lots having frontage only on an existing street shall be not less than 135 feet. Minimum frontage shall not be allowed where likely to result in a hazardous concentration of egress points.
 - (4) Lot setbacks. The present setbacks for front, side and rear yards, as stated in Table 2 at the end of this chapter, shall be reduced by 1/2 for all setbacks within the subdivision. Setback requirements where the cluster development lots abut adjacent property shall remain the same as required in Table 2. [Amended 5-1-2000 ATM, Art. 22]
 - (5) Individual lot area. Minimum lot sizes for lots within a cluster residential development shall be no less than 5,000 square feet. [Amended 5-1-2000 ATM, Art. 22]
 - (6) (Reserved)¹⁰

9. Editor's Note: See Ch. 290, Subdivision Rules and Regulations.

10. Editor's Note: Former Subsection B(6), Lot shape, was repealed 5-1-2000 ATM, Art. 22.

- (7) The development shall be served by public water, if available within 500 feet of the development.
- (8) No less than 60% of the land areas within the parcel or parcels subject to § 179-35 shall be set aside as open space more fully described in Subsection B(9). The open space shall include only uplands. It shall not contain any of the wetlands enumerated in Article II, § 179-6B hereof, or be included within the easement of any overhead utility wires, lines or cables, drainage easements. [Amended 5-1-2000 ATM, Art. 22; 5-7-2001 ATM, Art. 29]
- (9) Such common land shall be conveyed to the Town, to a nonprofit open space organization or to a corporation or trust owned by the residents of the development, as provided by MGL C. 40A, § 9, and as approved by the Planning Board.
- (10) Such common open land shall be preserved as undisturbed natural landscape in large contiguous areas and shall be permanently restricted for conservation. As appropriate to the site, open space may include woodlands, pasture, walking and riding trails, and similar areas, but shall not include structures such as tennis courts, buildings, swimming pools, or other impervious areas. [Amended 11-17-2008 FSTM Article 19/AG 3/18/09]

§ 179-35.1. (Reserved) ¹¹

§ 179-35.2. Major residential development. [Added 5-14-1990 STM, Art. 10]

- A. Applicability. Major residential development (see definition)¹² is allowed only on special permit from the Planning Board. Such special permits shall be acted upon in accordance with the following. In addition, smaller developments may, at the owner's option, be considered as if a major residential development and employ the following provisions.
- B. Procedures.
 - (1) Application for a special permit for major residential development shall include a basic development plan and a substantially different alternative development plan, each either conforming to the requirements for a preliminary subdivision plan or not requiring approval under the Subdivision Control law. Substantial difference would be a conventional plan versus a cluster development (§ 179 35) or two plans of the same type having major differences in the number of lots created, road pattern or open space configuration. [Amended 11-17-2003 FYTM, Art. 6]
 - (2) Applicants for major residential development shall file with the Planning Board four copies of the following, to have been prepared by an interdisciplinary team, including a registered land surveyor, a professional engineer and a registered architect or landscape architect.
 - (a) The basic and alternative development plans described above, conforming to the information requirements for a preliminary subdivision plan under the Town of

11. Editor's Note: Former § 179-35.1, Flexible development, added 5-14-1990 STM, Art. 9, was repealed 11-17-2003 FYTM, Art. 6.

12. Editor's Note: See § 179-2.

Brewster Rules and Regulations for Subdivisions.¹³ Such plans shall also indicate proposed topography and the results of deep soil test pits and percolation tests at the rate of one per every five acres, but in no case fewer than five per major residential development. Test pits shall be located to the satisfaction of the Planning Board, following consultation with the Board of Health, so as to indicate the buildability of areas proposed either for development or for reservation.

- (b) An environmental analysis as required by the Town of Brewster Rules and Regulations for Subdivisions.
 - (c) Any additional information necessary to make the determinations and assessments cited in Subsections E and F below.
- C. The Planning Board may authorize flexible development within a major residential development, subject to the following: [Amended 11-17-2003 FYTM, Art. 6]
- (1) Lots having reduced area or frontage are not limited in number to six, but may not have frontage on a street other than one created by or substantially improved by the development involved.
 - (2) Each lot shall have frontage of at least 50 feet and shall have lot area of at least 1/2 that required under Table 2 of § 179-16.
 - (3) The proposed open land, unless conveyed to the Town or its Conservation Commission, shall be covered by a recorded restriction enforceable by the Town, provided that such land shall be kept in an open state suitable for park, playground, conservation area or similar use with only minor coverage by structures or other features precluding vegetative cover.
- D. Other forms of residential development. All forms of residential development, including multifamily dwellings under the provisions of § 179-34, cluster residential development under § 179-35, planned residential development under § 179-36 and subsidized elderly housing under § 179-42 may be allowed in a major residential development, if otherwise allowable at that location, subject to the applicable provisions of those sections.
- E. Number of dwelling units.
- (1) The basic number of dwelling units allowed shall equal the number of lots which could reasonably be expected to be developed for single-family use on that parcel under a conventional plan in full conformance with zoning, subdivision regulations, health codes and other applicable requirements, as determined by the Planning Board.
 - (2) The Planning Board may approve a major residential development containing as many more than the basic maximum number of dwelling units as the number of units (up to 15% of the basic maximum) for which there is assurance satisfactory to the Brewster Housing Authority that through covenant, repurchase agreement or other means enforceable in the long term by the Town, the unit will be sold or leased at costs and with income eligibility limits meeting the guidelines of state or federal housing programs, such

13. **Editor's Note: See Ch. 290, Subdivision Rules and Regulations.**
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as the MHP Local Initiative Program or Housing Opportunity Program. In no event, however, shall the Planning Board allow an increase to the extent that disposal facilities discharging within a Water Resource District serve more than one bedroom per 10,000 square feet land area in the development in that District.

- F. Decision. The Planning Board shall approve or approve with conditions a special permit for major residential development for the basic development plan, provided that the Board determines that the basic plan is at least as beneficial to the Town as the alternative, based upon the considerations below, and that the alternative plan is in fact a good-faith design for beneficial use of the site.
- (1) If the Board determines that the alternative plan is more beneficial to the Town than the basic plan, it shall approve major residential development for that plan, provided that it meets all requirements of the Zoning Bylaw.
 - (2) The Board shall disapprove both plans only if it determines that the alternative plan is not a good-faith design or that the more beneficial plan does not conform to the requirements of the Zoning Bylaw.
 - (3) In considering whether to approve a special permit for major residential development, the Planning Board shall consider how well the development satisfies the following criteria:
 - (a) Preservation of natural resources, especially in relatively large-scale contiguous areas.
 - (b) Protection of visual character by having open spaces visible from major roads.
 - (c) Reduction in length of publicly maintained road and utility per dwelling unit served.
 - (d) Location of development on sites best suited for such and avoiding environmentally fragile locations.
 - (e) Protection of major street appearance and capacity by avoiding development fronting such streets.
 - (f) Provision of housing meeting needs of year-round residents.
- G. Development timing. As a condition of its approval, the Planning Board may require a development schedule limiting the rate of development for the premises, taking into consideration the intent of avoiding large year-to-year variations in Townwide development rate while allowing development consistent with historic average rates and also taking into consideration the housing needs which the development will serve, the housing cost and feasibility consequences of the limitation and the ability of the Town to timely provide needed services to the site. In no event shall a development be limited to fewer than six lots or dwelling units per year or be obliged to spread development out over more than eight years.

§ 179-36. Planned Residential Development. [Amended 5-11-1981 ATM, Arts. 35 and 36; 5-11-1982 ATM, Arts. 83 and 84; 5-14-1984 ATM, Art. 116]

- A. The planned residential development (PRD) is intended to provide an alternate pattern of land development to the pattern permitted in the R-M and R-L Residential zones. Specifically, it is

intended to encourage the conservation of significant tracts of common open space and the preservation of natural features of the land, while at the same time providing for a greater mixture of housing types.

B. A planned residential development shall result in:

- (1) Preservation of the natural landscape in large open areas, designed to foster the continuation of existing ecosystems.
- (2) Efficient allocation, distribution and maintenance of common open space to protect valuable natural environments, outstanding vegetation or scenic spots and critical wildlife habitat.
- (3) Economic and efficient street, utility and public facility installation, construction and maintenance.
- (4) Housing and land development harmonious with natural features so as to avoid extensive topographical change necessitating vegetation and tree removal.
- (5) Preservation of groundwater quality and prevention of pollution of adjacent open bodies of water.
- (6) Preservation of water views or other scenic views from public ways.
- (7) Preservation of the existing character of the surrounding neighborhood. [Added 11-15-1993 FYTM, Art. 17]
- (8) Preservation of existing historic resources, where applicable. [Added 11-15-1993 FYTM, Art. 17]

C. In addition, the planned residential development shall comply with the following requirements:

- (1) Minimum required land area for a planned residential development shall be 25 contiguous acres of buildable upland, as defined in this chapter, in single or consolidated ownership at the time of application.
- (2) A plan for the development of the entire tract and an impact study shall be submitted to the Planning Board for special permit approval. The plan shall be prepared by a registered architect, a professional engineer and a registered land surveyor. The development plan shall include the following:
 - (a) The location and acreages of area to be devoted to specific uses.
 - (b) A thoroughfare plan and a public utility plan.
 - (c) Proposed residential density of development in terms of dwelling units per acre and proposed commercial uses in square footage.
 - (d) A separate plan showing the location of buildings, of parks, of open recreation areas and of other open spaces and of any other community uses.
 - (e) Maps to a scale of one inch equals 100 feet, including the tract and surrounding area within 100 feet.

- (f) Areas of conservation interest or environmental concern, such as ponds, streams, bogs, marshes, swamps, bay and estuaries and upland areas bordering these wetlands; steep slopes, dunes and areas with high-water tables.
- (g) Photographs and a description of lands located within 100 feet of the proposed site, including existing building type, height, architectural style and density, to assist the Special Permit Granting Authority in evaluating the compatibility between proposed uses/structures of the proposed PRD and existing uses/structures in the surrounding neighborhood. [Added 11-15-1993 FYTM, Art. 17]
- (h) Areas of historical interest, located on site or within 100 feet of the proposed site, including a description of the building type, height and style of historic structures. [Added 11-15-1993 FYTM, Art. 17¹⁴]
- (i) An analysis of the consequences of the proposed development shall be included, evaluating the following impacts at a level or detail appropriate to the number of units proposed:
 - [1] Natural environment. A plume study shall be undertaken, the necessary geohydrological services to be performed by a firm acceptable to the Planning Board. The scope of these services shall include:
 - [a] The development of a water table contour map in the vicinity of the proposed project to determine probable groundwater flow directions.
 - [b] Projection of nitrogen levels in downgradient groundwater.
 - [c] The evaluation of the impacts on public and private drinking water, on lakes and ponds and on coastal waters.
 - [d] Copies of the report shall be available to the Cape Cod Commission and the Brewster Water Quality Review Committee. [Amended 11-15-1-2010, FSTM, Art. 12]
 - [2] Public services. The impact of the proposed development on public services shall be undertaken and shall address the following: [Amended 11-15-1993 FYTM, Art. 17]
 - [a] The expected impact on the Town of Brewster's school system (through 12th grade), including the number of school children to be generated, and the capacity of the public school system to handle the additional students.
 - [b] The anticipated demand for police and fire services.
 - [c] The estimated daily and peak volume and weight of solid waste to be generated and the increase in school-related waste disposal. Efforts to recycle solid waste shall be noted.
 - [d] The need for additional public recreation facilities.

- [e] The source of water proposed to serve the proposed development, the daily and peak water supply demand and its impact on public water supplies.
 - [3] Economics. There shall be a study of municipal costs and revenues, local business activity and local jobs.
 - [4] Visual environment. There shall be a study of visibility of buildings and parking and visual consistency with existing development of the area.
 - [5] Land. Changes to land topography and the extent of sedimentation and erosion during construction and post-development. [Added 11-15-1993 FYTM, Art. 17]
 - [6] Traffic. The expected impact of traffic generated from the proposed development upon the carrying capacity and safety of any adjacent highway or road during peak summer and year-round conditions, including the projected number of motor vehicle trips, road capacities and impacts on traffic congestion and circulation on nearby intersections, and provision of on-site and off-site traffic improvements and mitigation. Traffic flow patterns at the site, including entrances and exits, loading and unloading areas, parking areas and curb cuts on site and within 100 feet of the site, shall be evaluated. Pedestrian and bicycle circulation shall be provided and described. [Added 11-15-1993 FYTM, Art. 17]
 - [7] Community character. The style of architecture and landscaping shall be described and its impact on the surrounding community character and aesthetics shall be evaluated. [Added 11-15-1993 FYTM, Art. 17]
- (3) The developer shall provide within the planned residential development an internal sewage collection system which shall be of sufficient size and design to collect all sewage from all present and probable structures in the development. The developer shall also provide a communal sewage treatment and disposal system in accordance with Title V of the Massachusetts Department of Environmental Quality Engineering Regulations, filed May 20, 1977, as amended, and which is also of sufficient size to dispose of all sewage from all present and probable structures within the planned residential development. The entire system must also be approved by the Brewster Board of Health.
 - (4) The developer shall also provide within the planned residential development a storm drainage system which shall be of sufficient size and design as will collect, carry off and dispose of all surface water runoff within the development determined by a rational method of a twenty-year storm and shall be so constructed as to conform with the regulations of the Town of Brewster Department of Public Works Construction Standards, with appropriate computations and drainage schedules attached.
 - (5) The developer shall provide within the planned residential development a water distribution system which shall be approved by the Brewster Water Department and shall be of sufficient size and design to supply potable water to each of the structures to be erected in the development. This distribution system must be connected to and served by the public water system of the Town. The developer shall also provide a fire hydrant within 500 feet of each structure.

- (6) In order to achieve the most beneficial allocation of the required open space, the Planning Board may request the written advisory opinion of any appropriate Town Board or agent in order to evaluate the areas of conservation interest and environment concern designated in Subsection C(2)(f).
- (7) A trip reduction plan shall be submitted as a condition for issuance of a special permit. The trip reduction plan shall describe traffic impact mitigation strategies designed to reduce traffic generation and may include strategies such as company/homeowner association sponsored carpooling/vanpooling, bicycle and pedestrian incentive measures, variable work-hour or flextime programs for commercial use and inclusion of neighborhood-oriented commercial uses serving residents of the PRD. The applicant shall also propose a means to ensure participation by subsequent owners and tenants of the planned residential development. [Added 11-15-1993 FYTM, Art. 17¹⁵]
- (8) Uses.
 - (a) The following uses only shall be permitted within a planned residential development:
 - [1] Single-family attached or detached dwelling.
 - [2] Two-family or multifamily dwelling.
 - [3] Accessory private garage.
 - [4] Private park or recreation area which may include a golf course, swimming pool, tennis court, ice-skating rink and other similar recreational uses subject to the performance standards stated below.
 - [5] Stores with aggregate gross floor area of 2,000 feet or less primarily serving the local retail needs of the residents. The necessary parking spaces to be provided in accordance with the appropriate Zoning Bylaw.
 - [6] Signs in accordance with Article VI.
 - (b) No uses shall be permitted within which will produce noise, glare, odor, air pollution, fire hazards or other safety hazards, smoke, fumes substantially detrimental to existing or prospective development of the neighborhood, including abutting properties, as determined by the Brewster Planning Board prior to approval.
- (9) Within a planned residential development, the following percentages of the total land area shall be devoted to the specific uses:
 - (a) A minimum of 60% of the total area, of which at least 15 acres shall be buildable upland, shall remain as open space. The open space may be used for recreational purposes by residents of the PRD and may include such areas as woodland, open fields, golf courses, parks, gardens, grassed courts or clothes drying areas. No paved

15. Editor's Note: This Article also provided the renumbering of former Subsections C(7), (8), (9), (10), (11), (12), (13), (14), (15) and (16) as Subsections C(8), (9), (10), (11), (12), (13), (14), (15), (16) and (17), respectively.

or nonvegetated space may be included as open space, and no building may be erected on such open space.

- (b) The remaining 40% of the total PRD area for development, including roads, drives and parking lots, may be utilized for residential and commercial purposes. The residential area shall be spread over at least 75% of this 40%. In computing land to be considered as devoted to residential and commercial use, no part of the 60% designated as open space in Subsection C(9)(a) may be included.
- (10) The residential density shall not exceed that which would be permissible under a normal subdivision development in an R-M and R-L District as applicable.
- (11) There shall be no minimum lot size, no minimum percentage of lot coverage and no minimum lot width. However, every single-family dwelling shall be set back at least 20 feet from the street right-of-way and shall have access to a public street, court, walkway or other area dedicated to public use. No structure and no group of structures (such as semidetached dwellings or a row of townhouses) shall be erected within 24 feet of any other structure or group of structures. However, every residential structure shall be set back at least 20 feet from any way within the PRD.
- (12) The proposed location and arrangement of structures shall not be detrimental to existing or prospective adjacent structures and adjacent properties or to existing or prospective development of the neighborhood. To achieve this, a buffer zone of natural vegetation 50 feet minimum in width shall be maintained between the development and any abutting property; a buffer zone of natural vegetation 100 feet wide shall be maintained between the development's recreational facilities (swimming pool, tennis courts, game facilities) and any abutting property.
- (13) To ensure the protection of sensitive environmental areas from pollution, erosion, sedimentation and other adverse effects of construction and development, no buildings shall be allowed within 50 feet of any water body or wetland. Roads and other access structures, such as paths, boardwalks and steps, may be closer to these areas, provided that the Planning Board determines that no adverse effects shall result due to their construction or presence.
- (14) The dimensions and construction of roads, alleys and parking areas within the development, whether or not the dedication of them to the Town is contemplated, shall conform to all applicable regulations of the Town, including in particular the rules and regulations governing the subdivision of land adopted by the Planning Board.
- (15) The maximum permitted height of structures shall be 30 feet. [Amended 5-14-1990 STM, Art. 7]
- (16) Open spaces between structures, including those spaces being used as public or private recreational areas, shall be protected by adequate covenants running with the land or by conveyances or dedications.
- (17) Any modification of an approved planned residential development must be approved by the Planning Board. The Planning Board may require a public hearing for the modification of a planned residential development (PRD).

§ 179-37. Home occupations. [Amended 5-4-09 ATM; Article 29]

- A. The buildings or premises occupied shall not be rendered objectionable or detrimental to the residential character of the neighborhood due to the exterior appearance, emission of odor, gas, smoke, dust, noise, electrical disturbance or in any other way.
- B. Any such building shall include no feature of design not customary in buildings for residential use.
- C. No more than two nonresidents shall be employed therein.
- D. The use is carried on strictly within the principal building on the premises and/or the accessory building(s).
- E. The area used for the home occupation shall not exceed 40% of the existing floor area of the principal building and/or the accessory building(s) or 499 square feet whichever is less.
- F. Items produced elsewhere shall not be brought to the premises for purposes of sale.
- G. Such uses as clinics, barbershops, bakeries, gift or antique shops, beauty parlors, tearooms, tourist homes, animal hospitals, kennels and others of a similar nature shall not be considered to be home occupations.

§ 179-38. Planned business development or row commercial. [Amended 10-17-1988 STM, Art. 25; 5-8-1989 ATM, Arts. 43 and 50]

- A. The tract in single or consolidated ownership at the time of application shall be at least three acres in size for a planned business development and a minimum of 40,000 square feet and a maximum of three acres for row commercial. Row commercial or planned business development shall contain a minimum of 25% open green space and a maximum of 25% building coverage. In either case, percentage figures are based on buildable uplands, as defined in Article I, General Provisions, § 179-2B.
- B. Uses in a planned business development shall, and in row commercial development may, be contained in more than one building. Each building shall be separated from another by at least 24 feet and each building shall have a minimum footprint of 500 square feet. [Amended 11-13-2006 FYTM, Art. 31]
- C. The building footprint shall not exceed 25% of the buildable upland of the land involved.
- D. Planned business developments or row commercials shall be served by one common parking area and by common exit and entrance areas.
- E. Reduction in parking space requirements shall not exceed more than 10% of those required under normal applications of requirements of the C, V-B or I Districts but shall not allow any reduction in the number of loading areas required.
- F. The design and construction of any ways for motor vehicles within the planned business development or row commercial shall be subject to the Land Subdivision Regulations of the Town of Brewster.¹⁶

16. **Editor's Note: See Ch. 290, Subdivision Rules and Regulations.**
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- G. The planned business development or row commercial shall be served by public water and public sewerage if available within 500 feet or by communal supply and disposal systems approved by the Massachusetts Department of Environmental Quality Engineering and the Brewster Board of Health.

§179-39 Sand and Gravel Operations [Amended 11-17-2008 FSTM Article 18]

- A. Lawful sand and gravel operation in existence on the effective date of this by-law may continue on those parcels of land where there are ongoing operations. After this by-law section becomes effective, sand and gravel operations shall not be extended horizontally or vertically without a special permit consistent with this by-law and section. [Motion made on Town Meeting floor and adopted 11-17-2008, pursuant to FSTM Article 18]
- B. Except where such activity is clearly incidental to the development of a site for a building or street or cranberry bog or repair of existing septic system or where the activity is approved coincident to the construction of a subdivision of land approved by the Planning Board pursuant to G.L. c.41, s.81-U, no sand, gravel, loam or minerals shall be moved from any area where the amount moved is 2,000 cubic yards or more within any one-year period unless authorized by a special permit by the Planning Board. No new ponds or enlargements to existing ponds shall be allowed in Zone II areas.
- C. After the effective date of this section, no preexisting sand and gravel operations shall involve excavation below a plane ten (10') vertical feet above the historical high groundwater level at that site nor within the setbacks prescribed in this section. Special permits for sand and gravel operations within the Water Quality Protection District may be issued for unworked areas, either on lots being worked or on lots abutting lots being worked, on the effective date of this section. The elimination of lot lines after that date shall not increase the area available for a special permit and shall not affect the application of Section 179-39 through 179-39.6. [Motion made on Town Meeting floor and adopted 11-17-2008, pursuant to FSTM Article 18]
- D. Notwithstanding language to contrary found within Section 179-52 of the Zoning Bylaw, no variance for a use or activity not otherwise permitted shall be granted by the Board of Appeals within Zones I or Zones II of the Ground Water Protection District.

