

## Chapter 164

### ZONING

[HISTORY: Adopted 3-8-1971 Annual Town Meeting, Art. 25.<sup>1</sup> Subsequent amendments noted where applicable.]

#### GENERAL REFERENCES

Scenic roads — See Ch. 139.  
Wetlands — See Ch. 160.  
Housing Authority — See Ch. 188.  
Subdivision regulations — See Ch. 192.

#### ARTICLE I General Provisions

##### § 164-1. Authority.

This Zoning Bylaw is adopted in accordance with the provision of Chapter 40A of the General Laws.

##### § 164-2. Purpose.

The purpose of this chapter is to promote the health, safety and convenience of the inhabitants of Orleans and to protect the welfare of the citizens.

##### § 164-3. Applicability.

A. Noninterference. This chapter shall not interfere with or annul any other town bylaw, rule, regulation or permit, provided that, unless specifically excepted or where a conflict exists within the chapter itself, where this chapter is more stringent, it shall control.

B. Conformance. 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 (6) 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.

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1. Editor's Note: This chapter was amended at the following Town Meetings: 8-20-1971 STM; 3-13-1972 ATM; 6-8-1972 STM; 3-13-1973 ATM; 5-6-1974 ATM; 5-3-1976 ATM; 5-2-1977 ATM; 5-1-1978 ATM; 12-11-1978 STM; 5-7-1979 ATM; 5-5-1980 ATM; 5-4-1981 ATM; 5-6-1982 ATM; 5-2-1983 ATM; 12-5-1983 STM; 5-7-1984 ATM; 10-3-1984 STM; 5-7-1985 ATM.

C. Nonconforming Structures and Uses. Legally preexisting, nonconforming structures or uses may be continued, in accordance with G.L. c. 40A, § 6, subject to the following: [Amended 5-8-2006 ATM, Art. 24]

(1) Alteration, Reconstruction (which shall include raze and replacement), Extension or Structural Change (collectively “alteration”) to Nonconforming Single or Two Family Residential Structures. Nonconforming single or two family residential structures may be altered, reconstructed, extended or structurally changed provided that such alteration does not increase the nonconforming nature of such structure.

(a) In the following circumstances alteration to a nonconforming single or two family residential structure shall not be considered an increase in the nonconforming nature of the structure and shall be allowed as of right: [Amended 5-7-2007 ATM, Art. 24]

[1] Alteration to a structure which complies with all current setbacks, yard, lot coverage and building height requirements but is located on a lot with insufficient area, where the alteration will also comply with all of said current requirements.

[2] Alteration to a structure which complies with all current setbacks, yard, lot coverage and building height requirements but is located on a lot with insufficient frontage, where the alteration will also comply with all of said current requirements.

[3] Alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, lot coverage and building height requirements; the provisions of this subsection shall apply regardless of whether the lot complies with current area and frontage requirements.

(b) Except as otherwise set forth in (c) below, alteration to a nonconforming single or two family residential structure that increases the nonconforming nature of the structure may be allowed on Special Permit from the Board of Appeals provided the Board of Appeals finds that such alteration will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

(c) Alteration to a nonconforming single or two family residential structure in such a manner as to: 1) create a new dimensional nonconformity, or 2) intensify an existing nonconformity by extending further into a required setback area, or 3) increase the height of the structure greater than the allowed height, shall require the issuance of a variance by the Board of Appeals and the Special Permit finding required under subsection (b). Provided, however, the extension of an exterior wall or surface of an existing structure at or along the same nonconforming distance within a required setback area shall not require the issuance of a variance.

(2) Alteration, Reconstruction, Extension or Structural Change (collectively “alteration”) to Nonconforming Structures Other than Single and Two Family Structures. Other nonconforming structures or uses may be altered, reconstructed, extended or structurally changed on Special Permit from the Board of Appeals if the Board of Appeals finds that such alteration will not be

substantially more detrimental to the neighborhood than the existing nonconforming structure or use. The alteration of a nonconforming structure in such manner as to create a new dimensional nonconformity or to intensify an existing dimensional nonconformity, shall require the Special Permit finding and the issuance of a variance by the Board of Appeals.

(3) Restoration. A nonconforming structure or use may be reconstructed or reinstated if destroyed by fire or other casualty if reconstructed or reinstated within a period of two (2) years from the date of the catastrophe, or else such reconstruction must comply with this chapter.

(4) Abandonment. A nonconforming use or structure which has been abandoned or otherwise discontinued for a period of two (2) years shall not be reestablished, and any future use of the premises shall conform to this chapter.

(5) Reversion. Once changed to be conforming, no structure or use shall be permitted to revert to a nonconforming structure or use.

D. Isolated lots and subdivisions. Under MGL C. 40A, § 6, lots not held in common ownership with any adjoining land are generally not subject to subsequent amendments in dimensional requirements, and land shown on subdivisions or other plans endorsed by the Planning Board is exempted from subsequent zoning amendments in certain respects for a limited period of time. (See MGL C. 40A, § 6.) Those exemptions are extended to other lots for single-family dwellings as specified in § 164-22A(2).

#### § 164-4. Definitions.

To make clear certain terms used in this chapter, the following meanings shall apply unless a contrary intention clearly appears:

**ACCESSORY DWELLING** — A subsidiary dwelling unit created within or as an extension to an existing single-family dwelling.

