

TOWN OF WELLFLEET

Options for control of reconstruction after teardown of single- and two-family structures

The following is intended to suggest a range of possible amendments to the Town's Zoning Bylaw, as well as other approaches, for exerting additional control over certain reconstructions following the voluntary demolition ("teardown") of single- or two-family residences. Although there is particular emphasis below on such reconstruction within the National Seashore Park zoning district, the comments and options set out below may also be applied, with or without modification to residential reconstruction within other zoning districts within Wellfleet.

ZONING OPTIONS

1. Clarify or Expand Seashore District Objectives – One example is below, with "A." being the redlined version showing the edits, and "B" being the revised text .

A. National Seashore Park – To provide for those residential and commercial uses that ~~do not conflict~~ **are consistent with the purposes for which the National Seashore Park was created with the regulations governing the activities of the National Seashore Park and are not incompatible with** **to support preservation of the character of the land within the Park**, including its ~~the preservation of~~ historic and natural features, and scenic areas, **scale of structures and other visual elements of the zoning district, while** as well as providing ~~of~~ for **compatible certain** recreational and leisure time activities for **residents and other** users of the **P**park.

B. National Seashore Park – To provide for those residential and commercial uses that **are consistent with the purposes for which the National Seashore Park was created and to support preservation of the character of the land within the Park**, including its historic and natural features, scenic areas, **scale and other visual elements of the zoning district, while** providing for **compatible** recreational and leisure time activities for **residents and other** users of the **P**ark.

COMMENT: Note that "compatible with" has been substituted for "do not conflict with" purposes for which the NSP district was created, and "to support preservation . . ." substituted for "not incompatible with. . ."

Additional purposes might be added to the above statement, if desired, to further indicate what is desirable to be preserved within the District, or to be avoided. As in any case of district objectives, these serve both to justify the particular regulations or constraints on uses and structures within the district, as well as to provide goals or standards to be incorporated in special permits or other discretionary provisions within the district.

For example: If a special permit requirement were imposed on certain residential uses within the NSP District, (such as size of an addition) the conditions for the grant of such permits would then contain references to complying with or advancing the district zoning purposes.

Compare: Eastham ZBL Section II – Zoning Districts, for slightly different standards within the Seashore District. Many variations are possible.

SEASHORE DISTRICT F -- An area of one (1) family dwellings located within the boundaries of the Cape Cod National Seashore Park to further the preservation and development of the Cape Cod National Seashore in accordance with the purposes of the Act of Congress of August 7, 1961 (75 Stat. 284, 291); to prohibit commercial and industrial uses therein, to preserve and increase the amenities of the Town; and to conserve natural conditions, wildlife and open spaces for the education, recreation and general welfare of the public.
[emphasis added – note additional purposes]

2. Amend District Dimensional Requirements – to one or more Districts, as appropriate

- Table of Dimensional Regulations

* Amend Maximum Building Coverage

Decrease % allowed in NPS district, or permit “the lesser of ___% or ___ sq. ft. area of footprint

- with or without a special permit for structures of greater size or certain dimensional variations:

* Add performance specifications to by-right uses in NPS district or elsewhere (a footnote to Intensity of Use Schedule is the common mechanism)

E.g.: “FN. 1 Provided gross floor area does not exceed _____ or _____

[For an example of gross floor area , See, e.g.: Town of Weston definition and use regulation, attached as “W”

* Add Site Plan requirement – either as a “checklist” to insure compliance with all terms of ZBL, or a separate special permit, for the purpose of maintaining “Scale” or other characteristic of the district.

* Add Design Review requirement

* Add Demolition Delay requirement

3. Amend Section 6.1 Nonconforming Uses and Structures

-Eliminate or modify the preferential treatment for conforming residences on nonconforming lots – this is not mandated by Chapter 40A, and is a matter exclusively of local choice. Its modification is a necessity in order to gain greater control over major increases after teardowns of conforming structures on nonconforming lots.

For a very different approach from Wellfleet's, see: Town of Norwell, as amended following the appeal brought by Bjorklund that resulted in the supreme Judicial Court decision: (Caution: one of two versions shown on the Norwell webpage is the old version.)