§179-39.1 Definitions.

BOARD — Shall mean the Planning Board.

EARTH — Shall include but not be limited to soil, sand, clay, gravel and rock.

SAND & GRAVEL OPERATIONS — Shall mean commercial mining, stripping, quarrying, filling, digging or blasting of earth originating from Brewster and its transportation on or off the site into or out of Brewster.

§179-39.2 Procedures; Application information.

- A. Each application for a special permit for sand and gravel operations shall be subject to the procedures as required by §179-51 of the Zoning Bylaw, as amended.
- B. Each application for a special permit for sand and gravel operations shall be accompanied by plans prepared by a licensed professional engineer, licensed land surveyor or other accepted professional, broken down into three phases, showing the premises in sufficient detail to describe the proposed operation and including the following:
- (1) Existing Conditions Plan:
- (a) Current Site Plan - Property and street lines, names and addresses of applicants, property owners and abutters drawn to a twenty-foot or forty-foot scale;
 - (b) Locus Plan - the applicants' entire property holdings within a 2 mile radius must be shown on a plan drawn to a two-hundred foot scale;
 - (c) Existing topography of the site in two-foot contours showing all man-made features/structures, property lines, fences/stonewalls, vegetative cover and the topography by five-foot contours 100 feet beyond the limits of the property where the excavation is to take place;
 - (d) Elevation of the seasonal high groundwater table and the historical high groundwater table and locations of monitoring wells, existing or to be installed, by the applicant;
- (2) Active Operational Plan:
- (a) Location and manner in which all material is to be stored; specific details about where debris, including but not limited to trees stumps, shall be disposed;
 - (b) A plan showing the proposed stage by stage progress of mining over the term of the special permit, recognizing that the maximum area of any single stage shall not exceed five acres. Each movement into a new stage shall be contingent on revegetation of at least a portion of the previous stage in such a way that no more than five acres of bare sand shall be open to weather at any given time;
 - (c) Estimated quantity of material to be removed and topsoil to be replaced and the method to be used during each anticipated phase of the operation, verified by a registered Massachusetts land surveyor or professional civil engineer;
 - (d) A road map shall be provided indicating the access and egress of traffic. Not more than one entrance and one exit shall be provided to any area of operation;
 - (e) The Plan should show the property has restricted access.

(3) Closure Plan:

Closure plan, showing the following information in two-foot contours drawn to a twenty-foot or forty-foot scale:

- (a) Final topography, grades and elevations;
- (b) Location, types and amounts of vegetation to be planted;
- (c) Drainage plans, swales and berms as may be applicable;
- (d) Location of any structures that are to remain;
- (e) Reclamation plan as outlined in Section 179.39.4 (Q O)

§179-39.3 Permit Limitations

- A. Each special permit for Sand and Gravel Operations shall be issued for a period of no more than five (5) years. Special permits may be renewed for additional periods of five (5) years in the same manner.
- B. Where the request covers a parcel of land larger than five (5) acres a special permit may be granted for the entire parcel but the special permit shall define the intended progress of mining in stages not to exceed five contiguous acres. The special permit shall explicitly specify the order in which each stage shall be mined and that progress into the next successive stage shall be contingent on the revegetation of the current stage so that under no circumstances shall more than five acres be open and un-vegetated at any one time

§179-39.4 Conditions and Restrictions

Each special permit shall be subject to, but not limited to, conditions and/or restrictions related to the following, unless as determined by the normal super-majority vote of the Board that such conditions or controls are not necessary:

- A. All vegetation and soil suitable for cover material shall be stockpiled or windrowed and retained for future use in the reclamation of the affected area;
- B. Border buffer strips in which natural vegetation and soil are undisturbed shall be required to be left for a width of at least 100 feet from the side line of any road open to public use, except for designated access to the sand and gravel operation and for a width of at least 50 feet from all abutting property lines unless written consent of the abutting property owner has been received by the Board;
- C. The preservation of trees, bushes and other vegetation and the erecting of a six-foot highlandscaped berm or fencing may be required within 200 feet of a residential property line to muffle objectionable noise or vibration;

- D. The depth of any excavation shall be limited to a plane that is at least ten (10) vertical feet above the historical high groundwater level for that location, unless the purpose is to create a pond or cranberry bog. The Board may require the installation of monitoring wells in addition to those proposed by the applicant and require a sampling and reporting schedule different and more stringent than that proposed by the applicant;
- E. No mining or excavation activity shall induce flooding, erosion, or siltation on any adjacent property;
- F. Provisions of the special permit may be maintained during operations for the control of noise, dust and/or erosion caused by wind or water which would affect the adjacent properties or traffic along a roadway;
- G. Only uses allowed in the special permit shall take place on the subject premises. No other co-incident land uses shall be permitted to coincide with the primary use for more than 30 days per year (consecutive or not) unless specifically authorized by the Special Permit;
- H. No earth or other materials foreign to the subject premises, including but not limited to boulders, asphalt, cement, road construction debris, demolition debris and tree stumps shall be brought onto and deposited or buried on the subject premises during the period of the special permit except topsoil and living plant material for reclamation use, unless specifically authorized by an existing registration or by the special permit or by written consent of the Board of Health or its agent. In this connection, debris is not included in the definition of "earth" above;
- I. The special permit grantee shall, to the satisfaction of the Board, stake or mark all phase areas where work and restoration have been completed, the phase area currently being worked, and any phase areas for which subsequent work is planned. The GPS coordinates of these bounds and all bounds on the premises shall be recorded and this information shall be filed with the Special Permit Granting Authority. These boundary markers shall be maintained at all times during the time period of original and any renewed special permits;
- J. Records showing the amount of earth removed shall be provided to the Planning Board on each one-year anniversary date of the granting of the special permit by a registered Massachusetts professional engineer or civil engineer on a certified current site plan with contours and elevations;
- K. Times of earthmoving or related operations may be restricted to those stipulated in the Special Permit, which will vary in accordance with the proposed site and existing and/or future surrounding land uses. Included among related operations are the starting of engines either for vehicles or machinery, loading and unloading of trucks, and preparations for commencing work;
- L. The applicant and/or property owner shall agree by acceptance of the special permit to allow the Planning Board, the Board of Health or their representative(s) free access to the site to conduct inspections to determine compliance with the conditions of the special permit at any time without prior notice;

- M. The applicant for a special permit shall advance sufficient funds to reimburse the Town of Brewster as the Planning Board estimates necessary for professional evaluation services. Unexpended funds will be refunded to the applicant. During the term of the special permit, The Planning Board may demand additional funds at its sole discretion to monitor operations on site should these services become necessary;
- N. The Board must be notified of any transfer of ownership or legal interest or change in contractual interest in the subject property, including the sand and gravel operator deriving income resulting from such work on said property, within 10 days of such transfer or change. Failure to do so will render the special permit null and void ~~ab-initio~~ from the date of transfer or change in contractual interest; [Amended 5/04/2009 ATM; Article 30];
- O. The reclamation plan of the altered land shall be performed in the following manner:
 - (1) The slope of the finished banks shall at a minimum meet OSHA standards 2008 edition.
 - (2) At least four inches of topsoil shall be placed or remain over the subsoil.
 - (3) The area shall be graded and seeded or planted to prevent erosion and to conceal the scars of earth removal. Seeding, planting, fertilizing and watering shall be done to the best professional standards;
 - (4) The Board may allow a portion of a specific stage to be reclaimed at a later specific date for purposes of starting work in an adjacent stage or for purposes of interior roadways if seasonal or weather factors make immediate revegetation impractical; however, these areas must be shown on the submitted site plans. The restriction to no more than five un-vegetated acres shall be observed.

§179-39.5 Security for mining operations

- A. To ensure compliance with the conditions of the special permit the applicant shall be required to post cash deposit or surety bond, in form acceptable to the Town Treasurer, in amount sufficient to meet 115% of the estimated cost of the required reclamation work. The Treasurer shall not accept the deposit or the bond until the amount of the estimate has been approved by the Town of Brewster's Department of Public Works. Within six months of the completion of the operation, or following the expiration or withdrawal of the special permit, and considering season and/or weather conditions, the land shall be reclaimed in accordance with the conditions of the special permit. Failure to comply with this section and the conditions of the special permit shall result in forfeiture of the security to the Town of Brewster. Said deposit or bond shall not be released until all conditions of the special permit and ground cover vegetation is established in the sole opinion of the Board.
- B. The holder of the Special Permit shall not allow motor cross, motorcycles or all-terrain vehicles or other recreational types of motorized vehicles to operate on the premises. The Planning Board may require additional restrictions if this activity occurs.

§179-39.6 Renewal.

Any special permit issued may only be renewed thereafter with a public hearing legally advertised in accordance with G.L. c.40A, §.9; however, applications for renewal must be made 120 days or more before expiration of the current valid special permit expires. Renewal, if granted, shall date from the day the current special permit expires. Renewal shall not be granted if work and restoration under the current special permit fails any of the conditions imposed by the Board in the originally issued special permit. Renewal may be denied if the applicant has a history of violations.

§ 179-40. Manufacturing.

- A. All resulting cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke, vapor, electromagnetic transmission or radioactive emission shall be completely and effectively confined within the building or so regulated as to prevent any nuisance or hazard to the public health or safety.
- B. The proposed use shall not emit any smoke of a shade darker than No. 2 of the Ringelmann Smoke Chart as published by the United States Bureau of Mines; no air particle concentration shall exceed 0.3 grains per cubic foot.
- C. All inflammable or radioactive materials shall be stored underground; the discharge of wastes shall be into a public sewer or a private on-lot system subject to the written approval of the Massachusetts Department of Environmental Quality Engineering.
- D. Vibration shall not exceed the safe range of Table 7, United States Bureau of Mines, Bulletin No. 442; there shall be no unusual or objectionable odor; and no direct or sky-reflected glare shall be permitted.
- E. All materials shall be stored within a completely enclosed building or within an outside area completely enclosed by a fence and gates, of suitable material and height to provide sufficient screening. [Amended 11-15-2010, FSTM, Art. 10]
- F. No retail sales will be permitted to the public from manufacturing units in the Industrial Zone, except for those products manufactured or processed in these units. [Added 12-8-1980 STM, Art. 20]

§ 179-40.1. Personal wireless services and communications facilities. [Added 5-5-1997 ATM, Art. 77; amended 5-6-2003 ATM, Art. 25]

- A. Purpose and intent. It is the express purpose of this section to minimize the visual and environmental impacts of personal wireless services and communication facilities, hereinafter referred to as "PWSCFs," to further the conservation and preservation of developed, natural, and undeveloped areas, wildlife, flora, and habitats for endangered species; the preservation of coastal resources; protection of the natural resources of the Town; balanced economic growth; the provision of adequate capital facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; and the preservation of historical, cultural, archaeological, architectural and recreational values.
- B. Consistency with federal law. This section is intended to be consistent with state and federal law and, in particular, the Telecommunications Act of 1996, 47 U.S.C.A. §§ 151 et seq., in

that:

- (1) They do not prohibit or have the effect of prohibiting the provision of PWSCF services;
- (2) They are not intended to be used to unreasonably discriminate among providers of functionally equivalent services; and
- (3) They do not regulate wireless telecommunications services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning such emissions. [47 U.S.C. § 332(c)(7)(B)].

C. Definitions and word usage. As used in this section, the following terms shall have the meanings indicated below. The word "shall" or "will" indicates mandatory requirements. Terms and words not defined herein but defined in the Brewster Town Code, Chapter 179, Zoning, or in the Commonwealth of Massachusetts State Building Code shall have the meanings given therein unless a contrary intention clearly appears. Words not defined in either place shall have the meanings given in the then most current edition of the Webster's Unabridged Dictionary.

ACT — The Telecommunications Act of 1996, 47 U.S.C.A. §§ 151 et seq.

ADEQUATE CAPACITY — Capacity is considered to be "adequate" if the grade of service is p.05 or better for at least 50% of the days in a preceding month, prior to the date of application, as measured using direct traffic measurement of the telecommunications facility in question, where the call blocking is due to frequency contention at the antenna(s).

ADEQUATE COVERAGE — For traditional cellular service or PCS service, coverage is considered to be "adequate" within those areas surrounding a base station where the predicted or measured median field strength of the transmitted signal is greater than -90dBm. It is acceptable for there to be holes within the area of adequate coverage where the signal is less than -90dBm, as long as the signal regains its strength to greater than -90dBm further away from the base station. For the limited purpose of determining whether the use of a repeater is necessary or desirable, there shall be deemed not to be adequate coverage within said holes. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain strength of greater than -90dBm. For services other than traditional cellular or PCS service, the SPGA will determine what is adequate coverage from time to time based on the evidence presented, which may include but shall not be limited to then-current industry standards and government standards or materials.

COLLOCATION — The use of a single mount on the ground by more than one carrier (vertical collocation) and/or several mounts on an existing building or structure by more than one carrier.

COMMUNICATIONS FACILITY — Any facility which supports or contains communications equipment, antenna, wiring or equipment for the purpose of broadcasting or receiving radio frequency waves and/or generating or detecting electromagnetic radiation, including but not limited to buildings, microwave transmitting and/or receiving antennas, microwave reflectors, broadcasting antennas and cable television antennas. Structures supporting equipment transmitting only visible light or used to support the equipment of a federally licensed amateur radio operator are excluded from this definition.

EQUIPMENT SHELTER — An enclosed structure, cabinet, shed or box at the base of the mount within which are housed batteries and electrical equipment.

FALL ZONE — The area on the ground within a prescribed radius from the base of PWSCF. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material and, in the case of towers, shall not be less than a radius equal in distance to the height of the tower.

FEDERAL COMMUNICATION COMMISSION (FCC) — The government agency responsible for regulating telecommunications in the United States.

LICENSED CARRIER — A company authorized by the FCC to construct and operate a commercial mobile radio services system.

PERSONAL WIRELESS SERVICES — The three types of services defined by the FCC in the Act as personal wireless services:

- (1) Commercial mobile radio services;
- (2) Unlicensed wireless services; and
- (3) Common carrier wireless exchange access services.

PERSONAL WIRELESS SERVICES FACILITY — Any facility used or to be used for the provision of personal wireless services, including, but not limited to, buildings, antennas, telecommunications equipment, communications towers, monopoles or other support structures, constructed, installed or operated, or to be constructed, installed or operated, for the purpose of providing personal wireless services.

REPEATER — A low-power receiver/relay transmitter generally of less than 20 watts' output designed to provide service to areas which are not able to receive adequate coverage directly from a base station.

SITE, PWSCF — The land that is, or will be, temporarily or permanently altered during the construction and use of any PWSCF, including the fall zone. The applicant shall offer proof of ownership of the tower site or control of said site via an existing, lawful easement, lease, license or land use agreement.

SPECIAL PERMIT GRANTING AUTHORITY (SPGA) — The Brewster Planning Board shall be the special permit granting authority for purposes of this section.

TOWER — A support structure proposed to support PWSCF antenna(s) and associated equipment, including but not limited to the following:

- (1) **MONOPOLE TOWER** — The type of mount that is self-supporting with a single shaft of wood, steel, fiberglass, or concrete, and a platform (or racks) for panel antennas arrayed at the top.
- (2) **GUYED TOWER** — A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.
- (3) **LATTICE TOWER** — A type of mount that is self-supporting with multiple legs and cross bracing of structural steel.

D. Personal Wireless Services and Communications Facilities Overlay District. There is hereby established a Personal Wireless Services and Communications Facilities Overlay District within the Town of Brewster. This district consists of the following parcels of property shown on the Personal Wireless Services and Communications Facilities Overlay District Zoning Map on file with the Brewster Building Department, the Brewster Planning Department and the Brewster Town Clerk. [Amended 11-17-2003 FYTM, Art. 23]

- (1) Map 44, Parcels: 8, 9, 10, 13, 15, 16, 17, 18, 18-1, 19, 19-1, 19-2, 19-3, 21, 22-1, 22-2, 23, 24, 25, 27, 28, 29, 30, 30-1, 33, 34, 34-1, 34-2, 35, 37.
- (2) Map 45, Parcels: 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22-23, 22-24, 23, 24-21, 24-22, 24-28, 25, 26, 27, 28, 30, 31, 32, 32-1, 33, 33-1, 34, 35-1, 35-2, 36, 37, 39, 39-1, 40, 41, 42, 43, 44, 45, 45-1, 46, 58-1, 59, 66, 67, 68, 69, 70-1, 70-2, 71, 72, 76, 77, 78, 79, 80-1, 80-2.
- (3) Map 46, Parcels: 1, 2, 3, 4, 5, 6, 9, 12-1, 12-2, 12-3, 14-1, 14-2, 31, 32, 33, 34, 34-1, 35, 39, 40, 41, 41-2, 55, 56, 57, 58, 81.
- (4) Map 47, Parcels: 24, 25, 26, 27, 28, 29, 32-1, 32-2, 32-3, 33, 35, 36, 37, 38, 42, 43, 46, 47, 48, 50, 51, 52, 58, 64, 90, 91.
- (5) Map 52, Parcels: 1, 2-1, 2-2, 3, 6, 17, 18, 24, 26, 27, 29, 30-1, 30-2, 70, 94.
- (6) Map 53, Parcels: 3, 6-1, 6-4, 6-6.
- (7) The Industrial (I) District: All parcels located within said District within the Town of Brewster.
- (8) The Municipal Refuse District (MRD): All parcels located within said District within the Town of Brewster.
- (9) All Town-owned properties: All parcels currently owned by the Town of Brewster, and any future property acquisitions, provided there are no legal restrictions or restrictions on the title to prevent or prohibit such development.

E. Use, siting and dimensional regulations.

- (1) Use regulations. All PWSCFs shall require a building permit and in all cases may be permitted only as follows:
 - (a) All PWSCFs under 35 feet in height shall be allowed as a matter of right in all districts.
 - (b) Municipal PWSCFs are exempt from this section.
 - (c) Any proposed PWSCF towers and ground-mounted PWSCFs in excess of 35 feet in height shall only be allowed in the Personal Wireless Services and Communication Facilities Overlay District, as identified in § 179-40.1D, and only upon:
 - [1] Referral to the Cape Cod Commission for mandatory review;
 - [2] Prefiling review under Staff Review [Amended 5-2-2011 ATM Article 32] in accordance with § 179-40.1F(2) hereunder;

- [3] Application and issuance of a special permit by the Special Permit Granting Authority in accordance with Subsections G and H, and in accordance with Subsection L, Rules and regulations, hereunder; [Amended 5-3-2004 ATM, Art. 25]
 - [4] Application and issuance of a building permit from the Building Commissioner;
 - [5] Proof of ownership of or control over the PWSCF site via an existing, lawful easement, lease, license or land use agreement; and
 - [6] Any other required local, state and federal approvals.
- (d) PWSCFs may collocate on any existing structure, including buildings, guyed tower, lattice tower, monopole tower, electric utility transmission tower, fire tower or water tower located in any zoning district, and only upon:
- [1] Prefiling review and approval under Staff Review [Amended 5-2-2011 ATM Article 32] in accordance with § 179-40.1F(2) hereunder;
 - [2] Application and issuance of a special permit by the Special Permit Granting Authority in accordance with Subsections G and H, and in accordance with Subsection L, Rules and regulations, hereunder; [Amended 5-3-2004 ATM, Art. 25]
 - [3] Application and issuance of a building permit from the Building Commissioner;
 - [4] Proof of ownership of or control over the tower site via an existing, lawful easement, lease, license or land use agreement; and
 - [5] Any other required local, state and federal approvals.
- (e) Teleports, as defined in this article, are allowed only within the Industrial (I) District, as located within the PWSCF Overlay District, Town of Brewster.
- (2) Siting regulations.
- (a) PWSCFs shall be located on preexisting structures, including but not limited to buildings, existing guyed towers, lattice towers, monopole towers, utility transmission towers, fire towers, water towers and related facilities, unless the applicant demonstrates that there are no feasible preexisting structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more PWSCFs. Such installations shall preserve the character and integrity of those preexisting structures.
 - (b) New facilities or structures shall be considered only upon a finding by the SPGA that existing or approved facilities or structures cannot accommodate the PWSCF proposed. The applicant shall have the burden of proving there are no feasible existing structures upon which to locate.
 - (c) If the applicant demonstrates that it is not feasible to locate on an existing structure,

PWSCFs shall be designed so as to be camouflaged to the greatest extent possible and in accordance with any design standards regulations promulgated hereunder by the Planning Board.