**ADULT BOOKSTORE** — An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in Massachusetts General Laws, Chapter 272 Section 31. [Added 5-9-1989 ATM, Art. 23]

**ADULT CABARET** — Any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in M.G.L. Chapter 272, § 31. [Added 5-10-1999 ATM, Art. 18]

**ADULT MOTION PICTURE THEATRE** — An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in Massachusetts General Laws, Chapter 272, Section 31. [Added 5-9-1989 ATM, Art. 23]

**AMATEUR RADIO TOWER** — Any structure (lattice tower, monopole, or other) intended to support equipment, including antennas, microwave dishes, wiring, and other devices attached thereto, utilized in connection with the reception

or transmission of electromagnetic radiation for the purpose of radio communications by a federally licensed amateur radio operator. [Added 5-8-2000 ATM, Art. 17]

**AMUSEMENT PARK** — An outdoor commercial enterprise other than an itinerant circus or carnival which includes one or more of the following types of amusements: roller coasters, amusement rides, water slides, shooting galleries or other paraphernalia for amusement or entertainment purposes. [Added 5-12-1992 ATM, Art. 36]

**APARTMENT** — A structure, regardless of form of tenure, containing three (3) or more dwelling units or a mixed-use structure containing three (3) or more dwelling units having a majority of floor area devoted to non-residential use, except that up to four (4) dwelling units may be contained in a commercial structure in the Village Center District without being considered an apartment. (See § 164-32 and § 164-19.1). [Amended 5-5-1987 ATM, Art. 47; 5-12-1998 ATM, Art. 30; 5-7-2001 ATM, Art. 33; 5-13-2008 ATM, Art. 24]

**BUILDABLE UPLAND** — That land which is contiguous and not in the Conservancy District and which is contiguous and not swamp, pond, bog, dry bog, marsh or an area of exposed groundwater and which is not subject to flooding from storms and mean high tides or is not located in the FEMA flood zone 100-year base flood elevation. (See § 164-23 and § 164-20.) [Amended 5-13-2008 ATM, Art. 24]

**BUILDING** — A structure enclosed within exterior walls or firewalls, whether portable or fixed, built, erected, and framed, and having a roof for the shelter of persons, animals, or property. For the purposes of yard requirements, decks and porches shall be considered part of a building but shall not count towards the building coverage of the lot. [Added 5-10-2004 ATM, Art. 25]

**BUILDING COVERAGE** — The buildable upland portion of a lot which is covered by buildings, including porches, but excluding parking areas, pools, decks, or any permanent structures which do not have roofs. [Added 5-13-1996 ATM, Art. 21]

**BUILDING HEIGHT** — The vertical distance from the average undisturbed existing natural grade at the foundation on the street side of the building to the top of the ridge. Except as otherwise provided in § 164-40.2B, the only portions of a structure permitted above the ridge line shall be chimneys, air conditioning equipment, skylights, ventilators and antennae and other like features appurtenant to buildings which are usually carried above roofs and are not used for human occupancy and which in no event shall exceed 5 feet above the ridge line. See Section 164-19.1 E for third floor housing allowance in the Village Center District. [Amended 5-9-1988 ATM, Art. 66; 11-18-1991 STM, Art. 3; 5-7-2007 ATM, Art. 23]

**CHANGE OF USE** — Either the establishment of a commercial use in an existing commercial or industrial space where the resulting commercial use constitutes a different use category than the existing commercial use pursuant to the use regulation schedule at 164-13, or a use which by reason of its normal operation, would cause readily observable and substantial differences from the existing use in one or more of the following: patronage, service, noise, employment, appearance, parking, traffic or other similar characteristics. [Added 5-8-2006 ATM, Art. 28]

**COMMERCIAL STRUCTURES WITH DWELLING UNITS** — A structure with mixed uses, containing a maximum of 2 dwelling units, but having a majority of the gross floor area devoted to non-residential use; includes buildings containing office, retail or other non-residential use together with the dwelling units. [Added 5-12-1998 ATM, Art. 26]

**COMMUNICATION APPURTENANCE** — Any antenna, device, wiring or equipment utilized in connection with the reception or transmission of electromagnetic radiation and which is attached to a pre-existing structure. This definition does not include a communication tower or monopole. [Added 5-19-1997 ATM, Art. 29]

**COMMUNICATION BUILDING** — Any building utilized primarily for the installation and operation of equipment for generating and detecting electromagnetic radiation and which is accessory to a communication structure. [Added 5-19-1997 ATM, Art. 29]

**COMMUNICATION STRUCTURE** — Any structure intended to support equipment used for the transmission and/or reception of electromagnetic radiation, including communication towers, monopoles, antennas, wiring or other devices attached thereto, including guy wires. [Added 5-19-1997 ATM, Art. 29]

**COMMUNICATION TOWER** — Any multi-sided structure intended to support equipment used for the transmission and reception of electromagnetic radiation including antennas, microwave dishes, wiring or other devices attached thereto. [Added 5-19-1997 ATM, Art. 29]

**COMMUNICATION MONOPOLE** — Any cylindrical pole structure intended to support equipment used for the transmission and reception of electromagnetic radiation including antennas, wiring or other devices attached thereto. [Added 5-19-1997 ATM, Art. 29]

**CONGREGATE DWELLING** — A residence for six (6) or more unrelated persons, single or couples, with some shared facilities and shared services primarily as a convenience but with no licensed care. [Amended 5-7-2001 ATM, Art. 32]

**CONGREGATE HOUSING UNIT** — Accommodation for not more than six (6) persons in a congregate dwelling, sharing a single kitchen.