NON-ZONING OPTIONS

1. Demolition Delay – Consider designating all or some of structures within the NSP District as “Historically Significant Building.” The Standard is contained in the Town’s General Bylaws Article XIII, Section 2.1.c.:

Designated by the [Historical Review] Board after public hearing(s) as being historically or architecturally significant in terms of period, style, and methods of construction or association with historic persons or events. [emphasis added]

Note these features of historically significant building designation:

- Any structure listed in the National Register of Historic Places, or over 75 years old is automatically Historically Significant under this Bylaw.
- The designation under subsection c. quoted above is made by the Historical Review Board. While there is no express provision in the Bylaw for petitioning the HRB to make such a designation, there is no prohibition from making such a request.
- The “demolition delay” for an historically significant building, after it is designated by the HRB as also “preferably preserved” is a period of six months, during which alternatives for moving or preserving the building are explored.

NOTE: In many communities with a demolition delay bylaw, the designation and determinations are made by the Historical Commission, in light of its presumed expertise and its maintenance of information such as listings in the National Register of Historic Places.

2. Creation of a new Historic District (all or a portion of the land within the NSP District)

General Laws c.40C, §3, provides for the establishment of historic districts. A copy of this statute is attached as “H.”. Procedurally, the establishment of a new historic district requires an “investigation and report” by the Historical Commission and a review by the Massachusetts Historical Commission. A public hearing must be held and a vote of town Meeting is required to establish a district.

H

CHAPTER 40C. HISTORIC DISTRICTS

Chapter 40C: Section 3. Establishment of historic districts; pre-requisites; enlargement or reduction of boundaries; amendment of creating ordinance; filing of maps

Section 3. A city or town may, by ordinance or by-law adopted by two-thirds vote of the city council in a city or by a two-thirds vote of a town meeting in a town, establish historic districts subject to the following provisions:— Prior to the establishment of any historic district in a city or town an investigation and report on the historical and architectural significance of the buildings, structures or sites to be included in the proposed historic district or districts shall be made by an historic district study committee or by an historic district commission, as provided in this section and in section four, who shall transmit copies of the report to the planning board, if any, of the city or town, and to the Massachusetts historical commission for their respective consideration and recommendations. The buildings, structures or sites to be included in the proposed historic district may consist of one or more parcels or lots of land, or one or more buildings or structures on one or more parcels or lots of land. The Massachusetts historical commission may consult with the director of economic development, the director of housing and community development and the commissioner of environmental management with respect to such reports, and may make guidelines for such reports, and, after public hearing, establish rules as to their form and manner of transmission. Not less than sixty days after such transmittal the study committee shall hold a public hearing on the report after due notice given at least fourteen days prior to the date thereof, which shall include a written notice mailed postage prepaid, to the owners as they appear on the most recent real estate tax list of the board of assessors of all properties to be included in such district or districts. The committee shall submit a final report with its recommendations, a map of the proposed district or districts and a draft of a proposed ordinance or by-law, to the city council or town meeting.

An historic district may be enlarged or reduced or an additional historic district in a city or town created in the manner provided for creation of the initial district, except that (a) in the case of the enlargement or reduction of an existing historic district the investigation, report and hearing shall be by the historic district commission having jurisdiction over such historic district instead of by a study committee; (b) in the case of creation of an additional historic district the investigation, report and hearing shall be by the historic district commission of the city or town, or by the historic district commissions acting jointly if there be more than one, instead of by a study committee unless the commission or commissions recommend otherwise; and (c) if the district is to be reduced written notice as above provided of the commission's hearing on the proposal shall be given to said owners of each property in the district.

Any ordinance or by-law creating an historic district may, from time to time, be amended in any manner not inconsistent with the provisions of this chapter by a two-thirds vote of the city council in a city or by a two-thirds vote of a town meeting in a town, provided that the substance of such amendment has first been submitted to the historic district commission having jurisdiction over such district for its recommendation and its recommendation has been received or sixty days have elapsed without such recommendation.

No ordinance or by-law creating an historic district, or changing the boundaries of an historic district, shall become effective until a map or maps setting forth the boundaries of the historic district, or the change in the boundaries thereof, has been filed with the city clerk or town clerk and has been recorded in the registry of deeds for the county or district in which the city or town is located, and the provisions of section thirteen A of chapter thirty-six shall not apply.

W

Town of Weston: RESIDENTIAL GROSS FLOOR AREA (“RFGA”)

Definition:

”The sum of the horizontal area(s) of the above-grade floors in the residential building(s) on a lot, excluding unfinished attics but including attached or detached garages. The RFGA shall be measured from the exterior face of the exterior walls.

Use regulation:

Single Family Residence Districts (A, B, C and D)

1. By-Right Uses

a. . . .

The Residential Gross Floor Area “RFGA” of any new or replacement single family dwelling use constructed pursuant to a building permit issued on or after October 29, 1998, may not exceed the greater of 3,500 s.f. or 10% of the lot area up to a maximum of 6,000 s.f.