- (d) PWSCFs shall be located so as to provide adequate coverage and adequate capacity with the least number of PWSCFs which is technically and economically feasible.
 - (e) The use of repeater(s) to assure adequate coverage, or to fill holes within areas of otherwise adequate coverage, shall be encouraged.
 - (f) To the extent lawful and feasible, all service providers shall collocate on a single tower. Towers shall be designed to structurally accommodate the maximum number of foreseeable users (within a ten-year period) technically practicable. The applicant is required to document all collocation tenants and provide a tower design indicating types and locations of all facilities.
- (3) Dimensional requirements. Except as otherwise provided herein or in any subsequent regulations passed by the Planning Board, the height of PWSCFs shall be as follows:
- (a) Height: new PWSCF towers. PWSCF Towers may be allowed by special permit from the SPGA in the Personal Wireless Services and Communication Facilities Overlay District, as identified in § 179-40.1D, and may be constructed to a height of up to 200 feet AGL, provided such towers are designed to accommodate a minimum of six licensed carriers; up to 150 feet AGL if proposed to accommodate a minimum of four licensed carriers; up to 135 feet AGL if proposed to accommodate a minimum of three licensed carriers; up to 120 feet AGL if proposed to accommodate a minimum of two licensed carriers; and up to 105 feet above natural ground elevation if proposed to accommodate a minimum of one licensed carrier. Monopoles are the preferred type of mount for such structures. Such structures shall comply with all applicable siting and dimensional requirements set forth in § 179-40.1E(2) and (3) and all applicable performance standards regulations set forth in any regulations promulgated by the Planning Board.
 - (b) Height: ground-mounted facilities. Proposed ground-mounted PWSCFs may be allowed by special permit from the SPGA in the Personal Wireless Services and Communication Facilities Overlay District, as identified in § 179-40.1D, provided they shall not project higher than 10 feet above the average building height within 300 feet or, if there are no buildings within 300 feet, ground-mounted PWSCFs shall not project higher than 10 feet above the average tree canopy height, measured from ground level. If there are no buildings within 300 feet of the proposed site of the PWSCF, all ground-mounted PWSCFs shall be surrounded by dense tree growth to screen views of the facility in all directions. These trees may be existing on the subject property or planted on site.
 - (c) Height: side- and roof-mounted facilities. Side- and roof-mounted PWSCFs shall not project more than 10 feet above the height of an existing building nor project more than 10 feet above the height limit of the zoning district in which the PWSCF is located. PWSCFs may locate on the side or roof of a building that is legally nonconforming with respect to height, provided that the PWSCF does not project

above the existing building height.

- (d) Height: facilities proposed to be mounted on existing structures. New antennas for PWSCFs to be located on any of the following structures existing on the effective date of this section shall be exempt from the height restrictions of this section, provided there is no increase in height of the existing structure as a result of the installation of the PWSCF:
 - [1] Guyed towers;
 - [2] Lattice towers;
 - [3] Monopoles;
 - [4] Fire towers; or
 - [5] Water towers.
 - (e) Height: facilities proposed to be mounted on existing utility structures. New antennas located on any of the following existing structures as of the effective date of this section shall be exempt from the height restrictions of this section, provided there is no more than a twenty-foot increase in the height of the existing structure as a result of the installation of the PWSCF, and further provided that no such structure shall be permitted to exceed 200 feet in total height above ground elevation:
 - [1] Electric transmission and distribution towers;
 - [2] Telephone poles;
 - [3] Similar existing utility structures.
- (4) Setbacks. All PWSCF and their equipment shelters shall comply with the building setback provisions of the underlying zoning district in which the facility is located. In addition, the following setbacks shall be observed:
- (a) The layout of any tower site shall be such that, in the event the tower shall fall, it shall fall within the confines of the tower site.
 - (b) To ensure public safety, the minimum distance from the perimeter of the PWSCF, including any guy wire, anchor or brace to any property line, road or structure, business or institutional use, or public recreational area shall be the height of the PWSCF, including any antennas or appurtenances, plus 50 feet.
 - (c) Towers and monopoles shall provide a minimum setback equal to the height of the structure plus 100 feet from any residential zoning district.
 - (d) In the event that an existing structure is proposed as a mount for a PWSCF, a fall zone shall not be required, but the setback provisions of the underlying zoning district shall apply.

F. Application procedures.

- (1) Special permit granting authority (SPGA).
 - (a) The special permit granting authority for PWSCFs shall be the Brewster Planning Board.
 - (b) The SPGA shall not approve any application that does not comply with all the requirements of this section. The Board does, however, have the right to waive any part of this section without the requirement of a variance, when it makes a specific finding that such a waiver would not be detrimental to the public interest, cause the Town any expense, or be inconsistent with the intent and purpose of this section.
 - (c) The SPGA shall act in accordance with the standards and requirements set forth herein and in accordance with the Massachusetts General Laws.
 - (d) The SPGA shall open the public hearing on the application within 65 days of the filing of an application for special permit and shall issue a decision within 90 days following the date of the close of the public hearing.
- (2) Preapplication Staff Review meeting. Prior to filing a special permit application with the SPGA, and after mandatory review by the Cape Cod Commission, if required, the applicant shall request a meeting for Staff Review for purposes of discussing the proposed PWSCF in general terms and reviewing the relevant local approvals required. Staff Review shall take place with the applicant under this section within 30 days following a written request submitted to the Town Planner, or a designee. If the Staff Review meeting fails to take place on a project within said thirty-day period, the applicant may proceed with a special permit application under this section without need for a preapplication meeting. The applicant shall prepare sufficient preliminary architectural and engineering drawings to inform the staff of the location of the proposed facility, as well as its scale and overall design. Staff shall issue a statement containing any written recommendations or proposed alterations it recommends be made to the proposal to better conform to the provisions of any Town bylaw and which better serve the public interest. A written copy of the Staff Review statement must be included in the application to the SPGA. [Amendment 5-2-2011 ATM Article 32]

G. Approval criteria; required findings and denials.

- (1) Approval criteria. In reviewing all applications for special permits, the SPGA shall utilize as approval criteria all applicable use, siting, dimensional, and setback requirements set forth in § 179-40.1E, and any applicable regulations promulgated by the Planning Board pursuant to § 179-40.1J herein.
- (2) Required findings for issuance of special permit. The SPGA shall make the following applicable findings, with appropriate reasoning, in writing, prior to the granting of any special permit:
 - (a) The applicant is not already providing adequate coverage and/or adequate capacity to the Town of Brewster; and
 - (b) The applicant is not able to use or modify for use any existing structure or PWSCF located within or outside the Town, either with or without the use of repeaters, to

provide adequate coverage and/or adequate capacity to the Town of Brewster; and

- (c) The applicant has endeavored to provide adequate coverage and adequate capacity to the Town of Brewster within the least number of PWSCFs which is technically and economically feasible; and
 - (d) The applicant has agreed to rent or lease any available space on the proposed PWSCF tower, under the terms of a fair-market lease, with reasonable conditions and without discrimination to other licensed providers; and
 - (e) The proposed PWSCF will not have an undue adverse impact on historic resources, seethe views, natural resources, and/or residential property values; and
 - (f) The applicant has agreed to implement all reasonable measures to mitigate the potential adverse safety, environmental, and aesthetic impacts of the PWSCF; and
 - (g) The proposed PWSCF shall comply with current FCC standards regarding emissions of electromagnetic radiation; and
 - (h) The applicant has agreed to any maintenance and monitoring requirements set forth in any regulations promulgated by the Planning Board; and
 - (i) The proposed PWSCF shall be camouflaged and screened to the greatest extent possible to minimize adverse visual impacts; and
 - (j) The applicant meets the criteria set forth in § 179-40.1E and all performance standards and siting priority requirements contained in any regulations promulgated by the Planning Board pursuant to § 179-40.1J, to the maximum extent practically and economically feasible.
- (3) Denials.
- (a) The SPGA may deny a special permit if it finds:
 - [1] That adequate coverage for the Town of Brewster can be provided by any existing or proposed PWSCF located within or outside the Town of Brewster, with or without the use of repeaters, or can reasonably be provided by modification or adjustments to said sites; or
 - [2] That the Town of Brewster already has adequate coverage from this provider; or
 - [3] That the applicant failed to meet any application filing requirements set forth in regulations promulgated by the Planning Board; or
 - [4] That the application fails to meet applicable use, siting, dimensional, and setback requirements set forth in § 179-40.1E, or any applicable regulations promulgated by the Planning Board pursuant to § 179-40.1J.
 - (b) Any decision by the SPGA to deny an application for special permit under this section shall be in conformance with Section 332 of the Act [47 U.S.C. § 332(c)(7)(b)(iii)] in that it shall be in writing and supported by substantial evidence contained in the record.

H. Terms of special permit.

- (1) Pursuant to the provisions of Massachusetts General Laws, Chapter 40A, Section 9, a special permit shall lapse 24 months following the issuance thereof if construction of, or a substantial use of, the PWSCF has not sooner commenced (excluding such time required to pursue or await the determination of an appeal taken under General Laws, Chapter 40A, Section 17).
- (2) A special permit issued for any PWSCF over 35 feet in height shall be valid for 15 years, unless previously abandoned or discontinued.
- (3) At the end of that time period, the PWSCF shall be removed by the carrier or a new special permit shall be required.
- (4) Any permit issued by the SPGA for a PWSCF shall be valid for the applicant only; it may not be reassigned, leased or sold.

I. Severability. The provisions of this section are severable from each other, and the invalidity of any provisions or sections shall not invalidate any other provision or section thereof.

J. Amendments. This section may be amended from time to time in accordance with Section 5 of Chapter 40A of Massachusetts General Laws.

K. Validity. The invalidity, unconstitutionality or illegality of any provision of this section or any boundary described herein shall not have any effect upon the validity, constitutionality or legality of any other provision or boundary.

L. Rules and regulations. After public notice and public hearing, the SPGA shall, if it deems necessary, promulgate rules and regulations to effectuate the purpose of this section, including but not limited to performance standard regulations relative to design, environmental, safety, access and utility standards, reconstruction or replacement of existing towers, and modifications to existing PWSCFs, and regulations governing monitoring and maintenance, abandonment and discontinuance of use, and indemnification, insurance and fee requirements. Public notice shall include publication of all proposed regulations in a newspaper of general circulation in the Town not less than 21 days prior to public hearing. Failure by the SPGA to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this section.

§ 179-40.2. Wind energy turbines. [Added 11-5-2007 FYTM, Art. 16]

A. Purpose and intent. It is the express purpose of this section to accommodate wind energy turbines (WET) in appropriate locations, while minimizing any visual, safety and environmental impacts. This section enables the review of WETs by the Town's Planning Board in keeping with the Town's existing bylaws. This section is intended to be used in conjunction with other regulations adopted by the Town, including historic district regulations, Staff Review [Amendment 5-2-2011 ATM Article 32], and local bylaws designed to encourage appropriate land use, environmental protection, adequate infrastructure development, and the preservation of historical, cultural, archaeological, architectural and recreational values. The scale of the proposed WET will determine the review and permitting process required by the Town of Brewster.

- B. Consistency with federal law. This section is intended to be consistent with state and federal law and, in particular the regulations of the Federal Communications Commission and Federal Aviation Administration.
- C. Definitions and word usage. As used in this section, the following terms shall have the meanings indicated below. The word "shall" or "will" indicates mandatory requirements. Terms and words not defined herein but defined in the Brewster Town Code, Chapter 179, Zoning, or in the Commonwealth of Massachusetts State Building Code shall have the meanings given therein unless a contrary intention clearly appears. Words not defined in either place shall have the meanings given in the then most current edition of the Webster's Unabridged Dictionary.

BLADE — Extensions from the hub of a WET which are designed to catch the wind and turn the rotor to generate electricity.

EQUIPMENT SHELTER — An enclosed structure, cabinet, shed or box at the base of the mount, or close to the base of the mount, where batteries, electrical equipment and other appurtenant nonhazardous components or materials may be housed.

FALL ZONE — The area on the ground within a prescribed radius from the base of a WET. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) and, in the case of towers, shall not be less than a radius equal in distance to the total height of the WET. The area within the fall zone shall be under the legal care, custody and control of the WET applicant. Applicants who own contiguous parcels of land that will be included within the fall zone must file ANR applications to relocate any property lines within the fall zone.

FEDERAL AERONAUTICAL ADMINISTRATION (FAA) — The governmental agency responsible for regulating airways in the United States

FEDERAL COMMUNICATIONS COMMISSION (FCC) — The government agency responsible for regulating telecommunications in the United States.

HUB — The center of the rotor to which the blades are attached.

HUB HEIGHT — The height as measured from the natural grade of the land below the WET to the center of the hub.

LARGE-SCALE WIND ENERGY TURBINE (LWET) — Wind energy system consisting of a wind turbine, a tower, and associated control or conversion electronics, whose total height is more than 130 feet above natural grade. LWETs shall have a rated capacity of more than 60 KW and be intended primarily to produce energy for sale to the grid, for consumption off-site.

MEDIUM-SCALE WIND ENERGY TURBINE (MWET) — Wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, whose total height is between 75 feet and 130 feet above natural grade. MWETs shall have a rated capacity in excess of 60 KW, be intended primarily to produce energy for on-site power consumption and reduce the need to purchase utility power from the grid, and have the ability to sell power back to the grid.

NACELLE — The frame and housing at the top of the tower which protects the gear box and generator from weather and helps control the mechanical noise level.

ROTOR — A WET's blades and the hub to which they are attached.

ROTOR DIAMETER — The diameter of a WET's rotor measured as twice the length of the largest blade (or equal to the diameter of the swept area).

SHADOW/FLICKER — Shadows cast from WETs which generally occur in close proximity to the WET, although this will vary depending on the time of year, latitude and turbine height. Flicker effects can occur when the sun shines through the rotor blades at certain times of day and results in the temporary blocking of the sun's rays with each pass of a rotor blade.

SITE, WET — The land that is, or will be, temporarily or permanently altered during the construction and use of any WET, including the fall zone. The applicant shall offer proof of ownership of the site or control of said site via an existing, lawful easement, lease, license or land use agreement.

SMALL-SCALE WIND ENERGY TURBINE (SWET) — Wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, whose total height is between zero and 75 feet above natural grade. SWETs shall have a rated capacity of not more than 60 KW, be intended primarily to produce energy for on-site power consumption and reduce the need to purchase utility power from the grid, and have the ability to sell power back to the grid.

SPECIAL PERMIT GRANTING AUTHORITY (SPGA) — The Brewster Planning Board shall be the special permit granting authority for purposes of this section.

TOTAL HEIGHT — Combined height as measured from the natural grade at the base of the tower to the tip of the rotor blade when extended vertically 90° from the horizontal plane of the ground.

TOWER

- (1) A structure supporting WET generators and associated equipment, including but not limited to the following:
 - (a) Monopole tower. The type of mount that is self-supporting with a single shaft of wood, steel, fiberglass, or concrete, and a platform (or racks) for nacelle and blades arrayed at the top.
 - (b) Guyed tower. A monopole or lattice tower that is tied to the ground and supported by diagonal cables attached to concrete and steel anchors embedded in the ground.
 - (c) Lattice tower. A self-supporting mount constructed of structural steel with multiple legs and cross bracing of structural steel.
- (2) Guyed and lattice towers may be utilized for SWET and MWET installations. Only monopole towers shall be utilized with LWET installations.

TOWER HEIGHT — The height as measured from the natural grade of the land below the WET to the top of the tower.

WIND ENERGY TURBINE (WET) — Any structure or facility used for the converting of wind energy to electric power, including, but not limited to, towers, blades, motors, transmission wires, buildings, monopoles or other support structures, constructed, installed or operated, or to be

constructed, installed or operated.

WIND MONITORING OR METEOROLOGICAL (TEST OR MET) TOWERS — Towers which support mechanical devices such as anemometers and their support structures which elevate them to the height desired above the natural grade to measure wind speed, variability and direction in order to determine wind-to-electrical-energy conversion capabilities at a specific site. Such towers shall not exceed 175 feet in total height and shall carry aircraft warning lights. The owners shall file FAA Form 7460 and receive FAA approval before erecting an MET tower, and shall remove the MET tower after 18 months restoring the site to its original condition.

D. Use, site and dimensional regulations.

- (1) Use regulations. All WET or MET towers shall require a building permit and may be permitted as follows:
 - (a) MET towers. MET towers shall be permitted in all zone districts subject to the issuance of a special permit and a building permit. Provided these towers are only used to measure the wind regime at a site, a building permit may be issued for the construction of a tower subject to the following conditions:
 - [1] The tower shall be removed after a period of 18 months;
 - [2] The site shall be restored to its original condition following removal of the tower;
 - [3] The tower shall not be erected until the applicants file FAA Form 7460;
 - [4] The tower shall have a fall zone and conform to setback requirements; and
 - [5] The tower shall carry aircraft warning lights and shall be painted with alternating red and white sections.
 - (b) WET facilities. The permitting process for WET facilities shall be dictated by the size and scale of the proposal. SWETs of less than 75 feet total height may be permitted in any district, provided they meet all the building code requirements. MWETs of 75 to 130 feet in total height shall only be permitted by special permit. LWETs of greater than 130 feet in total height shall require a special permit and shall only be erected on land located within the districts described in Subsection H.
- (2) Site control. The applicant seeking to install a WET facility or a MET tower shall submit documentation of his legal right to use the proposed site when applying for a special permit. Documentation should include proof of control over the setback and clear areas required by this section.
- (3) Setback.
 - (a) All WET facilities and their associated equipment shall comply with the building setback provisions of the zoning district in which the facility is located.
 - (b) In reviewing a special permit application for a WET facility, the SPGA may reduce the required setback for accessory buildings/structures if the applicant can produce sufficient evidence to the SPGA that no potential exists for damage or damage

claims from any other party.

(c) The following setbacks shall be observed for LWET facilities:

- [1] In order to ensure public safety, the minimum distance from the base of any tower to any property line, road (except for roads used exclusively for servicing the LWET), habitable dwelling, business, institution, or public recreational area shall be equal to the fall zone.
- [2] The fall zone for LWET facilities must be kept free of all habitable structures during the operational life of the facility. Fall zone areas shall be measured from the base of the tower.

E. Small-scale wind energy turbines (SWET).

- (1) The Building Commissioner is hereby established as the permit granting authority for SWET facilities. A permit may be issued for the erection of a SWET in any designated district or in connection with any permitted use in a designated commercial or residential district, provided that the below conditions are met.
- (2) Stand-alone SWETs may not be placed on lots of less than 40,000 square feet: however, a SWET which will be attached to an existing structure and will not exceed the building height restriction in the zoning district in which it will be located, may be located on a lot smaller than 40,000 square feet at the discretion of the Building Commissioner.
- (3) No portion of a SWET shall be located within a wetland area.
- (4) Total height of a SWET shall be limited to less than 75 feet from natural grade to top of extended rotor blade.
- (5) All portions of a SWET support structure must meet the setback requirements for the zone where the land is located. A SWET must be setback from all habitable structures on abutting properties by an area equal to or exceeding the distance of the fall zone. Said setback shall not be required when the abutting owner(s) grants an easement to the applicant. In a case where the applicant is also the owner of the abutting property, refer to definition of "fall zone" and requirements to expunge lot lines.
- (6) The noise level at the lot line may not exceed 10 dB(A) over the ambient sound level and must comply with the existing Town of Brewster Noise Bylaw.¹⁷
- (7) Climbing access to the tower structure shall be limited by a) placing fixed climbing apparatus no lower than 10 feet from the ground, and b) placing a six-foot fence or shielding around the SWET.
- (8) Building permit applications for SWET shall be accompanied by standard drawings of all structures, including the tower, base, footing, guy wires, guy anchors, and any additional equipment or housings. Also included shall be a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to all federal, state and local codes.

17. **Editor's Note: See Ch. 125, Noise.**
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- (9) No SWET shall be installed until evidence has been supplied to the Town that the utility company has approved the applicant's proposal to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this utility certification.

F. Medium-scale wind energy turbine (MWET).

- (1) The construction of a MWET is subject to the issuance of a special permit pursuant to § 179-51. The proposed MWET must comply with all the requirements of this section, the Zoning Bylaws, and the wind energy conversion turbine special permit regulations adopted by the Brewster Planning Board.

G. Large-Scale Wind Energy Turbine (LWET).

- (1) The construction of a LWET may only be permitted in the Large-Scale Wind Energy Conversion Turbine Overlay District, subject to issuance of a special permit pursuant to § 179-51. The proposed LWET must comply with all the requirements of this section, the Zoning Bylaws, and the wind energy conversion turbine special permit regulations adopted by the Brewster Planning Board.

H. Large-Scale Wind Energy Turbine Overlay District. There is hereby established a Large-Scale Wind Energy Turbine Overlay District within the Town of Brewster. This district consists of the following parcels of property shown on the Large-Scale Wind Energy Turbine Overlay District Zoning Map on file with the Brewster Building Department, the Brewster Planning Department and the Brewster Town Clerk.

- (1) Map 44, Parcels: 8, 9, 10, 13, 15, 16, 17, 18, 18-1, 19, 19-1, 19-2, 19-3, 21, 22-1, 22-2, 23, 24, 25, 27, 28, 29, 30, 30-1, 33, 34, 34-1, 34-2, 35, 37.
- (2) Map 45, Parcels: 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22-23, 22-24, 23, 24-21, 24-22, 24-28, 25, 26, 27, 28, 30, 31, 32, 32-1, 33, 33-1, 34, 35-1, 35-2, 37, 39, 39-1, 40, 41, 42, 43, 44, 45, 45-1, 46, 58-1, 59, 66, 67, 68, 69, 70-1, 70-2, 71, 72, 76, 77, 78, 79, 80-1, 80-2.32, 33, 34, 34-1, 35, 39, 40, 41, 41-2, 55, 56, 57, 58, 81.
- (3) Map 46, Parcels: 1, 2, 3, 4, 5, 6, 9, 12-1, 12-2, 12-3, 14-1, 14-2, 31, 32, 33, 34, 34-1, 35, 39, 40, 41, 41-2, 55, 56, 57, 58, 81.
- (4) Map 47, Parcels: 24, 25, 26, 27, 28, 29, 32-1, 32-2, 32-3, 33, 35, 36, 37, 38, 42, 43, 46, 47, 48, 50, 51, 52, 58, 64, 90, 91.
- (5) Map 52, Parcels: 1, 2-1, 2-2, 3, 6, 17, 18, 24, 26, 27, 29, 30-1, 30-2, 70, 94.
- (6) Map 53, Parcels: 3, 6-1, 6-4, 6-6.
- (7) The Industrial (I) District: All parcels located within said District within the Town of Brewster.
- (8) The Municipal Refuse District (MRD): All parcels located within said district within the Town of Brewster.
- (9) All Town-owned properties: All parcels currently owned by the Town of Brewster, and any future property acquisitions, provided there are no legal restrictions or restrictions on the title to prevent or prohibit such development.