**CONSERVANCY DISTRICT** — See Section 164-15. [Added 5-10-1999 ATM, Art. 19]

**COTTAGE COLONIES** — Any group of two (2) or more rental cottages on a parcel of land.

**CUSTOMARY OR SELF-EMPLOYED HOME OCCUPATIONS** — Includes carpenters, electricians, painters, plumbers, paperhangers, shellfish opening and the storage of fishing equipment as customarily carried on in the town, masons, radio and television repairs, dressmaking, hand laundering, home handicrafts, home cooking, lawn mower and bicycle repairs, the practice of any recognized profession and any others of similar nature which may be approved on Special Permit by the Board of Appeals, provided that it is not injurious, noxious or

offensive to the neighborhood, and provided that there is no outside display of goods.

**DWELLING** — A building or portion thereof used exclusively for residential purposes, including one or multiple dwelling units, but not including a facility offering transient lodging accommodations to the general public. [Added 5-8-2000 ATM, Art. 19]

**DWELLING UNIT** — One (1) or more rooms intended as a single housekeeping unit for the use of one (1) or more individuals living together, and having cooking, sanitary and sleeping facilities. A “dwelling unit” does not include garages, sheds or an accessory or additional structure, whether attached or unattached.

**FENCE** — A combination of materials assembled at a fixed location for the purposes of protection, confinement, enclosure, or privacy. Any fence, that exceeds six (6) feet in height, as measured from the undisturbed existing natural grade, shall be required to meet yard requirements of an accessory building as set forth in Section 164-22.F. Trees, hedges, plants and all other vegetation shall not be considered a fence. [Added 5-10-2004 ATM, Art. 25]

**FLOOR AREA, GROSS** — The sum of the horizontal areas of the several floors of all buildings on the same lot, measured from the exterior face of exterior walls, but not including interior parking or loading areas, cellars with walls more than fifty percent (50%) below grade and areas having less than six (6) feet of floor-to-ceiling height. [Added 10-23-85 STM, Art. 40]

**GUEST HOUSE** — A separate structure accessory to a single-family dwelling or two-family dwelling and containing sleeping and toilet facilities.

**HOTEL, MOTEL or MOTOR INN** — A group of rental units for human habitation under one (1) roof which shall not provide space for cooking within each unit and may include an apartment and office for the resident manager as well as customary public facilities for the patrons. “Hotels, motels or motor inns” shall be considered a business use of the land occupied. [Amended 5-6-86 ATM, Art. 74]

**INTERCONNECTION** — A physical connection, resembling a driveway, between two parking lots or parking areas, either private or public, that allows for site traffic to circulate conveniently and safely between the areas without traveling on or crossing public roadways. [Added 5-8-2006 ATM, Art. 28]

**LODGING HOUSE** — A structure originally designed as a dwelling unit for single-family use which may be converted to provide rentable sleeping rooms [not more than five (5)] for individuals [not more than ten (10)] with a family resident in said dwelling, and may provide a common dining area within the facility. It may include a boardinghouse, tourist home, rooming house, and bed-and-breakfast but does not include a hotel, motel or motor inn.

**LOT** — An area or parcel of land in undivided ownership with definite boundaries, used or available for use as the site of one (1) or more buildings.

**LOT FRONTAGE** — The boundary of a lot coinciding with a street line if there are both rights of access and potential vehicular access across that boundary and the street either has been determined by the Planning Board to

provide adequate access to the premises under the provisions of the Subdivision Control Law and the Orleans Subdivision Regulations or is shown on an approved definitive subdivision plan; measured continuously along one (1) street line between side lot lines or, in the case of corner lots, between one (1) side lot line and the midpoint of the corner radius. [Amended 5-6-1986 ATM, Art. 70]

**LOT SHAPE NUMBER** — The number resulting from the division of the square of the perimeter by the square feet of area of the lot or said portion thereof. [ $\text{Perimeter}^2/\text{Lot Sq Ft} = <22$ ] A lot may have a shape number greater than 22 provided that the site intended for building, respective of yard requirements, is contained within a portion of said lot and said portion consists of at least 40,000 square feet of buildable upland and has a shape number not exceeding 22. [Added 5-10-2004 ATM, Art. 24]

**MARINA** — A boat basin and/or boatyard which provides facilities for mooring boats, storage and servicing of all types of recreational craft, including supplies and repairs.

**MARINE INSTALLATION** — A marina which includes such additional facilities as restaurants, cocktail lounges, luncheonettes, automatic laundries, waterskiing and skin-diving supplies and instruction, children's play areas, apparel shops, boat rentals, club houses, yacht sales and brokerage offices and transient residential accommodations.

**MOBILE CAMPING UNIT and MOBILE BUSINESS UNIT** — Any vehicle or object on wheels which is so designed and constructed or reconstructed or added to by means of such accessories as to permit the vehicle to travel over the highways and as to permit the use thereof for camping, living or business purposes, whether resting on wheels, jacks or other foundations, and shall include the type of vehicle commonly known as a "mobile home". A trailer, when used for dwelling or business purposes and affixed to land, shall remain and be considered a trailer for all purposes of this chapter. The words "mobile camping unit" and "mobile business unit" shall include travel trailers, self-powered camping units, expandable camping units and similar camping devices.

**OPEN SPACE RESIDENTIAL DEVELOPMENT** — An option to conventional grid subdivisions allowing a development where single-family dwellings are built on lots with less than the ordinary area and frontage, and the remaining land is set aside for open space, according to the procedure and design standards described in § 164-40.1 of this bylaw. [Added 5-8-1990 ATM, Art. 42]

**RESTAURANT, FAST-FOOD** — An establishment for the sale of on-premises-prepared food or drink packaged for takeout, whether for consumption on the premises or not, unless such sales are wholly incidental to a conventional restaurant or other use defined in this section, and including establishments providing in-car service or window service or service at two (2) or more take-away stations within the town.

**SETBACK LINE** — A line measured from the line of a way, public and/or private, on which the lot abuts.

**SIGN** — Any device, including recognizable logos, pictographs and objects of similar nature, which is used to identify or advertise a permitted use, service or activity in the zone in which it is located. (See § 164-35.)

**STREET LINE** — The boundary line of a road layout that coincides with the boundary line of adjoining lots. [Added 5-10-1999 ATM, Art. 19]

**TOXIC OR HAZARDOUS MATERIAL** — Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant actual or potential hazard to water supplies or other hazard to human health if such substance or mixture were discharged to land or waters of this town. “Toxic or hazardous materials” include, without limitation, organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalies and include products such as pesticides, herbicides, solvents and thinners. Wastes generated by the following activities, without limitation, are presumed to be toxic or hazardous:

- Airplane, boat and motor service and repair
- Chemical and bacteriological laboratory operation
- Cabinetmaking
- Dry cleaning
- Electronic circuit assembly
- Metal plating, finishing and polishing
- Motor and machinery service and assembly
- Painting, wood preserving and furniture stripping
- Pesticide and herbicide application
- Photographic processing
- Printing

**TRAILER** — Any vehicle or object which is, has been or may be portable. For the purpose of this definition, “trailers” shall include, but shall not be limited to, motor freight trailers, dump trailers, utility trailers and the like other than those covered in this section.

**WHOLESALE BUSINESS/WAREHOUSE** — A use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment, but excluding bulk storage of materials that are flammable or explosive or that create hazardous or commonly recognized offensive conditions. [Added 5-8-2000 ATM, Art. 19]

**YARD** — An area open to the sky, located between a structure or other property line and any principal structure or element thereof. Projections allowed to encroach on building lines and yards shall only be allowed under 164-22.D. [Amended 5-7-2007 ATM, Art. 25]

**YARD, FRONT** — A yard extending between lot side lines across the front of a lot adjacent to each street the lot adjoins.

**YARD, REAR** — A yard adjacent to the rear lot lines and extending between side lot lines.

**YARD, SIDE** — A yard adjacent to the side lot line and extending from the front yard to the rear yard.

## ARTICLE II Establishment of Districts



§ 164-5. Districts enumerated.

To accomplish the purposes of this chapter, the town is divided into districts which will best preserve their general character as follows:

Residential Districts

Residence District R

Business Districts

Rural Business District RB

Limited Business District LB

General Business District GB

Industrial District I [Amended 5-10-1999 ATM, Art. 20]

Marine Business District MB

Village Center District VC [Added 10-23-1985 STM, Art. 40]

Other districts

Conservancy District CD

Seashore Conservancy District SC (See § 164-14.)

Overlay districts

Water Resource District WR (See § 164-17.)

Shoreline District S (See § 164-18.)

Floodplain District F (See § 164-19.)

Residence District RAH [Added 5-12-1998 ATM, Art. 32]

§ 164-6. Location of districts; Zoning Map.

A. These districts are located and bounded as shown on a map entitled "Zoning Map of Orleans, Massachusetts," dated March 11, 1963, as amended and on file in the office of the Town Clerk. This map, with all explanatory matter thereon, is hereby made a part of this chapter. [Map amended 5-8-2000 ATM, Art. 20; 5-7-2001 ATM, Art. 35; 12-3-2001 STM, Art. 17; 5-13-2002 ATM, Art. 23; 5-13-2002 ATM, Art. 24; 5-12-2003 ATM, Art. 21; 5-9-2005 ATM, Art. 31; 5-13-2008 ATM, Art. 22]

B. Overlay districts.

(1) [Amended 11-18-1991 STM, Art. 2] Groundwater Protection Districts. The Town of Orleans is hereby divided into four Groundwater Protection Districts which shall be considered to be superimposed over any other districts established by the Town Zoning Bylaws. Land in each Groundwater Protection District shall be subject to the requirements of this § 164.17 as well as all other requirements of Town Bylaws which apply to the underlying zoning districts. A map entitled, "Town of Orleans Proposed Groundwater Protection Districts" dated June 7, 1991 showing the locations of the four Groundwater Protection Districts is on file for public reference in the offices of the Town Clerk, Town Planner and Water Department. The four Groundwater Protection Districts are defined as follows:

District 1 consists of Town Watershed Properties #15 and #91 as delineated on the above referenced map entitled "Town of Orleans Proposed Groundwater Protection Districts," dated June 7, 1991. District 1 also includes those properties shown as parcels 81-05, 81-09, 75-119, 75-87, 68-05 and 68-07 on the Town of Orleans Assessor's maps as of January 24, 2001.

District 2 consists of all land located in the Zones of Contribution for Town public water supply wells as determined by the Cape Cod Commission in accordance with Massachusetts Department of Environmental Protection regulations, except those portions of the Zones located within District 1, as delineated on the above-referenced map entitled "Town of Orleans Proposed Groundwater Protection Districts" dated June 7, 1991.