I. Special permit application procedures for medium- and large-scale wind energy turbines.

(1) Special permit granting authority (SPGA).

- (a) The SPGA shall not approve any application that does not comply with all the requirements of this section and the special permit regulations for wind energy conversion turbines adopted by the Brewster Planning Board. The Board does, however, have the right to waive any part of this section without the requirement of a variance, when it makes a specific finding that such a waiver would not be detrimental to the public interest, cause the Town any expense, or be inconsistent with the intent and purpose of this section.
- (b) The SPGA shall act in accordance with the standards and requirements set forth herein and in accordance with the Massachusetts General Laws.
- (c) The SPGA shall open the public hearing on the application within 65 days of the filing of an application for a special permit and shall issue a decision within 90 days following the date of the close of the public hearing.

(2) Preapplication Staff Review meeting. Prior to filing a special permit application with the SPGA, and after review by the Cape Cod Commission, if required, the applicant shall request a meeting for Staff Review for purposes of discussing the proposed WET in general terms and reviewing the relevant local approvals required. Staff Review shall take place with the applicant under this section within 30 days following a written request submitted to the Town Planner, or a designee. If the Staff Review meeting fails to take place on a project within said thirty-day period, the applicant may proceed with a special permit application under this section without need for a preapplication meeting. The applicant shall prepare sufficient preliminary architectural and engineering drawings to inform staff of the location of the proposed facility, as well as its scale and overall design. Staff shall issue a statement containing any written recommendations or proposed alterations it recommends be made to the proposal to better conform to the provisions of any Town bylaw or to better serve the public interest. A written copy of the Staff Review statement must be included in the application to the SPGA. [Amendment 5-2-2011 ATM Article 32]

J. Approval criteria; required findings and denials.

- (1) Approval criteria. In reviewing all applications for special permits, the SPGA shall utilize as approval criteria all applicable use, siting, dimensional, and setback requirements set forth in § 179-51 and any applicable regulations promulgated by the SPGA pursuant to this section.
- (2) Required findings for issuance of special permit. The SPGA shall make the following applicable findings, with appropriate reasoning, in writing, prior to the granting of any special permit:
 - (a) The proposed WET will not have an undue adverse impact on historic resources, scenic views, natural resources, and/or residential property values;
 - (b) The applicant has agreed to implement all reasonable measures to mitigate the potential adverse safety, environmental, and aesthetic impacts of the WET;

- (c) The proposed WET shall comply with current FCC and FAA standards regarding flight and air navigation hazard identification and prevention;
 - (d) The applicant has agreed to any maintenance and monitoring requirements set forth in any regulations promulgated by the SPGA;
 - (e) The proposed WET shall be sited or camouflaged or screened to the greatest extent possible to minimize adverse visual impacts; and
 - (f) The applicant meets the criteria set forth in Subsection D as well as all performance standards and requirements contained in any regulations promulgated by SPGA pursuant to this section. The SPGA reserves the right to require the applicant to set aside fees in accordance with MGL c. 40A.
- (3) Denials.
- (a) The SPGA may deny a special permit if it finds:
 - [1] That the applicant failed to meet any application or filing requirements set forth in regulations promulgated by the SPGA; or
 - [2] That the application fails to meet applicable use, siting, dimensional, and setback requirements set forth in this section, or any applicable regulations promulgated by the SPGA pursuant to this section.
 - (b) Any decision by the SPGA to deny an application for special permit under this section shall be in conformance with MGL c. 40A.

K. Terms of special permits.

- (1) A special permit shall lapse 24 months following the issuance thereof if construction of or substantial use of the WET has not commenced (excluding any appeal periods).
- (2) A special permit issued for any MWET shall be valid for 15 years, unless previously abandoned or discontinued. A special permit issued for any LWET shall be valid for 25 years, unless previously abandoned or discontinued. [Amended 5-3-2010, ATM, Article 29]
- (3) At the end of the initial time period, the MWET or LWET shall be removed or a new special permit shall be required. Any special permit extension beyond the original fifteen-year term for a WET or the original twenty-five year term for a LWET shall terminate within 10 years or upon the manufacturer's estimated useful life for the model and type of said WET or WET component equipment. A special permit may be extended for up to a maximum of 10 years, provided the applicant provides an inspection and certification by a licensed structural engineer. [Amended 5-3-2010, ATM, Article 29]
- (4) Any permit issued by the SPGA for an MWET or LWET shall be valid for the applicant or the applicant's financier pursuant to a "step-in" or default provision; it may not be reassigned, leased or sold. [Amended 5-3-2010, ATM, Article 29]

L. Severability. The provisions of this section are severable from each other, and the invalidity of any provisions or sections shall not invalidate any other provision or section thereof.

- M. Amendments. This section may be amended from time to time in accordance with Section 5 of Chapter 40A of Massachusetts General Laws.
- N. Validity. The invalidity, unconstitutionality or illegality of any provision of this section or any boundary described herein shall not have any effect upon the validity, constitutionality or legality of any other provision or boundary.
- O. Rules and regulations. After public notice and public hearing, the SPGA shall, if it deems necessary, promulgate rules and regulations to effectuate the purpose of this section. Public notice shall include publication of all proposed regulations in a newspaper of general circulation in the Town not less than 21 days prior to public hearing. Failure by the SPGA to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this section.

§ 179-41. Environmental performance standards.

Any use permitted by right or special permit in any district shall not be conducted in a manner as to emit any dangerous, noxious, injurious or otherwise objectionable fire, explosion, radioactive or other hazard; noise or vibration, smoke, dust, odor or other form of environmental pollution; electrical or other disturbance, glare, liquid or solid, refuse or wastes; or conditions conducive to the breeding of insects, rodents or other substance, conditions or element in an amount as to affect adversely the surrounding environment.

§ 179-42. Subsidized elderly housing. [Added 12-10-1979 STM, Art. 37]

The Planning Board may grant a special permit for construction and occupancy of subsidized elderly housing in accordance with the following:

- A. Application.
 - (1) Application for a special permit for subsidized elderly housing shall include materials indicating subsidies committed or sought; the proposed form of tenure (rental or condominium); occupant selection system; a schedule indicating, by year, the number of dwelling units and the improvements proposed to be constructed, schematic floor plans, architectural elevations and cross sections as necessary to clarify the proposal; and a site plan indicating the information required at § 179-34, Multifamily dwellings, also indicating existing and proposed topography, areas of existing trees or other vegetation to be retained and wetlands, if any. In addition, it is advisable for the applicant to submit material relating this proposal to the criteria of § 179-42F below.
 - (2) Following approval of the special permit and prior to the issuance of a building permit, site plan approval must be granted by the Planning Board. Application for such approval shall, in addition to further detailing all of the above, locate lighting, solid waste facilities and erosion control proposals; and shall include description of methods proposed for securing site improvements in the event that partial occupancy is proposed prior to their completion. Site plan approval shall be granted, provided that the Planning Board determines that the further detailing of the design has been consistent with both the stipulations of the special permit and with the design guidelines of § 179-42E.

- B. Number limitation. The provisions of this section shall not be used to increase the townwide number of subsidized dwelling units by more than 125 dwelling units in excess of that number which is consistent with local needs as defined in MGL C. 40B, § 20.
- C. Dimensional requirements. Minimum required lot area, regardless of district, shall be 10 contiguous acres in single or consolidated ownership at the time of application, at least 75% of which must be buildable upland as defined in this chapter. The average density for the entire lot shall not exceed eight dwelling units per acre. Other district area, height and bulk regulations of Article V for the location in question must be complied with.
- D. Multifamily rules. All provisions of § 179-34, Multifamily dwellings, shall apply to such development, except that Subsection A(1) above shall apply not only in C-H District but also in all other districts where subsidized housing is allowed, and except that actions designated for the Board of Appeals shall be taken by the Planning Board.
- E. Design.
 - (1) To minimize departure from single-family residential scale, there shall be no more than four dwelling units served from a single entrance. No exterior building wall shall extend for more than 100 feet without a horizontal offset of six or more feet, and no building shall exceed 200 feet in length. Parking areas shall not contain more than 24 parking spaces each, with parking areas of 12 or more spaces separated from each other by 50 feet or more.
 - (2) To avoid lighting impacts, outdoor lighting fixtures shall be mounted no higher than 15 feet, oriented and shielded to avoid glare on adjoining premises and plantings or other screening used to block headlight glare from drives and parking lots onto adjoining premises.
 - (3) To avoid traffic concern, any egress serving 24 or more dwelling units shall have at least 250 feet visibility in each travel direction.
 - (4) The design of building form, building location, egress points, grading and other elements of development shall:
 - (a) Protect pedestrian and vehicular safety within the site and egressing from it.
 - (b) Minimize visual intrusion of parking areas as viewed from public ways or abutting premises.
 - (c) Minimize the volume of earth cut and fill.
 - (d) Minimize the number of removed trees four inches in diameter and larger.
 - (e) Control soil erosion.
 - (f) Avoid more than a 10% increase in peak hour stormwater flow increase from the site.
 - (g) Control headlight glare.
- F. Decision. A special permit for subsidized elderly housing shall be granted only if the Planning Board determines that the proposal would have beneficial effects which overbalance any

adverse impacts on the neighborhood or the Town considering the following:

- (1) Municipal costs and revenues.
- (2) Effect on the range of available housing choices.
- (3) Service to current Brewster residents.
- (4) Service to identified housing needs.
- (5) Support for local business activity and jobs.
- (6) Impacts on the natural environment, especially on ground- and surface water quality and level.
- (7) Impacts on traffic safety and congestion, adequacy of water service and need for other public services.
- (8) Impacts on the visual environment through preservation or displacement of visual assets and consistency with existing development in the area.

§ 179-42.1. Affordable housing. [Added 11-18-2002 FYTM, Art. 16; amended 11-5-2007 FYTM, Art. 19]

- A. For the purposes of encouraging affordable housing, as defined in Article I, § 179-2B, this section shall control, subject to the following general conditions and standards.
- B. General conditions.
 - (1) Affordable housing units created pursuant to this section shall be use-restricted for as long as they shall exist in accordance with any special conditions allowed herein. Said restrictions and/or conditions shall be noted on the occupancy permit and recorded at the Barnstable County Registry of Deeds. Proof of such recording shall be submitted to the Zoning Enforcement Official prior to occupancy.
 - (2) Affordable housing units shall only be leased to and/or used by families/individuals meeting one of the categories of qualified persons as defined in § 179-2B, "affordable housing." Affordable housing units' maximum rents shall be governed by the Massachusetts Department of Housing and Community Development regulations, and shall not exceed the maximum rent under the then current guidelines.
 - (3) Affordable housing units shall only be occupied as year-round residential domiciles. Leases for affordable housing units shall be for a minimum term of 12 months.
 - (4) Affordable housing units shall have an occupancy restriction of two persons per bedroom, and said restriction shall be noted on the occupancy permit.
 - (5) To the extent permitted by law, current employees of the Town of Brewster and residents of the Town of Brewster shall receive preference in the selection of tenants for affordable housing units.
 - (6) (Reserved)
 - (7) Record title holders of property upon which an affordable housing unit is situated, or will

be situated, shall be solely responsible for submitting all of the information required under this section to the Zoning Enforcement Official.

- (8) Failure to comply with any provision contained in § 179-42.1 shall constitute a violation under the Zoning Bylaws and shall be subject to fines and penalties enumerated in § 179-49, except that each day a violation is found to exist shall constitute a separate offense. Any fines rendered as a result of a violation of § 179-42.1 shall be deposited in the Brewster Affordable Housing Fund account for future expenditure towards affordable housing projects and/or programs.

C. Standards.

- (1) Affordable accessory single family dwelling units (AADU).
 - (a) AADUs created pursuant to this section shall be subject to the general conditions noted in § 179-42.1B above.
 - (b) An AADU shall only be permitted upon property occupied by the record title holder as a year-round principal or accessory dwelling.
 - (c) One AADU shall be allowed as a matter of right on residentially zoned lots that exceed the area regulations contained in § 179-16, Table 2, by at least 25%. One AADU may be allowed by special permit on existing lots with a minimum of 40,000 square feet of area, but less than 125% of the minimum lot size contained in § 179-16, Table 2.
 - (d) AADUs allowed as a matter of right may be situated in, attached to, or detached from the primary structure, provided that all frontage, setback, height, and lot coverage requirements are met.
 - (e) AADUs may be allowed by special permit if: 1) the lot has an area of more than 40,000 square feet, provided the lot has a structure or structures existing prior to the enactment of this section, or 2) the lot is residentially zoned, has at least 125% of the minimum lot size required for the district in which it is situated, has a structure or structures existing prior to the enactment of this section, but does not meet the frontage, setback, height and lot coverage requirements. The Zoning Board of Appeals may issue a special permit only if it finds that the requirements for a special permit are met and all of the general conditions and standards of § 179-42.1 are met.
 - (f) Unless a permitted in-law apartment or affordable accessory apartment, or a legally preexisting nonconforming apartment existed upon the property prior to the enactment of this section, no AADU shall exceed the number of bedrooms or area limit allowed for in the definition of AADU contained in § 179-2.
 - (g) AADUs shall have at least one but not more than three designated parking spaces.
 - (h) No AADU shall be sold (in condominium ownership form) separate and apart from the principal structure to which it is an accessory use, unless it has been in use for a period of 15 consecutive years and the Zoning Board of Appeals grants a special permit allowing the AADU to be sold as a separate unit with the condition that it

remain an affordable single-family dwelling unit in perpetuity.

- (2) Affordable accessory commercial dwelling units (AACDU).
 - (a) AACDUs created pursuant to this section shall be subject to the general conditions noted in § 179-42.1B above.
 - (b) AACDUs shall only be permitted where the owner of the property resides in the Town of Brewster or where a property manager responsible for the management of the AACDU resides in the Town of Brewster.
 - (c) One AACDU shall be allowed as a matter of right as an accessory use for each commercial, industrial, or business zoned lot, provided that such lot meets the requirements of Table 2 and Table 3 of Article V, Area and Bulk Regulations.
 - (d) A commercial, industrial, business zoned lot which either meets or does not meet the requirements of Table 2 and Table 3 of Article V, Area and Bulk Regulations, may be allowed one or more AACDU by special permit provided that the Special Permit Granting Authority finds that the requirements for a special permit are met and all of the general conditions and standards of § 179-42.1 are met.
 - (e) Unless otherwise granted by special permit, AACDUs shall only be situated within, above, or attached to the principal structure to which it is an accessory use.
 - (f) Unless a legally preexisting nonconforming apartment existed upon the property prior to the enactment of this section, no new AACDU shall exceed the number of bedrooms or area limit provided in § 179-42.1.
 - (g) AACDUs shall have a minimum of one designated parking space.
 - (h) No AACDU shall be sold (in condominium form of ownership) separate or apart from the principal structure to which it is an accessory use.
- (3) Affordable multifamily dwelling units (AMDU).
 - (a) (Reserved)

ARTICLE X

Administration and Enforcement

§ 179-43. Enforcement. [Amended 11-13-2006 FYTM, Art. 30]

This chapter shall be enforced by the Building Commissioner, assisted by a Zoning Agent appointed by the Selectmen. Buildings, structures or signs may not be erected, substantially altered, moved or changed in use, and land may not be changed in principal use without certification by the Building Commissioner that such action is in compliance with then-applicable zoning, or without review by him regarding whether all necessary permits have been received from those governmental agencies from which approval is required by federal, state or local law. Issuance of a building permit or certificate of use and occupancy, where required under the Commonwealth of Massachusetts State Building Code, may serve as such certification.

§ 179-44. Action by Zoning Agent. [Amended 11-13-2006 FYTM, Art. 30]

Materials submitted in application for such certification shall, upon receipt, be forwarded by the Building Commissioner to the Zoning Agent, who within three weeks of receipt by him shall determine whether the proposal is eligible to proceed, requires a special permit or is not in compliance with this chapter. The Zoning Agent shall also take such action as may be necessary to secure full compliance with the provisions of this chapter and of permits and variances issued hereunder, including notification of noncompliance and request for legal action through the Building Commissioner and Selectmen to Town Counsel.

§ 179-45. Previously approved permits.

The status of previously approved permits shall be determined in this article.

§ 179-46. Establishment of fees.

Fees shall be established by the Selectmen.

§ 179-47. Conformance to subsequent amendments.

Construction or operations under a building or special permit shall conform to any subsequent amendment of this chapter unless the use or construction is commenced within a period of six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

§ 179-48. Notice of violation and order. [Amended 11-13-2006 FYTM, Art. 30]

The Building Commissioner or Zoning Agent shall serve a notice of violation and order to any owner or person responsible for the erection, construction, reconstruction, conversion, alteration of a structure or change in use, increase in intensity of use or extension or displacement of use of any structure or lot in violation of any approved plan, information or drawing pertinent thereto; or in violation of a permit or certificate issued under the provisions of this chapter and such order shall direct the immediate discontinuance of the unlawful action, use or condition and the abatement of the violation. Any owner who has been served with a notice and ceases any work or other activity shall not leave any structure or lot in such a condition as to be a hazard or menace to the public safety, health, morals or general welfare.

§ 179-49. Violations and penalties. [Amended 1-13-1986 STM, Art. 15; 11-17-2003 FYTM, Art. 20; 5-3-2004 ATM, Art. 23]

- A. Any person, trust or other enterprise who violates or refuses to comply with any of the provisions of this chapter, any of the conditions under which a permit is issued or any decision rendered by the Board of Appeals may be fined by the Inspector of Buildings a sum of up to \$300 for each offense, unless otherwise noted in this chapter. Failure to respond to a properly issued citation within 21 days will make the person, trust or other enterprise not in compliance with the pertinent Zoning Bylaw, unless afforded protection under Article VIII of this chapter, and subject to the following penalty:
 - (1) First offense: warning.
 - (2) Second offense: fine of \$100.

- (3) Third offense: fine of \$200.
- (4) Fourth and subsequent: fine of \$300.
- B. Any Zoning Bylaw of the Town of Brewster enforceable by the Inspector of Buildings or his designee may, as an alternative to initiating criminal proceedings, be enforced by the Inspector of Buildings or his designee by the method provided in MGL c. 40, § 21D.
- C. For zoning violations of building permits, special permits, variances, certificates of occupancy, orders, bylaws, and statutes, or the conditions of any other permit or certificate issued under this chapter, the Building Commissioner may impose fines and institute enforcement actions, either criminal or civil, either legal or equitable or both. Each day the violation continues shall be a separate offense. [Added 11-13-2006 FYTM, Art. 26]

§ 179-50. Board of Appeals.

- A. Membership. There shall be a Board of Appeals of five members and four associate members. [Amended 8-27-1984 STM, Art. 67]
- B. Appointment. Members of the Board in office at the effective date of this chapter shall continue in office. Hereafter, as terms or vacancies occur, the Board of Selectmen shall make appointments pursuant to the Zoning Act.
- C. Powers. The Board shall have those powers granted under the Zoning Act.
- D. Adoption of rules. The Board shall adopt rules to govern its proceedings pursuant to the Zoning Act.
- E. Appeals. Appeals to the Board shall be taken in accordance with the rules of the Board.

§ 179-51. Special permits.

- A. Certain uses, structures or conditions are designated as permitted on special permit in § 179-11, Table of Use Regulations, and elsewhere in this chapter. Upon application duly made to the Board of Appeals or other designated Special Permit Granting Authority (SPGA), in appropriate cases and subject to appropriate conditions and safeguards, such special permits and no others may be granted. If an applicant needs a special permit from the Planning Board acting under either Article IX, Special Regulations, § 179-40.1, Personal Wireless Services and Communication Facilities Bylaw, or Article XII, Site Plan Review, and another special permit from the Board of Appeals, the applicant may file a single, combined, special permit application with the Planning Board, and in those instances, the Planning Board is authorized to grant all special permit relief in one proceeding and decision. The applicant shall comply with all requirements, and the Planning Board shall apply the appropriate criteria, including the criteria of § 179-51, to the various components of such an application. [Amended 5-11-1992 ATM, Art. 33; 11-15-1993 FYTM, Art. 16; 5-3-1999 ATM, Art. 32; 5-3-2004 ATM, Art. 22; 11-13-2006 FYTM, Art. 21] [Amended 5-2-2011 ATM Article 31]
 - (1) Applications. Written application shall be made to the SPGA for such permit containing a statement of the proposed use or uses, a site plan showing the proposed site development and, in the case of a multifamily development, plans in accordance with § 179-34 and such other related information concerning the proposed use of the premises as the SPGA

shall require.