District 3 consists of areas formerly established by the Town as part of the Water Resource District as delineated on the above-referenced map entitled "Town of Orleans Proposed Groundwater Protection Districts" dated June 7, 1991.

District 4 consists of all the areas of the Town except those within Districts 1, 2 or 3, as delineated on the above-referenced map entitled "Town of Orleans Proposed Groundwater Protection Districts" dated June 7, 1991.

(2) Shoreline District. A Shoreline District is hereby created as an overlay district covering areas so designated on the Zoning Map. See § 164-18 for requirements.

(3) Floodplain District.

(a) The Floodplain District is herein established, effective November 28, 1985, as an overlay district. The underlying permitted uses are allowed, provided that they meet the additional requirements of § 164-19, as well as those of the Massachusetts State Building Code dealing with construction in floodplains and coastal high hazards.

(b) The Floodplain District includes all special flood hazard areas designated as Zones A, A1-A30, V and V1-V30 on the Orleans Flood Insurance Rate Map (FIRM) dated December 3, 1991, on file with the Town Clerk, Planning Department, Conservation Commission and Building Department. The boundaries of the District are defined by the 100-year base flood elevation shown on the FIRM and further defined by the Orleans Flood Insurance Study booklet dated December 3, 1991. [Amended 5-12-1992 ATM, Art. 38]

(4) Residential Affordable Housing District (RAH). [Added 5-12-1998, ATM, Art. 32]

(a) The Residential Affordable Housing District is hereby established as an overlay district. The District shall be located as shown on a map on file with the Town clerk dated April 1, 1998."

#### § 164-7. Boundaries of districts.

Except when labeled to the contrary, boundary or dimension lines shown approximately following or terminating at street, railroad or utility easement

centers or layout lines, boundary or lot lines or the channel of a stream shall be construed to be actually at those lines; when shown approximately parallel, perpendicular or radial to such lines, they shall be construed to be actually parallel, perpendicular or radial thereto; and when appearing to follow tidal shoreline, they shall coincide with the mean high-water line. When not locatable in any other way, boundaries shall be determined by scale from the map.

§ 164-8. Lots in two districts.

When a district boundary line divides any lot in one (1) ownership of record at the time such line is adopted, a use that is permitted on one (1) portion of the lot may be extended into the other portion, provided that the first portion includes the required frontage, and provided that a Special Permit is granted by the Board of Appeals.

§ 164-9. Lots located partly in another municipality.

Lots located in part in another municipality shall be regulated as to the portion located in Orleans as if entirety within Orleans.

### ARTICLE III Use Regulations

§ 164-10. General requirements; uses enumerated.

A. No building, structure or land shall be used for any purpose or in any manner other than as permitted as set forth in the Schedule of Use Regulations, § 164-13, and in accordance with the following notation:

(1) Use permitted: P.

(2) Use prohibited: O.

(3) Use allowed: A, under Special Permit by the Board of Appeals as provided in § 164-44.

B. Permitted uses and uses allowed under Special Permit shall be in conformity with all dimensional requirements, off-street parking requirements and any other pertinent requirements of this chapter.

C. Where an activity might be classified under more than one (1) of the following uses, the more-specific classification shall determine permissibility; if equally specific, the more-restrictive shall govern.

§ 164-11. Prohibited uses.

A. Salvage yards, junkyards and all open-air storage of junk, waste products and salvage materials are expressly prohibited in the town unless owned and/or operated by the town, to include only the town disposal area. The open-air storage of more than one (1) unregistered motor vehicle is prohibited, except on premises used as a new or used car sales and service business or auto body and

motor vehicle repair shop, provided that said storage shall not be deemed by the Building Inspector to be in conflict with the other provisions of this section.

B. The parking of more than one (1) school or other type of bus on a lot is prohibited in the town except in the General Business and Industrial Districts or upon school premises or during permitted functions. Onshore commercial facilities to service or support or accommodate offshore exploration or drilling for fossil fuels, including oil and gas storage tanks, pipelines, warehouses or dockside heliports, airports, airstrips and all air-support facilities whose purpose or intention or principal business is to accommodate or service or support the onshore use of the Town of Orleans for offshore exploration, drilling and transportation of fossil fuels, including but not limited to oil and gas, are prohibited. [Amended 5-10-1999 ATM, Art. 20]

C. Adult bookstores or adult motion picture theatres or adult cabaret, as defined in Section 164-4 of this Chapter are prohibited except that such establishments are permitted under Special Permit from the Board of Appeals in the Commercial District. Within the Commercial District, any such establishment shall be at least three hundred feet from a residential zoning district. [Added 5-9-1989 ATM, Art. 23; amended 5-10-1999 ATM, Art. 18; 5-10-1999 ATM, Art. 20]

D. Filling Stations and/or fuel pumps, as an accessory use and/or incidental to any other use, when used for retail purposes, are prohibited in all zoning districts. [Added 5-9-2005 ATM, Art. 30]

§ 164-12. Exceptions. [Amended 11-18-1991 STM, Art. 3]

This Bylaw shall not prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation except to the extent allowed by Massachusetts General Laws Chapter 40A, Section 3, which provides that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures, determining yard sizes, lot area, setbacks, open space, parking and building coverage.

In addition to, and in furtherance of, the purposes of this Bylaw as stated in § 164-2, it is the purpose of this Bylaw:

to recognize the special considerations accorded institutional activities, including without limitation educational, religious, and municipal uses of land;

to provide a framework for allowing institutional activities to locate in the various districts of the Town, while protecting certain environmentally sensitive areas from being unduly burdened by institutional activities and maintaining in districts generally buildings of similar scale in order that the character of the Town and its neighborhoods be maintained and that lower-density residential uses in particular not be adversely affected by structures for institutional uses;

and further, while cognizant of institutional considerations with respect to architecture and of institutional needs for larger structures in some instances than would be necessary for other uses, to be mindful of the need for public security from fire, floods and other hazards;

to accommodate growth of institutional activities while recognizing the special requirements of institutional activities, such as parking, and that as the character of institutional activities may change over time, so will the special requirements of institutional activities;

to facilitate the adequate provision of parking and open space and other public amenities for all inhabitants of Orleans;

to clarify the provisions of this Bylaw with respect to institutional activities and the application of certain dimensional, parking and other requirements to institutional uses as such requirements existed on the date of the adoption of this provision and as they may be modified by the adoption of this provision and hereafter;

and to ensure the uniform regulation of the classes of buildings, structures and land in Orleans. Accordingly, this Bylaw so regulates such buildings, structures and land as provided herein, including, without limitation, pursuant to the provisions of § 164-40.2.

§ 164-13. Schedule of Use Regulations. [Amended 10-23-85 STM, Art. 40; 5-13-2002 ATM, Art. 24]

The following shall be the Schedule of Use Regulations.<sup>2</sup>

§ 164-14. Seashore Conservancy District SC.

A. The Seashore Conservancy District is intended to further preservation of the Cape Cod National Seashore in accordance with 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.

B. Permitted uses. No premises or buildings in this district may be used except for the purposes herein stated:

(1) Conservation of land, water, wildlife, vegetation and other natural features and values.

(2) Facilities deemed by the Secretary of the Interior to be necessary on federally owned property for administration and public use and enjoyment of the Cape Cod National Seashore, provided that, to the extent possible within the purposes of the Act of Congress of August 7, 1961 (75 Stat. 284,292), plans for such facilities are coordinated with the objectives and plans of the Orleans Planning Board.

(3) Recreation related and indigenous to conservation and the natural resources of the seashore such as hunting, fishing, swimming and boating.

(4) Traditional fishing activities.

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2. Editor's Note: The Schedule of Use Regulations is included at the end of this chapter.

(5) Moving, alteration, enlargement, maintenance or repairs of existing\* one-family residential dwellings or the erection of customary structures which will be accessory to the existing\* principal residential use, provided that such improvements to existing\* dwellings and erection of accessory structures will afford not less than a fifty-foot setback from all boundary lines and, further, do not alter essential character of the dwelling as a residence. In appropriate cases, the Board of Appeals may approve lesser setback requirements for improvements to existing\* dwellings or for the erection of accessory structures, provided that they do not alter the residential character of the premises.

\*NOTE: "Existing" means in accordance with the requirement for construction of improved property contained in the Act of August 7, 1961 (75 Stat. 285,290) (September 1, 1959).

(6) Public utilities.

(7) Municipal, religious and educational uses.

(8) Detached one-family dwellings and accessory structures, provided that no lot may be used for their construction which has a frontage of less than one hundred fifty (150) feet on a way approved in accordance with the Subdivision Control Law and the rules and regulations of the Orleans Planning Board and an area of less than three (3) acres of upland, and no dwelling or building may be located in such manner as to provide less than a fifty-foot setback from all ways measured at a right angle with the street line and a fifty-foot distance from abutters' property lines, and further provided that no dwelling shall be erected below twenty (20) feet above mean high water.

(9) Agricultural, horticultural, floricultural and aquacultural uses.

C. Prohibited uses. Except as provided above, there shall be in the Seashore Conservancy District:

(1) No burning of cover unless permitted and supervised by the Fire Chief in accordance with MGL C. 48, §§ 41 and 42.

(2) No filling of land, no dumping and no removal of soil, loam, sand or gravel, except for the maintenance and protection of existing\* dwellings.

\*NOTE: "Existing" means in accordance with the requirement for construction of improved property contained in the Act of August 7, 1961 (75 Stat. 285,290) (September 1, 1959).

(3) No cutting timber except:

(a) By an owner for the purpose of reasonably controlling bush or trees.

(b) Maintenance cutting in pastures.

(c) Cutting for clearance or maintenance on a right-of-way.

(4) No buildings or structures.

- (5) No commercial or industrial ventures or activities or signs.
- (6) No drainage, damming or relocation of any watercourse except by a publicly authorized agency for the purpose of pest control.
- (7) No continuous storage of materials or equipment.
- (8) No other uses unless specifically permitted as enumerated above.

D. Provisions relating to variances and Special Permits. Applicants for variances and Special Permits within the Seashore Conservancy District shall be promptly notified by the Board of Appeals that the Secretary of the Interior is authorized to withdraw the suspension of his authority to acquire, by condemnation, property which is made the subject of a variance or Special Permit that, in his opinion, fails to conform or is in any manner opposed to or inconsistent with the purposes of the Cape Cod National Seashore. The Secretary of the Interior shall be given notice by the Board of Appeals of all applications or petitions made for variances and Special Permits to the bylaws for the Seashore Conservancy District, and he shall be provided notice by the Building Inspector of all applications for building permits involving the Seashore Conservancy District. Said notices shall be forwarded within seven (7) days of receipt of each application and petition. Subsequently, to meet the requirements of the Act of Congress of August 7, 1961, the Secretary shall be given notice by the appropriate board or official of any variance, Special Permit or building permit granted or denied for the area within the Seashore Conservancy District.