- (2) Hearing action. Within 65 days of the receipt of such application, the SPGA shall hold a public hearing. The notice of the time and place of such hearing and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing. The SPGA shall send notice by mail, postage prepaid, to all parties in interest as specified in MGL c. 40A § 11. At the hearing, any party whether entitled to notice thereof or not may appear in person or by agent or by attorney. Thereafter, the SPGA shall grant the permit, grant the permit upon specific conditions, or deny the permit within 90 days of the date of said hearing. The SPGA shall cause to be made a detailed record of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and setting forth clearly the reason or reasons for its decisions and of its official actions, copies of all of which shall be immediately filed in the office of the Town Clerk and shall be a public record, and notice of decisions shall be mailed forthwith to the parties in interest as designated above, to the Planning Board and to every person present at the hearing who requests that notice be sent to him and states the address to which such notice is to be sent. Upon the granting of a limited or conditional zoning variance or special permit, the SPGA shall issue to the landowner a notice, certified by the Chairman or Clerk, containing the name and address of the landowner, identifying the land affected and stating that a limited or conditional variance or special permit has been granted, which is set forth in the decision of the SPGA on file in the office of the Town Clerk of the Town in which the land is located. No such variance or permit shall take effect until such notice is recorded in the Barnstable County Registry of Deeds. The fee for recording such notice shall be paid by the owner, and the notice shall be indexed in the grantor index under the name of the owner of record.
- (3) Conditions. Special use permits shall be granted ~~only~~ upon the concurring vote of four or more members of the Board of Appeals or by the concurring vote of 5 members of the Planning Board, and only after the following considerations, where applicable [amended May 5, 2008, ATM Article 21]: written reports from the Inspector of Buildings and the Zoning Agent with regard to the specific site as an appropriate location for the use or structure; written reports from the Brewster Board of Health and, where applicable, the Massachusetts Department of Environmental Quality Engineering with regard to the adequacy of public sewerage and water systems; written reports from the Planning Board with regards to any roads or subdivision of land within any multifamily development; written reports from the Police and Fire Departments with the regard to the safety and convenience of travel on ways within and adjacent to any multifamily development and with regard to any possible adverse effect on the neighborhood; written reports from the Town Engineer with regard to the proper construction of ways and drainage within any multifamily development; written reports from the Architectural Advisory Committee with regard to their findings relative to any multifamily development; and, after consideration, that there are adequate and appropriate facilities to ensure the proper operation of the proposed use (structure, condition or development). The SPGA shall authorize such special permit only when it finds that, in view of these considerations and subject to the special regulations stated in Article XI, such permit is consistent with the

intent of this chapter and generally in conformity with the Brewster Master Plan, as last revised.

- (4) Expirations. Construction or operations under a special permit shall conform to any subsequent amendment of this chapter unless the use or construction is commenced within a period of six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.
- (5) Findings.
 - (a) No special permit shall be granted unless the SPGA finds that the proposed uses are in harmony with the purpose and intent of this chapter and will not be detrimental or injurious to the neighborhood in which it is to take place, or to the public, and that all requirements, standards and conditions for the granting of the special permit have been satisfied. No special permit shall be granted unless the SPGA determines that the proposed use will not be detrimental to the surrounding neighborhood and Town in light of each of the following conditions:
 - [1] The proposed use is consistent with the purpose and intent of the Town of Brewster's Comprehensive Plan.
 - [2] The location, type, character and size of the use/ building, or other structure in connection therewith, will be in harmony with the visual character of the neighborhood, including views and vistas and, where applicable, the historic character of the neighborhood.
 - [3] The site is suitable for the proposed use.
 - [4] Adequate access will be provided for the purpose of fire protection, police protection and other emergency equipment.
 - [5] The streets serving the proposed use are adequate (width, grade, construction, overall safety and design capacity) to carry all prospective traffic and adequate provision is made for entering and leaving the proposed site such that no undue hazard to traffic congestion will be created.
 - [6] The proposed use/development has incorporated applicable trip reduction measures, where possible, in order to minimize vehicular trips to and from the site. These include company sponsored carpooling/vanpooling, bicycle and pedestrian incentives and/or variable work-hour or flextime programs.
 - [7] Adequate parking and loading facilities are provided in accordance with § 179-22.
 - [8] The site will be suitably landscaped to protect the character of the neighborhood and adjacent property.
 - [9] The proposed use has an adequate method of sewage disposal, source of water and drainage.
 - [10] Adequate utilities and other public services will be provided.

[11] The proposed use will not result in the degradation of groundwater quality or coastal water quality off site.

[12] The location and design of buildings, roads, parking and loading areas will not cause avoidable damage to wildlife habitats or corridors or to any plant species listed as endangered, threatened or of special concern by the Massachusetts Natural Heritage and Endangered Species Program.

[13] The proposed use complies with all applicable provisions of this Zoning Bylaw.

- (b) It shall be the responsibility of the applicant, at the time an application for the special permit is made, to provide plans and reports which describe the proposed development's conformance with the required findings of this section. Any data, plans and reports submitted in support of an application may be used to identify additional conditions and stipulations of approval of a special permit.
 - (c) The SPGA shall also make such further findings as may otherwise be required by this chapter and may attach such conditions or safeguards or limitations on the grant of the special permit as it finds to be appropriate and reasonable to protect the surrounding neighborhood and town.
 - (d) For developments subject to Chapter 83, Development Plan Review, it is recommended that applicants incorporate development standards specified under Chapter 83, as well as applicable development standards specified in this Zoning Bylaw (Chapter 179), to better coordinate permitting under both bylaws.
- (6) Referral.
- (a) The SPGA shall refer all special permit applications to the Board of Health and, where applicable, to the Building and Zoning Commissioner, Massachusetts Department of Environmental Protection, Conservation Commission, Planning Board, Police and Fire Departments, Department of Public Works and Brewster Historic District Committee for written comments and recommendations before taking action on said special permit application. In addition to the above noted Boards, the SPGA may refer a special permit application to any other board/committee/department for comments and recommendations if it so desires before taking final action on said special permit application. A public hearing on said referral shall not be required.
 - (b) Any such board/committee/department to which applications are referred for comment shall make its recommendations and send copies thereof to the SPGA and the applicant within 35 days of receipt of the referral request by the SPGA, or there shall be deemed no opposition or desire to comment. The SPGA shall not act upon said special permit until either comments from each referred board/committee/department have been received or said 35 days have elapsed, whichever is sooner. Applications referred to more than one board or agency may be reviewed jointly by said boards or agencies.

B. Not counting the period of an appeal, special permits shall lapse 24 months after they are

available to the applicant unless 1) a substantial use of the special permit has begun 2) construction has started and has proceeded as reasonably practical, or 3) the special permit holder demonstrates to the special permit granting authority good cause for not complying with 1) or 2). Special permits may specify a date or dates by which events must occur or construction must be completed in order for the special permit holder to avoid the lapse of that special permit. [Amended 11-13-2006 FYTM, Art. 27]

§ 179-52. Variances.

- A. The Board of Appeals may hear and decide appeals or petitions for variances from the terms of this chapter, including variances for use, with respect to particular land or structures. Such variance shall be granted only in cases where the Board of Appeals finds all of the following:
- (1) A literal enforcement of the provisions of this chapter would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.
 - (2) The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures, but not affecting generally the zoning district in which it is located.
 - (3) Desirable relief may be granted:
 - (a) Without substantial detriment to the public good.
 - (b) Without nullifying or substantially derogating from the intent or purpose of this chapter.
- B. In authorizing a variance, the Board may impose conditions, safeguards and limitations, both of time and use, including the continued existence of any particular structures but excluding any conditions, safeguards or limitations based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner. [Amended 11-13-1989 STM, Art. 31]

ARTICLE XI

WATER QUALITY PROTECTION BYLAW

[Amended 11-17-2008 FSTM Article 17/Attorney General 6-15-2009]

§ 179-53. Purpose.

The purposes of this Water Quality Protection Bylaw are:

- A. To promote the health, safety and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions and businesses of the Town of Brewster;
- B. To preserve and protect all existing and potential sources of drinking water supplies within Brewster's borders;
- C. To identify uses that should be prohibited or allowed only by special permit;
- D. To protect groundwater and surface water resources from viral, pathogenic, phosphorus and nitrogen contamination and pollution from stormwater runoff;

- E. To complement the Commonwealth's Department of Environmental Protection regulations governing groundwater protection and the Commonwealth's efforts to protect surface and coastal waters;
- F. To protect other sensitive water resource areas, including those land areas that contribute recharge to private drinking water supply wells;
- G. To conserve the natural resources of the Town; and
- H. To prevent temporary and permanent contamination of the water resources of the Town.

§ 179-54. Scope of Authority; Overlay District.

This Bylaw establishes regulations governing land uses and structures and their potential impact upon the Town's water resources. The provisions of Article XI are superimposed over all zoning districts and all land within the Town of Brewster and shall function as an overlay district. Where this Article establishes rules, regulations, requirements, standards or provisions that are stricter than the underlying zoning districts, including those uses and structures found in Table 1 of the Zoning Bylaw, the provisions of this Article shall control. [Amended 10-19-2009 ATM Article 18] In addition, this Article establishes specific requirements for land uses and activities within those portions of the Town of Brewster mapped and identified on the Zoning Map as the District of Critical Planning Concern ("DCPC") entitled "Brewster Water Protection District" as adopted by the Barnstable County Assembly of Delegates pursuant to the Cape Cod Commission Act which includes "Zone I" and "Zone II" and the "Groundwater Protection District" and the "Pleasant Bay Watershed."

§ 179-55. Definitions.

As used in this Article, the following terms shall have the following meanings indicated:

AQUIFER - Geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

BEST MANAGEMENT PRACTICES - means any structural or non structural mechanism designed to minimize the impact of non-point source pollution on receiving waters or resources, including, but not limited to: detention ponds, construction or installation of vegetative swales and buffers, street cleaning, reduced road salting, and public education programs.

BUILDER'S ACRE – a unit of land measure equal to 40,000 square feet, which is considered a building acre in accordance with standard real estate practices.

COMMERCIAL FERTILIZERS - Any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use, or claimed by its manufacturer to have value in promoting plant growth. Commercial fertilizers do not include un-manipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum.

EARTH REMOVAL - The removal or relocation of geologic materials, such as topsoil, sand, gravel, metallic ores or bedrock. Mining activities are considered earth removal, whether the disturbed natural materials are removed from the site or re-worked on the site.

DEP - The Massachusetts Department of Environmental Protection.

DEVELOPMENT- means the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mine, excavation, landfill, or land disturbance; and/or any change in use, or alteration or extension of the use, of land.

DISCHARGE - The accidental or intentional disposal, deposit, injection, dumping, spilling, leaking, incineration, or placing of toxic or hazardous material or waste upon or into any land or water so that such hazardous waste or any constituent thereof may enter the land or waters of Brewster. Discharge includes, without limitation, leakage of such materials from failed or discarded containers or storage systems and disposal of such materials into any on-site leaching structure or sewage disposal system.

HAZARDOUS OR TOXIC MATERIALS - Any substance or mixture of physical, chemical or any infectious characteristics posing a significant, actual or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Brewster. Hazardous or toxic materials include, without limitation, organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, solvents and thinners and products such as pesticides, herbicides in quantities greater than normal household use; and all substances defined as hazardous or toxic under Massachusetts General Laws (MGL), Chapters 21C and 21E, using the Massachusetts Oil and Hazardous Substance List (310 CMR 40.0000), and 310 CMR 30.00.

HAZARDOUS MATERIAL OR WASTE, HOUSEHOLD QUANTITY OF - means any or all of the following:

- a) 275 gallons or less of oil on site at any time to be used for heating of a structure or to supply an emergency generator, and
- b) 25 gallons (or the dry weight equivalent) or less of other hazardous materials on site at any time, including oil not used for heating or to supply an emergency generator, and
- c) a quantity of hazardous waste at the Very Small Quantity Generator level as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR Section 30.353.

HISTORICAL HIGH GROUNDWATER TABLE ELEVATION - A groundwater elevation determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey.

IMPERVIOUS SURFACE - Material or structure on, above or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

LANDFILL - A facility established in accordance with a valid site assignment for the purposes of disposing solid waste into or on the land, pursuant to 310 CMR 19.006.

LOT – as per Chapter 179-2 Definitions.

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

NITROGEN MANAGEMENT- means the process of ensuring that nitrogen generated by land uses does not exceed established capacities of the resources receiving nitrogen inputs.

NON-SANITARY WASTEWATER- Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage including, but not limited to, activities specified in the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6).

OPEN DUMP - A facility which is operated or maintained in violation of the Resource Conservation and Recovery Act (42 U.S.C. 4004(a)(b)), or the regulations and criteria for solid waste disposal.

POTENTIAL DRINKING WATER SOURCES - Areas that could provide significant potable water in the future.

PETROLEUM PRODUCT - Petroleum or petroleum by-product including, but not limited to: fuel oil; gasoline; diesel; kerosene; aviation jet fuel; aviation gasoline; lubricating oils; oily sludge; oil refuse; oil mixed with other wastes; crude oils; or other liquid hydrocarbons regardless of specific gravity. Petroleum product shall not include liquefied petroleum gas including, but not limited to, liquefied natural gas, propane or butane.

PROCESS WASTEWATER - All wastewater disposed of on site other than sanitary wastewater.

RECHARGE AREAS - Areas that collect precipitation or surface water and carry it or have it pumped to aquifers. "Recharge areas" may include areas designated as Zone I, Zone II or Zone III.

SEPTAGE - The liquid, solid, and semi-solid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. Septage does not include any material that is a hazardous waste, pursuant to 310 CMR 30.000.

SLUDGE - The solid, semi-solid, and liquid residue that results from a process of wastewater treatment or drinking water treatment. Sludge does not include grit, screening, or grease and oil which are removed at the headworks of a facility.

STORMWATER MANAGEMENT - means the process of ensuring that the magnitude and frequency of stormwater runoff does not increase the hazards associated with flooding and that water quality is not compromised by untreated stormwater flow.

SUBDIVISION - means the division or re-division of a lot, tract, or parcel of land into two or more lots, tracts, or parcels in accordance with G.L. c.41 s.81-L.

TIGHT TANK- Any and all containers or devices with regard to or used for wastewater disposal as defined and regulated by the State Sanitary Code, 310 CMR 15.260.

TREATMENT WORKS - Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

VERY SMALL QUANTITY GENERATOR - Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

WASTE OIL RETENTION FACILITY - A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with M.G.L. c.21, section 52A.

WATER QUALITY REVIEW COMMITTEE (WQRC)- Shall consist of a Committee to be appointed by the Board of Selectmen to include seven members; one member each from the Board of Selectmen, Board of Health, Planning Board, Conservation Commission and Water Commissions, the Brewster Building Commissioner and the Brewster Health Agent. At the initial appointment, to occur no later than three weeks after the effective date of this Bylaw, members other than the Building Commissioner and the Health Agent

shall be appointed for one, two and three year terms and thereafter all members shall be appointed for three year terms. The Building Commissioner and Health Agent shall serve as members of the WQRC while they are employed in their respective positions.

ZONE I - The immediate land area around a well. It is defined as a 400 foot protective radius for wells greater than 100,000 gpd and 100 to 400 foot radius for wells less than 100,000 gpd, depending upon the pumping rate. The Zone I must be owned by the water supplier or controlled through a conservation restriction. Only water supplier activities are allowed in the Zone I.

ZONE II - The DEP approved area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated as defined in 310 CMR 22.00. The Zone II includes the Zone I.

ZONE III - The land area beyond the area of Zone II from which surface water and groundwater drain into Zone II. Zone III boundaries are determined by identifying the topographic surface water drainage divides. The surface water drainage area commonly coincides with the groundwater drainage; however, in areas where they are not coincident, the Zone III encompasses both the surface and groundwater drainage area.

§ 179-56. Use Regulations.

- A. Provided that all necessary permits, orders, or approvals as required by local, county, state, or federal law are also obtained and notwithstanding any requirement to the contrary found within this Article, the following uses and activities shall be exempted from the requirements of this Article and may occur without a special permit:
- (1) Continuous Transit. The transportation of hazardous wastes or materials provided that the transporting motor vehicle is in continuous transit;
 - (2) Vehicular and Lawn Maintenance Fuel and Lubricant Use. The use in a vehicle or lawn maintenance equipment of any hazardous material solely as fuel or lubricant in that vehicle or equipment fuel tank;
 - (3) Retail/Wholesale Sales/Office/Commercial Uses that store or handle hazardous materials or wastes in amounts that do not exceed household quantities;
 - (4) Construction Activities. The activities of constructing, repairing, or maintaining any building or structure, provided that all contractors, subcontractors, laborers, and their employees follow all local, county, state and federal laws, when using, handling, storing, or producing any hazardous materials or wastes.
 - (5) Household Use. The household use of hazardous materials or wastes in amounts that do not exceed household quantities.
 - (6) Municipal Use. The municipal use of hazardous materials and any materials stored and used for the sole purpose of water supply treatment or as required by law; and
 - (7) Storage of Oil(s). The storage of oil(s) used for heating fuel, provided that the container used for such storage shall be located within an enclosed structure that is sufficient to preclude leakage of oil to the external environment and to afford routine access for visual inspection and shall be sheltered to prevent the intrusion of precipitation.

- (8) Conservation of soil, water, plants, and wildlife;
- (9) Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted;
- (10) Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
- (11) Use and development of single-family residential dwelling units;
- (12) Use of land pursuant to an approved definitive subdivision plan, special permit, or variance;
- (13) Farming, gardening, nursery, conservation, forestry, harvesting, and grazing;
- (14) Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels;
- (15) Underground storage tanks related to permitted activities.

B. Prohibited uses within the Town of Brewster.

The following uses are prohibited throughout and within the Town of Brewster:

- (1) [Deleted]
- (2) Landfills receiving only wastewater and/or septage (wastewater residuals “monofils”) as defined in 310 CMR 32.05, approved by the DEP pursuant to M.G.L. c. 21, sections 26 through 53; M.G.L. c. 111, section 17; M.G.L. c. 83, sections 6 and 7, and regulations promulgated thereunder;
- (3) Storage of sludge and septage, as defined in 310 CMR 32.05, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31.
- (4) Storage of deicing chemicals, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads, unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
- (5) Storage of animal manure, unless such storage is covered or contained within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
- (6) Earth removal, not consistent with Section 179-39 of the Brewster Zoning Bylaw.
- (7) Facilities that generate, treat, store or dispose of hazardous waste subject to MGL c. 21C and 310 CMR 30.000, except for the following:
 - (a) Very Small Quantity Generators of Class A Regulated Recyclable Material as defined under 310 CMR 30.000.
 - (b) Household hazardous waste centers and collection events under 310 CMR 30.390.
 - (c) Waste oil retention facilities required by MGL c. 21, § 52A.

- (d) Water remediation treatment works approved by the Department of Environmental Protection (DEP) designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters and operated in compliance with M.G.L. c. 21E and 310 CMR 40.000.
- (8) Automobile graveyards and junkyards, as defined in MGL c. 140B, § 1.
- (9) Storage of dry hazardous materials, as defined in MGL C. 21E, unless in a freestanding container within a building or above ground with adequate secondary containment adequate to contain a spill the size of the container's total storage capacity.
- (10) Storage of fertilizers unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate.
- (11) Land uses that result in rendering impervious any lot or parcel more than 15% or 2,500 square feet, whichever is greater, unless a system for artificial recharge of precipitation is provided that will not result in the degradation of groundwater quality.
- (12) Any floor drainage system which discharges to the ground without a DEP permit or authorization

C. Prohibited uses within Zones I and Zones II of the Ground Water Protection District.

The following uses, which may be allowed in other areas of the Town of Brewster are prohibited in Zones I and II of the Ground Water Protection District. Notwithstanding language to contrary found within Section 179-52 of the Zoning Bylaw, no variance for a use or activity not otherwise permitted shall be granted by the Board of Appeals within Zones I or Zones II of the Ground Water Protection District.

- (1) Storage of liquid petroleum and/or liquid hazardous products (as defined in M.G.L. c. 21E), except the following: normal household use, outdoor maintenance and heating of a structure; fuel storage facilities as licensed by the Town; waste oil retention facilities required by statute, rule or regulation; emergency generators required by statute, rule or regulation.
- (2) Petroleum, fuel oil, and heating oil bulk stations and terminals including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5983 and 5171, not including liquefied petroleum gas.
- (3) Treatment works that are subject to 314 CMR 5.00 (not Title 5 septic systems), including privately owned sewage treatment facilities, except for the following:
 - (a) The replacement or repair of an existing treatment works that will not result in a system capacity greater than the system capacity of the existing treatment work;
 - (b) The replacement of existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a system capacity greater than the system capacity of the existing system(s);
 - (c) Treatment works approved by DEP designed for the treatment of contaminated groundwater; and

- (d) Sewage treatment facilities in those areas with existing water quality problems when it has been demonstrated to DEP and the Planning Board's satisfaction that these problems are attributable to current septic problems and that there will be a net improvement in water quality.
- (4) Stockpiling and disposal of snow or ice removed from highways and streets located outside of a Zone II that contains sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.
- (5) Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material within ten (10) vertical feet of historical high groundwater table elevation, as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey.
- (6) Industrial and commercial uses which discharge process wastewater on site.
- (7) Facilities or works for the treatment or disposal of non-sanitary wastewater that are subject to 314 CMR 5.00, or that discharge to the ground nonsanitary wastewater, including industrial and commercial process waste water, except the following:
 - (a) the replacement or repair of an existing system/treatment works that will not result in a design capacity greater than the design capacity of the existing system/treatment works;
 - (b) treatment works approved by the Department of Environmental Protection designed for the treatment of contaminated ground water and operating in compliance with 314 CMR 5.05(3) or 5.05(13); and
 - (c) publicly owned treatment works.
- (8) Storage of commercial fertilizers, as defined herein and in G.L. c. 128, § 64.
- (9) Gasoline stations, automotive service stations or car washes or motor vehicle or commercial boat storage or repair. For the purposes of this Chapter, "commercial" is defined as any activity involving the sale of goods or services carried out with the intent of earning a profit.
- (10) Dry cleaning establishments.

D. Uses/Structures Allowed by Special Permit –

- (1) Unless otherwise exempted or prohibited elsewhere by this Article and as otherwise permitted in the underlying zoning district, the following uses and activities shall require a Special Permit from the Planning Board. Where the use or activity requires a special permit from another special permit granting authority, the provisions of this Article shall nevertheless apply, although the Planning Board and the other special permit granting authority may hold a combined public hearing pursuant to G.L. c.40A, s.9 in lieu of separate public hearings:
 - (a) [Deleted]
 - (b) the application for the construction of 10 or more dwelling units, whether on one or more contiguous lots, tracts, or parcels, or whether contained within one or more structures;

- (c) the application for a nonresidential use of 40,000 square feet or greater in lot size or 5,000 square feet gross floor area;
- (2) Provided that the following uses and/or structures are permitted by the underlying zoning district and other relevant regulations, a special permit may be issued by the Planning Board for the following uses and/or structures, provided that the Planning Board may impose conditions upon the use or structure, consistent with the authority provided in G.L. c.40A, s.9, such that the use or structure will not, in the Planning Board's sole judgment, be inconsistent with the purpose and intent of this Bylaw. Notwithstanding the powers hereby conveyed by this Article and G.L. c.40A, s.9 to the Planning Board and in recognition of the expertise found within the members of the Water Quality Review Committee, the Planning Board shall, in accordance with the procedures of G.L. c.40A, s.11, cause all applications for a special permit pursuant to this Article to be submitted to the Water Quality Review Committee for the Committee's comments and recommendations as provided by G.L. c.40A, s.11. The Planning Board shall include in its decision an explanation regarding any substantive deviation from the Committee's recommendation regarding the approval, denial or conditional approval of the special permit application.
- (a) [Deleted]
 - (b) The application of fertilizers for non-domestic or non-agricultural uses. Such applications shall be made in a manner so as to minimize adverse impacts on groundwater due to nutrient transport, deposition and sedimentation.
 - (c) The construction of dams or other water control devices, ponds, pools or other changes in water bodies or courses, created for swimming, fishing or other recreational uses, or drainage improvements.
 - (d) Any use that will render impervious more than fifteen percent (15%) or two thousand five hundred (2,500) square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For nonresidential uses, recharge shall be by stormwater infiltration basins or similar systems covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all nonresidential uses, all such basins and wells shall be preceded by oil, grease and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.
 - (e) Any use which involves on-site wastewater disposal facilities having over 10,000 gallons per day capacity or disposal of process waste from operations other than personal hygiene and food for residents, patrons and employees.
 - (f) Commercial boat and motor vehicle, storage, service or repair. For the purposes of this Chapter, "commercial" is defined as any activity involving the sale of goods or services carried out with the intent of earning a profit.
 - (g) Storage of home heating fuels in approved containers in amounts greater than 275 gallons or in the aggregate, greater than 275 gallons.
 - (h) Treatment works that are subject to 314 CMR 5.00, including privately owned sewage treatment facilities, and:

1. The replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works.
2. The replacement of existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s).
3. Treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated groundwater.
4. Sewage treatment facilities in those areas with existing water quality problems when it has been demonstrated to the Department of Environmental Protection's and the Special Permit Granting Authority's satisfaction both that these problems are attributable to current septic problems and that there will be a net improvement in water quality.

179-57 Performance Standards.

To preserve the natural land surface providing high-quality recharge to the groundwater, to limit sewage flow and fertilizer application to amounts which will be adequately diluted by natural recharge and to prevent the discharge or leakage of toxic or hazardous substances into the surface and groundwater resources, all **new, altered or expanded** uses within Zone I, Zone II and/or the DCPC area shall meet the following performance standards, in addition to those requirements imposed by this Article or the Planning Board: [Amended 10-19-2009 ATM Article 18]:

- A. No new, altered or expanded uses within Zone I, Zone II and/or the DCPC area shall exceed a 5 parts per million (ppm) nitrogen loading standard based on the methodology contained in the Cape Cod Commission's Nitrogen Loading Technical Bulletin 91-001. [Amended 10-19-2009 ATM Article 18]

The concentration of nitrate nitrogen resulting from domestic wastewater disposal and from fertilizer application, when diluted by rainwater recharge on the lot, shall not exceed five parts per million (5 ppm).

- (1) Compliance with this standard is presumed under the following conditions:

For the purposes of calculating nitrogen generation, the following standards shall be used:

- (a) nitrogen from dwelling units that use septic systems assuming (three persons per dwelling): 35 mg/l;
- (b) nitrogen from lawn fertilizers: three pounds per 1,000 square feet (25 % leached);
- (c) nitrogen in background precipitation: 0.05 mg/l;
- (d) runoff from roads and ways: 1.50 mg/l;
- (e) runoff from roofs: 0.75 mg/l

- B. All toxic or hazardous materials shall be stored in product-tight containers, protected from corrosion, accidental damage or vandalism and shall be used and handled in such a way as to prevent spillage with provisions for spill containment and cleanup procedures. In addition, commercial enterprises shall be required to maintain a product inventory and reconcile said inventory with purchase, use, sales and disposal records at sufficient intervals to detect product loss. Subsurface fuel and chemical storage facilities in compliance with local regulations and Massachusetts fire prevention regulations shall be deemed to be in compliance with this standard.

- C. No toxic or hazardous materials shall be present in waste disposed on the site. Waste composed in part or entirely of toxic or hazardous materials shall be retained in product-tight containers for removal and disposal by a licensed scavenger service or as directed by the Board of Health.
- D. Contaminant levels in groundwater resulting from disposal of any substance from operations, other than personal hygiene and food for residents, patrons and employees or from wastewater treatment and disposal systems greater than 10,000 gallons per day capacity, shall not exceed those levels specified in the Drinking Water Regulations of Massachusetts, 310 CMR 22.00, after allowing for dilution by natural recharge on the premises. If higher, background levels of individual constituents in the groundwater shall not be exceeded.
- E. All runoff from impervious surfaces shall be recharged on the site and diverted towards areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are infeasible and shall be preceded by oil, grease and sediment traps to facilitate removal of contaminated solids. In the vicinity of chemical or fuel delivery points, provision shall be made for spill control.
- F. The Planning Board shall ensure that land uses, structures and related developments conform to the following performance standards for storm water management.
 - (1) No development shall result in a direct discharge of untreated stormwater, either on or offsite.
 - (2) Post development discharge rates shall not be greater than predevelopment discharge rates.
 - (3) New development shall maximize recharge to groundwater.
 - (4) New development shall be required to remove, onsite, no less than 80% of the annual total suspended solids generated from development runoff.
 - (5) Best management practices shall be maintained for appropriate periods of time.
- G. Sand and gravel removal operations shall be limited to a plane that is at least ten (10) feet above the historical high groundwater level for that location. Land area exposed at any one time shall be limited to no more than five (5) contiguous acres in surface area and land disturbed by sand and gravel removal operations shall be returned to a natural vegetative state within one year of completion of operations.
- H. Monitoring of Regulated Substances in Groundwater Monitoring Wells. If required by the Planning Board, groundwater monitoring well(s) shall be provided at the expense of the applicant in a manner, number, and location approved by the Planning Board. Except for existing wells found by the Planning Board to be adequate for this provision, the required well(s) shall be installed by a water well contractor. Samples shall be analyzed and analytical reports that describe the quantity of any hazardous material or waste present in each monitoring well shall be prepared by a Massachusetts certified laboratory.

§ 179-58. Prohibited Uses within the Pleasant Bay Watershed.

[RESERVED]

§ 179-58.1. Uses/Structures Allowed by Special Permit within the Pleasant Bay Watershed.

[RESERVED]

§ 179-58.2. Performance Standards within the Pleasant Bay Watershed.

[RESERVED]

§ 179-59. Prohibited Uses within the Watersheds of Surface Water Bodies Other than Pleasant Bay.

[RESERVED]

§ 179-59.1 Uses/Structures Allowed by Special Permit within Watersheds of Surface Water Bodies Other than Pleasant Bay.

[RESERVED]

179-59.2. Performance Standards within the Watersheds of Surface Water Bodies Other than Pleasant Bay.

[RESERVED]

§ 179-60. [Reserved]

§ 179-61. Water quality review.

- A. Water Quality Review Committee. There is hereby established a Water Quality Review Committee (WQRC), comprising one representative each appointed from time to time by and from the Board of Selectmen, Board of Health, Planning Board, Conservation Commission, Water Commission, Health Director and Building Commissioner.
- B. Certificate of water quality compliance.
 - (1) A certificate of water quality compliance shall be obtained by the owner of the premises from the WQRC or, for special permit uses, from the SPGA:
 - (a) For erection of any new principal structure other than a single-family dwelling or for change in occupancy requiring a certificate of use and occupancy under the State Building Code.
 - (b) For occupancy of any premises not requiring a Certificate of use and occupancy but involving the storage, handling or transportation of toxic or hazardous wastes.
 - (2) No building permit or certificate of use and occupancy shall be issued by the Building Commissioner unless a certificate of water quality compliance, if required, has been applied for or obtained.
- C. Requirements. A certificate of water quality compliance shall be granted only as follows:
 - (1) For new construction or additions or new activities not involving structures, only if in full compliance with all requirements of § 179-60, Performance standards.
 - (2) For change in occupancy or operation on previously developed premises, only if the requirements of § 179-60B, C and D are met, and the requirements of all other subsections of § 179-58 are either met or, if previously exceeded, there will be no further increase in noncompliance.
- D. Submittals. In applying for a certificate of water quality compliance or a special permit, seven sets of application materials shall be submitted to the Building Commissioner, who shall forward one set to each member of the WQRC. In the case of uses requiring a special permit

under § 179-58B, one set shall also be submitted to the SPGA along with any other application materials. All information necessary to demonstrate compliance must be submitted, including but not limited to the following:

- (1) A complete list of all chemicals, pesticides, fuels and other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use, accompanied by a description of measures to protect from vandalism, corrosion and leakage and to provide for control of spills.
 - (2) A description of potentially toxic or hazardous materials to be generated, indicating storage and disposal method.
 - (3) Evidence of approval by the Massachusetts Department of Environmental Protection of any industrial waste treatment or disposal system or any wastewater treatment system over 15,000 gallons per day capacity, accompanied by analysis by a professional engineer in sanitary or civil engineering registered in the Commonwealth of Massachusetts certifying compliance with § 179-60D.
- E. Action. For uses not requiring a special permit under § 179-58B, the WQRC shall act within 21 days of application, approving it by issuing a certificate of compliance if a majority determine that the applicant has adequately demonstrated compliance with the requirements of the Water Resource District, and rejecting the application otherwise. For uses requiring a special permit under § 179-58B, the WQRC shall make recommendations to the SPGA within 35 days of receipt of the application, as provided in MGL C. 40A, § 11.
- F. Certificate review.
- (1) Each three years the WQRC shall review compliance with this Article and the certificate of water quality compliance. Upon request, certificate holders shall submit the following:
 - (a) Description of any changes from the originally submitted materials.
 - (b) Certification that the waste disposal system has been inspected by a licensed septic system installer or treatment plant operator within the preceding 90 days and found to be properly maintained and in proper operating condition.
 - (c) Results from analysis of leachate or wastewaters as may be required by the Board of Health.
 - (2) Evidence of noncompliance shall be reported to the Building Commissioner for enforcement action.

§ 179-62. Enforcement.

- A. Inspection. These provisions shall be enforced by the Building Commissioner. The Building Commissioner or agent of the Board of Health may enter upon the premises at any reasonable time to inspect for compliance with the provisions of this Article. Evidence of compliance with approved waste disposal plans may be required by the enforcing officers. All records pertaining to waste disposal and removal shall be retained.
- B. Violations. Written notice of any violations shall be provided to the holder of the certificate of

water quality compliance, specifying a time for compliance, including cleanup of any spilled materials which is reasonable in relation to the public health hazard involved and the difficulty of compliance, but in no event shall more than 30 days be allowed for either compliance or finalization of a plan for longer term compliance, approved by the WQRC.

ARTICLE XII
Site Plan Review

[Amended 5-2-2011 ATM Article 30]

§ 179-63. Purpose.

The purpose of this Article is the protection of public health, safety and welfare through the preservation of the Town's transportation corridors and protection of its historic and cultural character for the residents and visitors of the Town of Brewster. In addition, the Site Plan Review process assures that the site functions in a logical fashion with minimal impacts. The Site Plan Review of development activities can reduce the potential number of vehicular trips along the Town's road systems, thereby reducing congestion and improving safety. The adoption of standards for transportation, access, parking, landscaping and appearance ensures that future development will not degrade the existing character of the Town's roadways and surroundings and will maintain or enhance the ability of the corridors to serve as cultural assets for the residents and visitors of the Town of Brewster.

§ 179-64. Applicability.

In addition to any other permits required, the following development activities shall require a site plan special permit from the Planning Board:

- A. Any development required to undertake Staff Review pursuant to Section 83-3 A of the General By-laws
- B. The establishment of any new commercial, industrial, or multi-family use.
- C. For commercial, industrial, or multi-family uses, any increase of floor area by more than 500 square feet through either a new principal building; a new accessory building; or an addition to a pre-existing building shall be allowed only if granted a special permit in accordance with this § 179-66 and § 179-51.
- D. A change of use of an existing structure or lot from its current use to any other commercial, industrial, or multi-family use specified in the Table of Uses, §179-11. However, change of a home occupation shall not require a special permit.
- E. An increase in lot coverage by 10% or more associated with any previously developed commercial, industrial, or multi-family use.

§ 179-65. Regulations.

- A. The special permit granting authority (SPGA) shall be the Planning Board.
- B. The Planning Board shall not grant a special permit under this article until a project required to undergo Staff Review has completed that process.
- C. If the site plan meets the requirements of this article, the Planning Board shall approve it. Notwithstanding the foregoing, such approval may include reasonable conditions to ensure that:
 - (a) Reasonable measures are implemented to provide for screening of parking areas or other parts of the premises, for adjoining premises or from the street, by walls, fences, plantings or other devices.
 - (b) The convenience and safety of vehicular and pedestrian traffic are enhanced.
 - (c) Surface water from parking areas and driveways will be efficiently and safely disposed of by means of a proper drainage system as specified in the Planning Board's approval.

However, the Planning Board cannot deny approval of a site plan for a use which is allowed by right (not by special permit) in the district but may impose reasonable conditions on the proposed use. The Planning Board may not impose conditions on the grant of a special permit the implementation of which would be contrary to any requirement of this by-law or require a variance from it or any other applicable provision of law.

- D. If the project proponent needs both a special permit from the Planning Board acting under this article and a special permit from the Board of Appeals acting under Article VIII, Nonconforming Uses, Structures and Lots, §179-28, Change of nonconforming uses, Subsection A, the proponent may file a single, combined, special permit application with the Planning Board, and in those instances, the Planning Board is authorized to grant all special permit relief in one proceeding and decision. The proponent shall comply with all pertinent requirements, and the Planning Board shall apply the appropriate criteria to the different components of such an application.

§ 179-66. Site Plan standards.

The purpose of these standards is to improve roadway safety and internal site circulation, aesthetics and retention of historic character. All uses requiring a special permit under this Article shall meet the following standards as a condition of approval.

A. Transportation standards.

- 1. Proposed uses shall not degrade the existing levels of service of surrounding roads and intersections, below level of service (LOS) C, based on summer peak-hour traffic volumes. The proponent shall demonstrate that the proposed use shall maintain Level of Service (LOS) C. If the existing level of service is presently below LOS C or if the LOS with the new use would fall below LOS C, the Planning Board may require a traffic study that would indicate ways to maintain or improve performance indicators. The analysis shall be performed using the Highway Capacity Manual published by the Transportation Research Board. When the existing LOS is below C, the proponent shall maintain or improve performance indicators.

2. Driveways shall be designed to provide exiting motorists with safe sight distance. Sight distance at any driveway serving at least 20 trips per day shall meet American Association of State Highway and Transportation Officials standards as well as those set forth in Brewster's Sight Line By-law (Chapter 157, Article VI, of the Town Code).

B. Trip reduction standards.

All retail and service uses and wholesale and manufacturing uses (see § 179-11, Table 1, Use Regulations) shall prepare a trip reduction plan as a condition for issuance of a special permit. The trip reduction plan shall describe traffic impact mitigation strategies designed to reduce traffic generation and may include strategies such as company-sponsored carpooling/vanpooling; bicycle and pedestrian incentive measures; and/or variable work hour or flextime programs. The applicant shall also present a plan for future enforcement of proposed trip reduction measures following permit issuance.

C. Access standards.

1. The number of curb cuts on Route 6A, Route 124, Route 137, Underpass Road and Tubman Road shall be minimized. To the extent feasible, access to businesses shall be provided through one of the following means:
 - i. Access through a common driveway serving adjacent lots or premises;
 - ii. Access through an existing side or rear street; or
 - iii. Access through a cul-de-sac or loop road shared by adjacent lots or premises.
2. The special permit granting authority may relax setback requirements to accommodate joint driveways in cases where it is deemed advantageous to the Town.
3. Existing businesses are encouraged to consolidate existing access points, especially in cases where separate parcels are assembled under one purpose, plan, entity or usage.
4. Businesses shall be permitted one access driveway by right. Two driveways shall be permitted only when deemed necessary by the SPGA and shall be clearly marked "entrance" and "exit."
5. Internal circulation shall be provided, to the greatest extent possible, among adjoining premises to encourage internal property-to-property pedestrian, bicycle and vehicular movements. Site circulation shall have clarity from the driver's perspective, aided by simple patterns and use of planting islands or other devices in larger circulation areas.
6. An occupancy permit shall not be issued for proposed developments requiring access on a state highway until a permanent state curb cut permit is issued and all necessary site improvements are completed.
7. Pedestrian and bicycle circulation shall be provided for between the principal building and the street and, where appropriate, connection to any adjacent developed premises.
8. Pedestrian access and bicycle and wheelchair access where possible, shall be provided among all facilities on the site, between them and the street and between them and adjacent premises developed for uses open to the public.

9. Driveway locations shall provide the maximum practicable separation between access locations, using shared access where feasible.
10. All access drives shall be separated by at least 120 feet in the C-H District and V-B District, as measured between the center line of each access drive at the street line. This standard may only be modified in cases where the SPGA believes it is in the best interest of the Town to do so.
11. A project resulting in more than 100 vehicle trips per day may be required to provide a traffic study to outline the impacts and mitigations opportunities

D. Parking design standards.

1. The Town of Brewster recognizes that reliance on rigid parking and loading lot standards precludes the development of parking lots that are sensitive to the Town's historic and rural character. Yet, it also recognizes that some standards for parking and loading lot design are required, provided that they can be administered with flexibility given the individual requirements of development proposals and the parcels on which they are proposed.
2. Through provisions of its special permit, the SPGA is authorized to relax any and all of numerical standards established by §179-22, Parking and loading requirement tables, and by §179-23, Parking and loading lot standards, if the SPGA finds that:
 - i. Such relaxation will not conflict with the minimum standards established by this article or the purpose of this article; and
 - ii. It will result in a development that is at least as beneficial to the Town of Brewster as the development without a relaxation of the numerical standards.
3. The following guidelines are set forth to assist the applicant and the SPGA:
 - i. Loading and unloading areas shall be provided of a sufficient size to accommodate the numbers and types of vehicles likely to use the premises, given the nature of the development proposed. Loading and unloading areas shall be located and designed to allow vehicles to safely maneuver to and from a public right-of-way and to prevent obstruction or interference with a public right-of-way, parking space or parking aisle.
 - ii. Loading areas shall be provided to the rear of the lot, wherever possible.
 - iii. Parking areas shall be located to the side or rear of the structure. No parking is permitted in the required front yard setback for the structure.
 - iv. To the extent possible, parking areas shall be shared with adjacent businesses and should be situated to the side and rear of the lot (frontage on Route 6A shall be considered the "front" of the lot).
 - v. In cases where shared parking is provided, the SPGA may permit a reduction in necessary spaces since complementary uses may require less total parking area than each use individually.
 - vi. Bicycle users shall be accommodated by provision of on-site bicycle parking

storage and bicycle and walking paths.

- vii. Drainage facilities shall be designed and constructed for parking areas in such a way as to contain and treat stormwater runoff on the premises, as well as comply with design standards referred to in § 179-57 of the Zoning By-law.

E. Landscaping, design and appearance standards.

1. A landscaped buffer strip shall be provided adjacent to any public road to visually separate parking and other uses from the road, where feasible and without interfering with vehicular or pedestrian safety. The buffer strip shall be approximately 15 feet in depth and planted with a combination of grass, medium-height shrubs [approximately two to eight (2 to 8) feet tall, evergreen varieties preferred] and shade trees planted at least every forty to sixty (40 to 60) feet along the road frontage. Trees and shrubs shall be set back at street and driveway entrances, exits or intersections to allow adequate sight distance and ensure vehicular and pedestrian safety while entering or exiting the site. Applicants are encouraged to review Brewster's Sight Line By-law, Chapter 157, Article VI, of the Town Code, prior to designing parking lot landscaping plans.
2. At least 25% of the required front yard area shall be vegetated.
3. A landscaped buffer strip of approximately ten-foot depth shall be provided adjacent to adjoining uses, excluding areas providing shared access and parking. The buffer strip shall be planted with a combination of grass, medium-height shrubs (evergreen varieties preferred) and shade trees.
4. Large parking areas shall be interrupted with landscaped islands such that no parking surface exceeds 60 feet in width, not including the area(s) used for parking aisles/stalls. A minimum of one shade tree shall be provided per five parking spaces to be placed in a protective pervious plot of at least 60 square feet in area.
5. Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be screened from view from neighboring properties and streets using plantings, a wall or tight fence complemented with plantings or through some other means deemed acceptable to the permit granting authority.
6. All landscaped areas shall be maintained. Shrubs and trees which die shall be replaced within one growing season.
7. Buildings and architectural design shall be compatible with the character and scale of the adjacent roadway and surrounding neighborhood.
8. Structures shall be sited so as to allow separations between buildings, particularly to encourage open space in the site and reduce massiveness in the project.
9. The use of bituminous paving shall be minimized.
10. Old, well-established trees shall be protected by siting buildings and parking around or within the existing landscape.
11. Building design shall adhere to the guidelines of the Brewster Historic District Committee in locations subject to review by the Committee. Of significant concern to the Committee are

the issues of mass and size, impact of projects on sites and settings, harmony of design and detail within the project and setting and compatibility of projects, while encouraging variety and diversity.