#### § 164-15. Conservancy Districts CD.

A. Conservancy Districts are intended to preserve and maintain the groundwater table on which the inhabitants 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 and extreme high tides; to preserve the amenities of the town; and to conserve natural conditions, wildlife and open space for the education and general welfare of the public.

B. Permitted uses. Except as provided in § 164-3C, buildings, structures and premises in Conservancy Districts may be used only for the following purposes:

- (1) Fishing and shellfishing, including the raising and cultivation of fish and shellfish.
- (2) The growing and/or harvesting of such crops as cranberries, marsh hay, seaweed, berries and shrub fruits and seeds.
- (3) Revetments and other types of erosion control structures.  
[Amended 5-12-1992 ATM, Art. 41]
- (4) Conservation of water, plants and wildlife.
- (5) Publicly regulated utilities. [Amended 5-6-1986 ATM, Art. 76]

(6) Recreation, including swimming, boating, nature study, fishing and hunting, unless otherwise prohibited by other ordinance, law or bylaw.

(7) The following uses by Special Permit issued by the Board of Appeals, provided that any such building or structure permitted by the Board of Appeals shall not exceed twenty (20) feet in height and shall conform to the setback and side line requirements of the residential area nearest to the site on which it is to be erected:

(a) Nonresidential buildings or structures to be used only in conjunction with fishing, shellfishing, the growing, harvesting and storage of crops raised on the premises and boathouses.

(b) Dams, changes in watercourses or other drainage works, only as part of an overall drainage plan constructed or authorized by a public agency.

(c) Educational and religious uses.

(d) Fabricated walks or trails, docks, piers and landings for private use or municipal uses.

(e) [Added 5-5-1987 ATM, Art. 50] Prior to the issuance of a Special Permit for docks, piers and/or landings for private use, the Board of Appeals, in addition to the criteria provided for in § 164-44C, must find that the following criteria have been met:

[1] Construction. Permanent docks, piers or landings shall not be permitted unless a specific navigational need can be demonstrated.

[2] Size.

[a] No dock, pier or landing shall exceed eighty (80) feet in overall length, including stairs, ramps and floats, measured from the mean high-water (MHW) line. However, the Board of Appeals may, when considering a petition to extend a dock, pier and/or landing which existed prior to the adoption of this section, allow the overall length, including any such extension, to exceed eighty (80) feet.

[b] No dock, pier, landing, stairs or ramp shall exceed four (4) feet in width, measured outside the support structure (piling, posts or railing).

[c] The total area of any and all floats associated with a dock, pier or landing shall not exceed three hundred (300) square feet, and there shall be no floats above mean low water (MLW).

[d] The height of the deck (walkway) shall not exceed four (4) feet above mean high water (MHW) unless, in the interest of preserving marsh growth, a greater height is required, in which case, the height above the marsh shall not exceed one and five-tenths (1.5) times the width of the deck.



[3] Depth of water. At mean low water (MLW), there shall be, without benefit of dredging, sufficient navigable water for the proposed vessel at the end of the dock, pier or landing and/or float system.

[4] Access. At all normal levels of the tide along the shore, pedestrian passage shall be provided.

C. Prohibited uses. Except as provided above, there shall be in the Conservancy Districts:

(1) No landfill or dumping and no removal of soil, loam, sand or gravel.

(2) No drainage other than flood control or mosquito control works by an authorized agency.

D. Boundaries and definitions. Conservancy Districts are all land or lands and areas in the Town of Orleans, but excluding land or areas within the boundaries of the National Seashore:

(1) That border on tidewater, are subject to tidal action and flooding or flowage of coastal salt water and lay below four (4) feet above the mean high-water mark, being further delineated as by following a contour line of four (4) feet above the plane of mean high water around such land or lands, marshes, salt marshes, beaches, creeks, and including all so-called floodplains and land under water in such areas.

(2) That land inland or freshwater wetland or wetlands, including but not limited to swamps, bogs, unused bogs, dry bogs, cedar swamps, streams, brooks, ponds, lakes and beaches or banks bordering such inland wetland areas, and also including land lying under water in such areas, these areas being delineated by following a contour line of two (2) feet above the plane of the mean high-water level around such areas. All inland wetlands and waters shall be held in a state of conservation against pollution and contamination. Congested natural growth may be removed from areas of freshwater ponds and lakes only with permission of the Conservation Commission upon application by the owner of a pond or lake, presenting in detail the extent or area of such removal, the manner of doing such work and methods that will be used to protect the bottom of the pond or lake against damage. Such permission will not in any way relieve the applicant from complying with other town bylaws or the Wetlands Protection Law of the Commonwealth.

(Note: To the extent possible, areas falling within the boundaries defined above have been delineated upon a set of maps prepared and dated March 1973. This set of maps will be available at the office of the Town Clerk.)

E. Topographic data. If the Building Inspector is uncertain as to the exact location of any contour line bounding a Conservancy District as defined above in the preceding subsection, the submission of sufficient topographic data may be required in order to establish the precise location of said line on any lot affected thereby before issuing a building permit for any building or structure to be located thereon. If any portion of any lot existing at the time of the adoption of this subsection and meeting the requirement of § 164-23 lies within a Conservancy District, the

conservancy portion shall be considered a part of the buildable lot in computing square footage requirements.