F. Environmental protection requirements.

1. Stormwater management. All development shall be designed so that resulting stormwater patterns resemble, as nearly as possible, preexisting conditions of volume, velocity, quality and location of runoff. Any increase over predevelopment runoff peak rate shall be authorized only if Staff Review determines that any potential problems with capacity, downstream erosion or siltation will be prevented through on- or off-site improvements or compensatory actions and that the public interest is better served by allowing the increase than by denying it.
2. Erosion control.
 - i. Any area of bare earth exposed through building or site development or demolition must be permanently stabilized through replanting, paving or other means of eliminating wind or water erosion. Such stabilization must be completed prior to building occupancy or, where no building is committed, within 60 days of exposure, or a performance bond must be posted in an amount sufficient to assure completion of such work.
 - ii. Existing grade shall be changed minimally, typically departing from existing grade by no more than six feet and resulting in a balance on site between cut and fill, except for basement and cellar excavations. Existing grade shall be changed minimally, typically departing from existing grade by no more than six feet and resulting in a balance on site between cut and fill, except for basement and cellar excavations.
 - iii. All construction must comply with the following. An erosion control plan shall be submitted for every development which will expose more than 60,000 square feet of bare earth during development through either removal or filling on the same parcel or on contiguous parcels in the same ownership and for developments exposing 20,000 to 60,000 square feet of bare earth where the Plan Review Committee deems such plan to be necessitated by slopes in excess of 10% highly erodible soils or other unusual conditions. Such plan shall have sufficient information on existing and proposed topography, vegetation and control measures to allow determination of compliance.
 - a. Stripping of vegetation, regrading or other development shall be done in a way which will minimize soil erosion.
 - b. Whenever practical, trees and other natural vegetation shall be retained, protected and supplemented.
 - c. The disturbed area shall be kept to a minimum.
 - d. Where necessary, temporary vegetation and/or mulching shall be used to protect areas exposed during development.
 - e. Sediment basins (debris basins, desilting basins or silt traps) shall be installed and maintained where necessary to remove from runoff waters any sediment from land undergoing development.
 - f. The angle of graded slopes and fills shall be no greater than two horizontal to one vertical. Slopes left exposed must immediately be planted or otherwise

provided with permanent ground cover or other means sufficient to restrain erosion.

- g. A ground cover sufficient to restrain erosion must be planted or otherwise provided within 30 working days, season permitting, on any portion of the tract upon which further active construction is not being undertaken.
- h. The development plan shall be fitted to the topography and soils so as to minimize erosion potential.

G. Plants and animals.

- 1. Location and design shall not cause avoidable damage to wildlife habitats, forests or corridors or to any plant or animal species listed as rare, endangered, watch list or of special concern by the Massachusetts Natural Heritage Program or to any tree exceeding 12 inches in trunk diameter at a height of 4 1/2 feet above grade.
- 2. Specimen plants and trees shall be preserved or relocated when possible. Applicants shall be required to submit signed documentation from the Conservation Commission or its agent that the project has been reviewed by the Conservation Commission with respect to these considerations. The Conservation Commission or its agent may determine that the proposed site either contains no such habitats or species or that all feasible efforts to avoid, minimize or compensate for damage have been reflected in the proposal. The Conservation Commission or its agent may refer the project to the Massachusetts Natural Heritage Program for further review or comment.

H. Lighting.

- 1. The following lighting zones are hereby created:
 - i. Zone A: locations within a C-H, C-L, I, V-B or MRD District as established in the Brewster Zoning By-law.EN
 - ii. Zone B: all other locations.
- 2. Fixtures. Lighting fixture types are defined as follows:
 - i. Type 1: no light cutoff.
 - ii. Type 2: luminaire shielded such that peak candlepower is at an angle of 75° or less from vertical and essentially no light is emitted above the horizontal.
 - iii. Type 3: luminaire shielded such that total cutoff is at less than 90° from vertical and no light source is in direct view from five feet above the ground at any point off the premises.
- 3. Lighting limitation. The following limitations shall be observed by all uses, unless Staff Review determines that it is inherently unfeasible for that use (e.g., public outdoor recreation) to meet these standards, and that all reasonable efforts have been made to avoid glare or light overspill.
 - i. Maximum luminaire mounting height:

Fixture	Zone A	Zone B
Type	(feet)	(feet)

1	20	10
2	30	15
3	40	20

ii. Maximum off-site overspill:

<u>Fixture Type</u>	<u>Zone A (footcandles)</u>	<u>Zone B (footcandles)</u>
1	0.3	0.2
2	1.0	0.3
3	3.0	0.5

4. No flickering or flashing lights shall be permitted. Processes, such as arc welding, which create light flashes shall be confined within buildings or shielded to prevent either direct glare or flashing reflected from the sky.
5. When the Conservation Commission determines that lighting as proposed by an applicant may have a detrimental effect on plants, wildlife or a wildlife habitat or corridor, Staff Review may recommend more stringent restrictions or further mitigation.

I. Noise.

Where exterior noise levels after construction are expected to exceed 100 decibels at the source for more than 15 minutes at a time, continually on a regular or sporadic basis, the applicant shall be required to show the Planning Board the means by which this impact shall be mitigated. The Board shall have the authority to require greater degrees of mitigation if the Board is not satisfied that the resultant noise level will have a minimal effect on surrounding neighborhoods or wildlife habitats. [Amendment 10-29-2012 STM Article 12]

§ 179-67A. Waivers.

When in the opinion of the Planning Board the requirements of §179-66, Use Regulations, do not substantially change the relationship of the structure to the site and to abutting properties and structures, the Planning Board may determine, without a public hearing, that submission of a site plan for special permit approval is not required. Upon application, such a determination may be made by an affirmative vote of a majority of the Planning Board present, and in no event fewer than four members.

§ 179-67B. Severability.

The provisions of this Article are severable from each other, and the invalidity of any provisions or sections shall not invalidate any other provision or section thereof.

ARTICLE XIII
Natural Resource Protection Design

§179-69. Purpose.

The primary purpose of this article is to protect water resources and preserve the open space of Brewster as identified on the map submitted with the application for the designation of the District of Critical Planning Concern (DCPC). This article therefore is intended to foster compact development patterns using flexible regulations for density and lot dimensions and to promote and encourage creativity in neighborhood design. The Town wishes to encourage the use of Natural Resource Protection Design (“NRPD”) because NRPD results in the protection of water resources and the preservation of contiguous open space and important environmental resources, while allowing design flexibility. NRPD reduces development impacts on surface and ground waters, forests, farmland, wildlife habitats, large tracts of contiguous open space, environmentally sensitive areas, steep slopes, scenic views and historically and culturally significant areas. NRPD also helps to reduce areas of impervious surface when compared to traditional grid subdivisions. To encourage this type of development, NRPD is allowed by right, subject only to the requirements of the Regulations Governing the Subdivision of Land. NRPD that does not require approval as a subdivision is allowed by right subject to endorsement by the Planning Board.

§179-70. Applicability.

- A. A NRPD may be proposed anywhere in the area known as the DCPC in Brewster, as designated on July 16, 2008, when that area has an underlying residential designation.
- B. Subsection A above applies only to subdivisions of land as defined in Massachusetts General Laws Chapter 41, Section 81L, and not to construction of homes or businesses on individual lots that existed prior to the effective date of this by-law. If subdivision approval is not required and an Approval Not Required (ANR) plan is filed because a new roadway is not proposed, an applicant may apply for a NRPD under this Article. If the proposed NRPD also involves one or more common driveways, density bonuses, and/or any other use that requires a Special Permit, the proceedings for all such Special Permits shall occur in one consolidated Special Permit proceeding before the Planning Board. It should be noted that a special permit will be required for any other type of subdivision or for any plan for a NRPD that does not conform to the requirements herein. Maximum density allowances for all non-NRPD projects requiring a special permit shall be consistent with the allowable residential densities calculated for NRPD projects in Section 179-72.2.

§179-71. Development Impact Statement and Natural Resource Analysis.

In order to enable the Planning Board to determine whether or not a proposed NRPD (or development by Special Permit that deviates from the requirements for NRPD) satisfies the purposes and standards of this article, an applicant must present sufficient information on the environmental and open space resources for the Board to make such determination. The required information shall be provided in the form of a Development Impact Statement, including a “natural resource analysis” as described in Subsection B.3 of Section 290-10 of the Subdivision Rules and Regulations. In the case of a NRPD that is not a subdivision (i.e. an ANR), the applicant shall not be required to submit a full Development

Impact Statement. However, the Planning Board may require the submission of all or part of a natural resource analysis as described in the Subdivision Regulations.

§179-71.1 Natural Resource Analysis and Findings

- A. Prior to filing an application, an applicant is encouraged to meet with the Planning Board to discuss the natural resources on the site. At such a meeting, the Planning Board shall indicate to the applicant which land is likely to have the most conservation value and be most important to preserve based on the statement of purpose in Section 179-69 and where development may be most appropriately located. The Planning Board shall consult with the Conservation Administrator to determine the land areas with the most conservation value.
- B. In the case of a proposed plan that deviates from the requirements of this Article, and if the Planning Board determines that the land with the greatest conservation value cannot be protected except by the use of a NRPD plan, the Planning Board shall deny the Special Permit for the deviation and require that the applicant submit a plan that complies with the requirements for a NRPD.
- C. The Planning Board, in consultation with the Conservation Commission and Open Space Committee, shall study the natural resource analysis, may conduct field visits, and shall recommend which land should be preserved and where development may be located. The Planning Board shall make written findings supporting this determination (the “natural resource findings”). The Planning Board shall deny any application that does not include sufficient information to make natural resource findings or that does not preserve land that the Planning Board determines should be preserved from development as a result of the natural resource analysis and findings.
- D. The Planning Board’s natural resource findings shall be incorporated into its decision to approve, approve with conditions, or deny an application. The natural resource findings shall show land to be permanently preserved by a conservation restriction, as well as recommended uses, ownership, and management guidelines for such land. The natural resource findings shall also indicate preferred locations for development if the Plan is denied based upon such findings.

§179-71.2. Minimum Preserved Open Space.

The plan shall show that at least the percentages of the total acreage listed below will be preserved by conservation restriction, based upon the natural resource findings.

- RR District: minimum of 80%
- RL District: minimum of 65%
- RM District: minimum of 65%

§179-72. Allowable Residential Units.

The maximum number of residential units in a NRPD is calculated by a formula based upon the net acreage of the property. This formula is intended to take into account site-specific development

limitations that make some land less developable than other land. This calculation involves two steps, calculating the net acreage and dividing by the base allowed density, or number of acres required per dwelling unit.

§179-72.1. Net Acreage Calculation.

The factors named below are included in this subsection for net acreage calculation purposes only and do not convey or imply any regulatory constraints on development siting that are not contained in other applicable provisions of law, including this zoning bylaw. To determine net acreage, subtract the following from the total (gross) acreage of the site:

- A. half of the acreage of land with slopes of 20% or greater (2000 square feet or more of contiguous sloped area at least 10 feet in width);
- B. the total acreage of lakes, ponds, FEMA 100-year floodplains, and all coastal and/or freshwater wetlands as defined in Chapter 131, Section 40 of the General Laws, as delineated by an accredited wetlands specialist and approved by the Brewster Conservation Commission through an Abbreviated Notice of Resource Area Delineation (ANRAD); and
- C. land subject to easements or restrictions prohibiting development.

Applicants shall use the Field Data Form found in Appendix G of the Massachusetts DEP Handbook “Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act” (1995) (the “Handbook”). The complete form shall be submitted including all methods of determination, i.e., vegetation, soil, and any other indicators, as provided for on the form. If detailed vegetative assessments are not required by the Handbook for a particular site, the reasons must be noted on the Field Data Form. At the Planning Board’s discretion, any of the information described above may be taken from current geographic information systems data available from the Massachusetts Department of Environmental Protection, Mass GIS, and other credible sources including delineations registered by the use of global positioning systems. The Conservation Commission may request more detailed information for potentially more sensitive areas.

§179-72.2. Unit Count Calculation.

To determine the base maximum number of allowable residential dwelling units on the site, divide the net acreage by five (5) in the RR District, or by three (3) in the RL and RM Districts. Fractional units of less than .5 shall be rounded down and .5 or more shall be rounded up.

§179-72.3. Bonuses.

The unit count determined in §179-72.2 above may be increased through density bonuses designed to advance important goals of the DCPC. Density bonuses are given by Special Permit at the discretion of the Planning Board based upon the expected public benefit. Bonus amounts refer to percentages of a unit, unless otherwise stated. Resulting fractional units, if any, shall be rounded up or down as in §179-72.2.

- A. If the applicant provides shared, on-site wastewater denitrification treatment: one unit.
- B. For every unit outside the proposed project, currently using a Title 5 system or cesspool, that is

connected to the project's wastewater treatment facility: 25% bonus.

- C. If the applicant provides a minimum of three low impact development components, including but not limited to: bioretention, rain gardens, xeriscapes, vegetated swales, pervious pavement, green roofs: a maximum of 25% bonus.
- D. If the applicant preserves as permanent open space more than the minimum required percentage: a maximum 10% bonus per additional 5% of the parcel preserved as open space.
- E. If the applicant provides an area of 3 acres or more for agricultural use, including community gardens: a maximum of 10% bonus. Up to half of the area provided may be contained within the required open space. For a community garden, the applicant will also install Town water.
- F. Solar panel or wind turbine installation: a maximum of 10% per installation
- G. If the applicant allows deeded public access to the open space portion of the property and the Planning Board finds that such public access provides a significant recreational benefit to the Town (such as access to an important natural area or a trail system): a maximum of 10% bonus. Any bonus granted for public access to open space land shall not compromise the conservation value of such open space land, based upon the natural resource findings of the Planning Board.

§179-72.4. Maximum Bonus.

The density bonuses allowed in §179-72.3 above may result in a total unit count increase not exceeding the number of units permitted under any other type of subdivision in residential districts outside the DCPC area. Density bonuses may only be used if the resulting development complies with Title 5 of the State Environmental Code as determined by the Board of Health.

§179-72.5. Lots in More than One District.

For lots in more than one zoning district, the allowable unit count (excluding bonuses) and required open space for each district shall be computed separately first. These totals shall be added together and the allowable maximum bonus for the entire development shall be calculated based upon this combined total number of units. The permitted location of the units and protected open space shall be wherever the Planning Board determines best fits the characteristics of the land, based upon the natural resource analysis and findings.

§179-73. Types of Residential Development.

The allowable residential units may be developed as single-family or two-family dwellings, provided that applicable Special Permit review requirements for the zoning district are satisfied and that the number of dwelling units does not exceed the allowable unit count in Section §179-72.2 and §179-72.3 above. The subdivision approval and Special Permit requirements shall be fulfilled concurrently in one proceeding to the extent practical. Any NRPD application involving two-family dwellings shall include a site plan that shows the location, layout, height, and setbacks of such dwellings.

§179-74. Dimensional and Design Requirements.

§179-74.1. Minimum Lot Sizes in NRPDs.

The limiting factor on lot size in NRPDs is the need for adequate water supply and sewage disposal. Therefore, there is no required minimum lot size for zoning purposes. This does not affect the powers of the Board of Health to require minimum lot area for the disposal of sewage and the protection of water supply.

§179-74.2. Setbacks, Road Frontage, and Road Requirements.

The minimum setback shall be 10 feet from any property line except that, when the lot line is the exterior line of the subdivision, the setback shall be 25 feet. There shall be no numerical requirements for road frontage in NRPD, provided that each lot has legal and adequate vehicular access to a public way or a way approved under the Subdivision Rules and Regulations across its own frontage or via a shared driveway. All dwellings must comply with applicable Board of Health requirements. The Planning Board may modify the applicable road construction requirements for new roads within NRPD as provided in the Regulations Governing the Subdivision of Land, if it finds that such modifications will be consistent with the purposes of Article XIII and the DCPC purposes and goals.

§179-74.3. Arrangement of Lots.

A. Lots shall be located and arranged in a manner that protects:

- ponds and other surface waters;
- access to ponds and other surface waters;
- groundwater;
- views from designated scenic roads;
- wildlife habitat and corridors;
- farmland;
- open fields;
- large intact forest areas;
- contiguous undeveloped land;
- existing protected open space areas;
- steep slopes;
- other sensitive environmental resources,

while facilitating pedestrian circulation. Generally, residential lots shall be located the minimum feasible distance from existing public roadways. The Planning Board shall take into consideration the natural resource analysis and findings in approving the arrangement of lots.

B. Lot, roadway, and driveway layouts, land alterations, and placement of structures shall follow any design guidelines for NRPD which may be adopted by the Planning Board through its Subdivision Rules and Regulations.

§179-75. Permanent Open Space.

Open space set aside in a NRPD or as a condition of any Special Permit approval shall be permanently preserved from development as required by this Section. The Planning Board shall not require such open space land to be accessible to the public, unless a density bonus is allowed under §179-72.3. Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such open space land, based upon the natural resource findings of the

Planning Board. Such open space shall remain in a natural and undisturbed state unless otherwise stated by the Planning Board.

§179-75.1. Permanent Preservation of Open Space Land.

All land required to be set aside as open space in connection with any NRPD shall be so noted on any approved plans as a separate lot(s) and shall be protected by a permanent conservation restriction, to be held by the Town of Brewster Conservation Commission, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold conservation restrictions under G.L. Chapter 184, Section 31, and also qualified to hold tax-deductible conservation easements under Section 170(h) of the Internal Revenue Code. The restriction shall specify the permitted uses of the restricted land which may otherwise constitute development. The restriction may permit, but the Planning Board may not require, public access or access by residents of the development to the protected open space land. In addition, the boundaries between the permanent open space and the developed parcels shall be clearly marked with concrete bounds and appropriately distinguished iron pipes no shorter than three feet to prevent encroachment into or disturbance of the open space area.

A. Ownership of Open Space Land

- (1) At the developer's option and subject to approval by the Planning Board, all areas to be protected as permanent open space shall be:
 - (a) Conveyed to the Town to be placed under the care, custody and control of the Conservation Commission, and be accepted by it for a park or open space use. Land conveyed to the Town will be open for public use;
 - (b) Conveyed to a nonprofit organization, the principal purpose of which is the conservation or preservation of open space, with a conservation restriction as specified in 4.6.2 below. Such organization shall be acceptable to the Board as a bona fide conservation organization; or
 - (c) Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development (i.e. "homeowners association"). The documents which form said association are subject to approval by the Planning Board. If such a corporation or trust is utilized, as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide documentation that the homeowners association is an automatic (mandatory) association that has been established prior to the conveyance of any lots within the subdivision.

Ongoing maintenance standards shall be established as a condition of development approval to ensure that the open space land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials.

B. Permanent Restriction

In any case where open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction approved by the Conservation Commission, and Board of Selectmen, conforming to the standards of and approved by the Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA) , Division of Conservation Services and enforceable by the Town or holder of the conservation restriction, shall be recorded to ensure that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadways except as permitted in the conservation restriction. Restrictions shall provide for periodic inspection of the open space by the Town. Such restriction shall be submitted to the Planning Board prior to endorsement of the plan and covenant for the project and recorded at the Registry of Deeds/Land Court prior to endorsement of the definitive subdivision plan. The Planning Board may require a management plan that describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.

C. Encumbrances

All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances. Certification of said condition by a qualified title examiner shall be provided to the Planning Board at the time of conveyance.

ARTICLE XIV

Large-Scale Ground-Mounted Solar Photovoltaic Installations

1.0 Purpose

The purpose of this bylaw is to provide standards for new large-scale ground-mounted solar photovoltaic installations, including the placement, design, construction, operation, monitoring, modification and removal of such installations, and thereby, to address public safety, and to minimize impacts on scenic, natural and historic resources.

The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations on private property and Town-owned land.

1.1 Applicability

This section applies to large-scale ground-mounted solar photovoltaic installations proposed after the effective date of this section. For the purposes of this section, a large-scale ground-mounted solar photovoltaic installation is any solar photovoltaic array with a rated name plate capacity of 250 kW (DC) or more. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

2.0 Definitions

As of Right Siting: Development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development shall be subject to site plan review to determine conformance with local zoning ordinances or bylaws. Projects cannot be prohibited, but can be reasonably regulated by the Building Commissioner.

Building Permit: A construction permit issued by the Building Commissioner; the building permit evidences that the project is consistent with the state and federal building codes as well as local zoning by-laws, including those governing ground- mounted large-scale solar photovoltaic installations.

Designated Location: The zoning districts designated by Town Meeting, in accordance with Massachusetts General Laws Chapter 40A, section 5, where ground - mounted large scale solar photovoltaic installations may be sited. Said locations are shown on a Zoning Map pursuant to Massachusetts General Laws Chapter 40A Section 4.

Large-Scale Ground-Mounted Solar Photovoltaic Installation: A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW (DC) or more.

On-Site Solar Photovoltaic Installation: A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

Rated Nameplate Capacity: The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).

Solar Photovoltaic Array: an arrangement of solar photovoltaic panels.

Special Permit Granting Authority: For applications requiring a special permit, the special permit granting authority is the Planning Board

Staff Review: A review by Town staff pursuant to Section 83 of the Code of the Town of Brewster.

Zoning Enforcement Agent: The Building Commissioner.

3.0 General Requirements for all Large-Scale Ground-Mounted Solar Power Generation Installations

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

3.1 Compliance with Laws, Ordinances and Regulations

The construction and operation of all large scale solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

3.2 Building Permit and Building Inspection

No large scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

3.3 Fees

The application for a building permit for a large scale solar photovoltaic installation must be accompanied by the fee required for a building permit.

3.4 Staff Review and Site Plan Review

Large scale ground-mounted solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo Staff Review pursuant to the regulations in Chapter 83 of the Brewster Town Code. They shall also undergo Site Plan Review by the Planning Board, prior to construction, installation or modification as provided in this section, following the requirements in Sections 3.4.1 and 3.4.2.

3.4.1 General

All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.

3.4.2 Required Documents

Pursuant to the plan review process, the project proponent shall provide the following documents:

- (a) A site plan showing:
 - i. Property lines and physical features, including roads, for the project site;
 - ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
 - iii. Solar photovoltaic installation blueprints or drawings, signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts, showing the proposed layout of the system and any potential shading from nearby structures;
 - iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 - v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
 - vi. Name, address, and contact information for proposed system installer;
 - vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
 - viii. The name, contact information and signature of any agents representing the project proponent; and
- (b) A rendering or photo simulation showing the proposed project at completion;
- (c) Documentation of actual or prospective access and control of the project site (see also Section 3.5);
- (d) An operation and maintenance plan (see also Section 3.6);
- (e) A utility connection plan (see also Section 3.9.3), and an Acknowledgment of Application from the electric utility;

- (f) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose); and
- (g) Proof of liability insurance.

The Planning Board may waive documentary requirements as it deems appropriate.

3.5 Site Control

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

3.6 Operation & Maintenance Plan

The project proponent shall submit a plan for the operation and maintenance of the large- scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, and general procedures for operational maintenance of the installation.

3.7 Utility Notification

No large-scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

3.8 Dimension and Density Requirements

3.8.1 Setbacks

For large-scale ground-mounted solar photovoltaic installations, front, side and rear setbacks shall be as follows:

- (a) Front yard: The front yard depth shall be not less than twenty-five (25) feet in the Industrial (I) and Municipal Refuse (MRD) districts and not less than fifty (50) feet in other districts.
- (b) Side yard. Each side yard shall have a depth not less than fifteen (15) feet in the Industrial (I) and Municipal Refuse (MRD) districts and not less than fifty (50) feet in other districts.
- (c) Rear yard. The rear yard depth shall be not less than twenty-five (25) feet in the Industrial (I) and Municipal Refuse (MRD) districts and not less than fifty (50) feet in other districts.

3.8.2 Appurtenant Structures

All appurtenant structures to large-scale ground-mounted solar photovoltaic installations shall, in the case of special permits, be subject to reasonable conditions concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be screened from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

3.9 Design Standards

3.9.1 Lighting

Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

3.9.2 Signage

Signs on large-scale ground-mounted solar photovoltaic installations shall comply with Article VI of this by-law. A sign consistent with Article VI shall be required to identify the owner and provide a 24-hour emergency contact phone number.

Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

3.9.3 Utility Connections

Utility connections from solar photovoltaic installations shall be underground, but the Planning Board, after considering the soil conditions, shape, and topography of the site and any requirements of the utility provider, may permit connections above ground. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

3.9.4 Screening

The solar arrays should be screened from roads and from adjacent residential lots by a minimum 5-foot tall evergreen screen. The Planning Board may alter or waive this requirement if such screening would have a detrimental impact on the operation and performance of the array.

3.9.5 Security

Appropriate measures shall be taken to prevent the solar arrays from being damaged or tampered with by individuals trying to access the area of the installation. The method of securing the site shall be subject to the approval of the Planning Board.

3.10 Safety and Environmental Standards

3.10.1 Emergency Services

The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

3.10.2 Land Clearing, Soil Erosion and Habitat Impacts

All attempts should be made to locate a large-scale ground-mounted solar photovoltaic installation in an area that requires little or no clearing of natural vegetation. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance

of the large-scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.

3.11 Monitoring and Maintenance

3.11.1 Solar Photovoltaic Installation Conditions

The large-scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained at a level acceptable to the Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access roads, unless they have been accepted as public ways.

3.11.2 Modifications

All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Planning Board.

3.12 Decommissioning

3.12.1 Removal Requirements

Any large-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations due to the installation reaching the end of its useful life. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (a) Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

ARTICLE XV

Amendment and Validity

[Amended 5-9-1994 ATM, Art. 24] [Amended 10-19-2009 STM Article 17]

§ 179-76. Amendments.

This chapter may be amended from time to time in accordance with Section 5 of the Zoning Act.

§ 179-77. Validity.

The invalidity, unconstitutionality or illegality of any provision of this chapter or boundary shown on the Zoning Map shall have not any effect upon the validity, constitutionality or legality of any other provision or boundary.

**Table 1
Use Regulations**

[Uses and Table revised and reorganized
5/7/12 ATM, Article 24]

P = Permitted Use S = Special Permit Use Use with a dash (“-”) = Prohibited Use

Residential

Districts

		R-R	R-L	R-M	C-H	V-B	I	MRD	PWS- CF
1.	Accessory residential building	P	P	P	P	P	-	-	-
2.	Affordable accessory commercial dwelling unit “AACDU”	-	-	-	P	P	P	-	-
3.	Affordable Accessory Single Family Dwelling Units “AADU”	P	P	P	P	P	P	-	-
4.	Affordable Multi-family Dwelling Units “AMFDU”	-	-	-	P	-	-	-	-
5.	Cluster residential development	S	S	S	-	-	-	-	-
6.	Construction Trailer	P	P	P	P	P	P	-	-
7.	Major residential development	S	S	S	S	-	-	-	-
8.	Multifamily dwelling	-	-	-	S	-	-	-	-
9.	One-family detached dwelling unit	P	P	P	-	P	-	-	-
10.	One-family security dwelling	-	-	-	P	P	P	-	-
11.	Planned residential development	-	S	S	-	-	-	-	-
12.	Row or town houses	-	-	-	S	-	-	-	-
	Subsidized elderly housing	S	S	S	S	-	-	-	-

Community Facilities

District

		R-R	R-L	R-M	C-H	V-B	I	MRD	PWS- CF
1.	Church or other religious use	P	P	P	P	P	P	P	-
2.	Crematory	-	-	-	-	-	S	-	-
3.	Deicing materials storage facility	-	-	-	-	-	-	P	-
4.	Educational use	P	P	P	P	P	P	P	-
5.	Essential services	P	P	P	P	P	P	-	-

	Community Facilities (continued)	R-R	R-L	R-M	C-H	V-B	I	MRD	PWS- CF
6.	Historical association or society	P	P	P	P	P	-	-	-
7.	Cemetery	S	S	S	S	-	S	-	-
8.	Large-scale, ground-mounted Solar Photovoltaic Installation on private property	S	S	S	S	S	P	P	P
9.	Municipal equipment garage	P	-	-	P	-	P	P	-
10.	Municipal Solid Waste Facility	-	-	-	-	-	-	P	-
11.	Municipal water tank	-	-	-	P	-	-	-	-
12.	Museum	-	-	P	S	-	-	-	P
13.	Non-profit recreational facility	P	P	P	P	-	P	-	-
14.	Power plant, water filtration plant, sewage treatment plant	-	-	-	P	-	P	-	-
15.	Solar array on Town-owned land	P	-	-	-	-	P	P	P
16.	Town building, police station and fire station, except equipment garage	P	P	P	P	P	P	P	P

Agriculture

District

		R-R	R-L	R-M	C-H	V-B	I	MRD	PWS- CF
1.	Agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, as those terms are defined in Massachusetts General Laws, Chapter 40A, §3	P	P	P	P	P	P	P	-
2.	Commercial stable, kennel or veterinary hospital in which all animals are completely enclosed in pens or other structures, unless exempted pursuant to MGL c.40A, §3.	S	S	S	S	-	S	-	-

	Agriculture (continued)	R-R	R-L	R-M	C-H	V-B	I	MRD	PWS- CF
3.	Raising and keeping of farm animals for personal use on a parcel of land containing 40,000 square feet or more	P	P	P	P	P	-	-	-
4.	Raising and keeping of farm animals for personal use on a parcel containing less than 40,000 square feet	S	S	S	S	S	-	-	-
5.	Raising and keeping of poultry for personal use, provided that the land parcel contains a minimum of 15,000 square feet	P	P	P	P	P	-	-	-
6.	Temporary (not to exceed erection or use for a period of 3 months in any one year) greenhouse or stand for retail sale of agricultural or farm products, unless exempted pursuant to MGL c.40A, §3	P	P	P	P	P	-	-	-
7.	Year-round greenhouse or farm stand for wholesale and/or retail sale of agricultural or farm produce, unless exempted pursuant to MGL c.40A, §3	P	P	S	P	P	P	-	-

Commercial (except as provided in §179-36)

District

		R-R	R-L	R-M	C-H	V-B	I	MRD	PWS- CF
1.	Amusement arcade	-	-	-	S	-	S	-	-
2.	Amusements, outdoor commercial	-	-	-	S	-	S	-	-
3.	Antique shop, Art gallery	-	-	P	P	P	-	-	-
4.	Assisted Living Facility	S	S	S	P	-	-	-	-
5.	Automated and drive-through financial establishments/structures	-	-	-	S	S	S	-	-

	Commercial (continued)	R-R	R-L	R-M	C-H	V-B	I	MRD	PWS- CF
6.	Automotive repair, automobile service station and garage, not including a junkyard or open storage of abandoned automobiles or other vehicles	-	-	-	P	-	P	-	-
7.	Boat building or marine construction work and fabrication of marine and fishing supplies (A)	-	-	-	S	-	P	-	-
8.	Business offices and services	-	-	-	P	P	P	-	-
9.	Children's recreation camp	P	P	P	P	-	P	-	-
10.	Commercial parking lot or structure (B)	-	-	-	S	S	S	S	-
11.	Communication towers over 35 feet in height	-	-	-	-	-	-	-	S
12.	Communication towers under 35 feet in height	P	P	P	P	P	P	P	P
13.	Construction of drainage facilities other than essential services or damming up or relocating any watercourse, water body or wetlands	S	S	S	S	S	S	-	-
14.	Country, hunting, fishing, gun, tennis or golf club	P	P	P	P	-	P	-	-
15.	Educational Use, for profit	-	-	-	P	P	P	-	--
16.	Establishment selling new automobiles and/or used automobiles and trucks, new automobile tires and other accessories, boats, motorcycles and household trailers.	-	-	-	P	-	P	-	-
17.	Membership organization	-	-	S	P	S	-	-	-
18.	Funeral home or mortuary establishment	-	-	-	P	P	P	-	-
19.	Gift Shop	-	-	-	P	P	-	-	-
	Home Occupation	P	P	P	P	P	-	-	-
20.	Hotel and motel	-	-	-	S	-	-	-	-
21.	Lodging house	S	S	S	P	P	-	-	-
22.	Medical/dental clinic	S	S	S	P	P	-	--	-

	Commercial (continued)	R-R	R-L	R-M	C-H	V-B	I	MRD	PWS- CF
23.	Medical/dental office	S	S	S	P	P	-	-	-
24.	Movie theater, drive-in	-	-	-	-	-	P	-	-
25.	Nursing or convalescent home	S	S	S	P	-	-	-	-
26.	Personal service establishment	-	-	-	P	P	-	-	-
27.	Planned business development	-	-	-	P	P	P	-	-
28.	Recreation facilities and services, private	S	S	S	P	-	-	-	-
29.	Repair services	-	-	-	P	-	P	-	-
30.	Repair services, excluding outside storage of items for repair	-	-	-	P	P	P	-	-
31.	Restaurant, full-service and lounge	-	-	-	S	S	S	-	-
32.	Restaurant, limited-service	-	-	-	S	S	S	-	-
33.	Retail store	-	-	-	P	P	-	-	-
34.	Row commercial	-	-	-	P	P	-	-	-
35.	Sales by vending machines	-	-	-	P	-	P	-	-
36.	Sales by vending machines as an accessory use associated with an established business and located only within or against the structure	-	-	-	P	P	P	-	-
37.	Septic tank pumping service	-	-	-	P	-	P	-	-
38.	Storage of materials for a business, including but not limited to pipes, mulch, small or heavy equipment	-	-	-	P	-	P	-	-
39.	Storage of more than 2 commercial vehicles	-	-	-	P	P	P	-	-
40.	Theater, indoor	-	-	-	P	-	-	-	-

Wholesale, manufacturing and industrial

District

		R-R	R-L	R-M	C-H	V-B	I	MRD	PWS- CF
1.	Building and construction trades shop or garage	-	-	-	S	-	P	-	-
2.	Construction materials sales and service	-	-	-	-	-	P	-	-

	Wholesale, manufacturing and industrial (continued)	R-R	R-L	R-M	C-H	V-B	I	MRD	PWS-CF
3.	Excavations and/or removal of sand, gravel, quarry or other new material	-	-	-	-	-	S	S	-
4.	Freight transportation service	-	-	-	-	-	P	-	-
5.	Manufacturing	-	-	-	-	-	P	-	-
6.	Open storage of construction equipment and structures for storing such equipment	-	-	-	-	-	P	S	-
7.	Other transportation services, except airports, heliports, all air support facilities and	-	-	-	P	-	P	-	-
8.	Processing and treating of mixed and quarried raw materials, including operations appurtenant to the taking, grading, drying, sorting, crushing, grinding and milling operations	-	-	-	-	-	S	S	-
9.	Wholesale Trade	-	-	-	P		P		

Wetlands Conservancy District

District

		R-R	R-L	R-M	C-H	V-B	I	MRD	PWS-CF
1.	Any use	S	S	S	S	S	S	S	S

Supplemental Regulations

- A. Such activity shall not create unnecessary noise, smoke, flashing or odor, and all materials shall be stored in a completely enclosed building or within an outside area completely enclosed by a fence and gates at least 8 feet in height and of suitable material to provide sufficient screening.
- B. The lot or group of lots or structure may be used to provide parking for an adjacent building or business establishment or athletic facility or any other type facility enumerated in § 179-22A, Table 4.

Prohibited Uses in all Districts

- A. Raising and keeping swine or fur animals for commercial use or sale on parcels of less than 5 acres
- B. Septage transfer
- C. Septage transfer station

**Table 2
Area Regulations
Minimum Required Lots¹
Town of Brewster**

[Amended 12-10-1979 STM, Art. 37; 5-12-1980 ATM, Art. 42; 5-14-1984 ATM, Arts. 104 and 105; 8-27-1984 STM, Art. 57; 5-13-1985 ATM, Arts. 66, 74 and 94; 5-12-1986 ATM, Arts. 35 and 36; 5-11-1987 ATM, Art. 82; 5-9-1988 ATM, Art. 96; 10-17-1988 STM, Art. 26; 11-13-2006 FYTM, Arts. 29 and 33; 11-5-2007 FYTM, Art. 13]

District	Use	Area (square feet)	Lot Frontage ² (feet)	Yards ^{3,4,5,6,7,8}		
				Front (feet)	Side (feet)	Rear (feet)
R-R	Any permitted structure or principal use	100,000 plus 100,000 for the second dwelling unit of a duplex	200	40	25	25
R-L	Any permitted structure or principal use	60,000 plus 60,000 for the second dwelling unit of a duplex	150	40	25	25
R-M	Any permitted structure or principal use	60,000 plus 60,000 for the second dwelling unit of a duplex	150	40	25	25
C-H	Row commercial	40,000	150	30	20	20
	Multifamily dwellings	130,000 plus 10,000 per bedroom	200	100	30	30
	Hotel and motel	130,000 plus 2,000 per unit	200	100	30	30
	Row house or townhouse	130,000 plus 10,000 per bedroom	200	100	30	30
	Any other permitted structure or principal use ¹⁵	15,000	80	30	15	15
V-B	Any permitted structure or principal use	15,000	80	30	15	15
I	Any permitted structure or use, other than those listed above for the CH Zone (footnote 9) ¹⁰	20,000	100	30	15	40

NOTES:

¹ In general, only one principal structure shall be permitted on one lot. The exceptions are planned residential developments, row commercial development, subsidized elderly housing, planned business developments, community facilities and public utilities.

Also, residential lots may contain two single-family units, if the lot is twice that required by the Table of Area Regulations for single-family residences in that district and if each unit is provided proper street access.

³ Deleted

² The width of the lot, measured at the front yard setback line, shall be at least 80% of the lot frontage.

⁴ At each end of a through lot, there shall be a setback depth required which is equal to the front yard depth required for the district in which each street frontage is located.

⁵ No building, except a boathouse or building used for agricultural purposes, shall be within 50 feet of any water body, watercourse or wetland area or, if subject to flooding, within 50 feet beyond its flood line to the higher elevation.

⁶ Projections into required yards or other required open spaces are permitted subject to the following:

Balcony or bay window, limited in total length to 1/2 the length of the building, not more than two feet.

Open terrace or steps or stoop, under four feet in height, up to 1/2 the required yard setback.

Steps or stoop over four feet in height, windowsill, chimney, roof eave, fire escape, fire tower, storm enclosure or similar architectural features, not more than two feet.

⁷ Accessory buildings and structures. Any permitted accessory building in any R District shall conform to the following provisions:

It shall not occupy more than 40% of the required rear yard. It shall be not less than 40 feet for R-R and R-L Districts and 30 feet for an R-M District from any street lot line and shall be not less than 25 feet in any R-R or R-L District or 20 feet in the R-M District from any lot line. It shall not exceed 30 feet in height.

A temporary stand for retail sale of agricultural or farm products, where permitted, may be six feet from the front lot line.

Any permitted barn shall be at least 50 feet from any street lot line or side or rear property line and at least 100 feet from any abutter's dwelling.

⁸ The front, side and rear yard clearances shown in this table for multifamily dwellings are applicable to each structure containing dwelling units. These distances should be used as though each structure is set on a separate lot. For example, two structures sitting side by side would have side yard clearances each of 30 feet or a total of 60 feet between the structures.

⁹ Intensity of use applications to nursing convalescent home. For purposes of interpreting the portion of this chapter, the term "unit" shall mean each bed designed for use by an individual receiving care at such facility. The first three units of a nursing/convalescent home shall require a minimum land area equal to the lot requirements for any permitted structure or principal use in the district in which located, with the exception in the C-H District, where 20,000 square feet shall be required for the first three units of a nursing/convalescent home. In all districts where such use is allowed, including by special permit, each additional unit shall require a minimum of 4,000 square feet of land area. Front, side and rear yard requirements within the respective districts where special permits are required may be increased at the discretion of the Board of Appeals, if the size of the project, proximity to incompatible adjacent uses or other factors potentially having an adverse effect on the health, safety or welfare of the persons under care at such facility justifies a more extensive buffer from property lines. The Board of Appeals shall ensure that egress from such facility shall be on a street which should be safe and adequate

¹⁰ No building, loading space, parking space or structure, other than a sign, shall be located within 200 feet of the Industrial District boundary line in an Industrial District.

¹¹ Exception, panhandle lots. This exception shall only apply to a single parcel of land at least three times the area required for a single lot in that residential district, intended to be divided or subdivided into not more than two lots. Such a division or subdivision may be exempt from any or all of the requirements of the Town of Brewster Planning Board rules and regulations, upon the express written approval of the Planning Board. The regulations for lot frontage as set forth in this section may be waived by the Planning Board upon the following conditions:

There shall be no further subdivision of the lot(s).

The lots) shall be used for single-family residential purposes.

The area of the access to the lot as determined by the Planning Board shall not be used in determining lot size.

The access to the lot as determined by the Planning Board shall not be used to provide access to any other lots.

In no event shall the lot frontage and lot width be less than 30 feet.

Multiple use of this section of this chapter shall not be used as a means of accomplishing the subdivision of land without the construction of ways.

¹² Cottage colony conversion. An existing nonconforming cottage colony may not be converted to a single-family dwelling use under separate ownership, unless the lot upon which each building is located complies with the minimum requirements for single-family dwellings in the zoning district in which the land is located, and such nonconforming cottage colony may not be converted to a single-family use under condominium-type ownership, unless the lot meets the minimum zoning requirements in which the land is located.

¹³ For subsidized elderly housing, see S-I rather than Table 2.

¹⁴ An owner-occupied building containing two dwelling units, one of which shall be an accessory apartment with a net floor living area not exceeding 600 square feet, and including not more than one bedroom, a kitchen, living room and bath, shall be

allowed by a special permit granted by the Board of Appeals. Such dwelling shall be deemed to be owner-occupied if either dwelling unit is occupied by the property owner of record on a year-round basis, except for bona fide temporary absences during which the unit is not rented. The apartment shall be restricted to use by the property owner's immediate family, including in-laws (mother, father, brother, sister), and/or a health care professional providing a service to the above family and is defined as a "dwelling, one-family, with accessory apartment".

¹⁵ **Editor's Note:** The C-L District which immediately followed was removed at the request of the Town.

179 Attachment 3

**Table 3
Height and Bulk Regulations
Town of Brewster**

[Amended 12-10-1979 STM, Art. 37; 5-12-1980 ATM, Art. 43;
5-11-1981 ATM, Art. 34; 10-17-1988 STM, Art. 26; 5-8-1989
ATM, Art. 48; 5-14-1990 STM, Art. 8; 5-9-1994 ATM, Art. 26;
5-2-2005 ATM, Art. 25]

District	Maximum Permitted Height¹ (feet)	Maximum Building Coverage of Lot (covered area as percent of lot area)	Maximum Building Coverage of Buildable Uplands Within Lot Area (percent)
R-R	30	15	
R-L	30	20	
R-M	30	25	
C-H2	30		40**
V-B	30		30
I	30	50	

** Except 25% for multifamily dwellings.

NOTES:

¹ Any maximum height permitted in this chapter shall not apply to:

Community facility and public utility structures, provided that the side and rear yards or setbacks required in the district for the highest permitted principal structure shall be increased two feet in width for each foot by which the height of such structure exceeds the height permitted in the district.

Necessary appurtenant structures, such as church spire, smokestack, monument, flagpole, radio or television tower, aerial, airplane hangar, chimney or parapet wall, windmill generator or similar appurtenances.

Special industrial structures, such as a cooling tower and other similar structures where the industrial process requires a greater height.

² Editor's Note: The C-L District which immediately followed was removed at the request of the Town.