§ 164-16. Accessory scientific uses.

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

§ 164-17. Groundwater Protection Districts. [Amended 11-18-1991 STM, Art. 2]

A. Purpose.

Groundwater Protection Districts are herein established to promote the health, safety and welfare of Orleans residents by providing a legal framework for the protection of the Town's groundwater resources.

Orleans drinking water supply is obtained entirely from wells tapping groundwater (an Aquifer). Because the top of this groundwater source is relatively near the surface, it is highly susceptible to contamination resulting from wastewater disposal, improper use or disposal of hazardous materials such as pesticides, herbicides, salt, fertilizers, waste oil, paint, and paint thinners, and from accidental leaks or spills of oil, gasoline, or other hazardous materials. In addition to water quality considerations, groundwater recharge is necessary to provide a sufficient supply of water to meet the future needs of Orleans residents and visitors.

In order to help provide an adequate future supply of high quality Town drinking water, the following zoning bylaw provisions are enacted to (1) establish four Orleans Groundwater Protection Districts, and (2) define lot requirements and regulate land uses within such Districts. Use restrictions for each District vary as a function of the area's sensitivity with regard to protecting public water supply.

B. Definitions.

1. Aquifer: A porous water-bearing geologic formation generally restricted to materials capable of yielding an appreciable supply of water.
2. Groundwater Protection District: One of four such areas which together comprise the entire Town of Orleans and for which there are specified lot requirements and use restrictions.
3. Zone of Contribution: That portion of an aquifer which contributes water to a well and through which contaminants are likely to move and reach the well; it is represented on the surface by the area whose land uses can affect the well's water quality. Zones of Contribution for Orleans public water supply wells have been determined by the Cape Cod Commission in accordance with Massachusetts Department of Environmental Protection regulations.

C. Scope of Authority/District Delineation: The Town of Orleans is hereby divided into four Groundwater Protection Districts which shall be considered to be superimposed over any other districts established by the Town Zoning Bylaws. Land in each Groundwater Protection District shall be subject to the requirements of this § 164-17 as well as all other requirements of Town Bylaws which apply to the underlying zoning districts. A map entitled “Town of Orleans Proposed Groundwater Protection Districts” dated June 7, 1991 showing the locations of the four Groundwater Protection Districts is on file for public reference in the offices of the Town Clerk, Town Planner and Water Department. The four Groundwater Protection Districts are defined as follows:

District 1 consists of Town Watershed Properties #15 and #91 as delineated on the above referenced map entitled “Town of Orleans Proposed Groundwater Protection Districts,” dated June 7, 1991. District 1 also includes those properties shown as parcels 81-05, 81-09, 75-119, 75-87, 68-05 and 68-07 on the Town of Orleans Assessor’s maps as of January 24, 2001.

District 2 consists of all land located in the Zones of Contribution for Town public water supply wells as determined by the Cape Cod Commission in accordance with Massachusetts Department of Environmental Protection regulations, except those portions of the Zones located within District 1, as delineated on the above-referenced map entitled “Town of Orleans Proposed Groundwater Protection Districts” dated June 7, 1991.

District 3 consists of areas formerly established by the Town as part of the Water Resource District as delineated on the above-referenced map entitled “Town of Orleans Proposed Groundwater Protection Districts” dated June 7, 1991.

District 4 consists of all the areas of the Town except those within Districts 1, 2 and 3, as delineated on the above-referenced map entitled “Town of Orleans Proposed Groundwater Protection Districts” dated June 7, 1991.

If a Groundwater Protection District boundary passes through a lot which can not be subdivided, such entire lot shall be deemed to be within the District providing the higher level of groundwater protection. If a Groundwater Protection District boundary passes through a lot which may be subdivided, such lot shall be comprised of portions of two Groundwater Protection Districts as delineated by the District boundary; and if such a lot is subsequently subdivided, any created lots will be treated in the same way as a lot which can not be subdivided.

D. District Regulations.

1. District 1 Allowed Uses: Only those directly or indirectly related to the protection or production of Town drinking water. All other uses are prohibited in District 1. Provided, however, that wind turbines permitted under § 164-35-1 shall be an allowed use, provided that (a) the wind turbines are approved by the Board of Water Commissioners and the Massachusetts Department of Environmental Protection, and (b) all or a portion of the energy produced by the wind turbines is devoted to the production of Town drinking water. [Amended 5-9-2005 ATM, Art. 29]

2. District 2:

a. Lot Requirements: All lots are required to meet the following conditions, and a site plan showing compliance with these conditions must be approved by the Building Inspector prior to the commencement of any site clearing or construction:

1) At least 30% of a lot area shall be retained in its natural state except for minor removal of existing trees and ground vegetation.

2) No more than 15% of a lot area may be rendered impervious unless a system is provided for the artificial recharge of precipitation and such system will not result in the harmful degradation of groundwater quality. Regardless of such artificial recharge, at least 60% of a lot area must be pervious to water.

3) All precipitation runoff generated on a lot shall be recharged within such lot in a manner which assures that no harmful degradation of groundwater quality will occur.

4) Fill material used in construction shall contain no solid waste, toxic or hazardous materials, or hazardous waste. Prior to the use of any fill, adequate documentation shall be provided to the Building Inspector that establishes the acceptable chemical and biological quality of the fill.

b. Land Uses:

1) Allowed: All uses permitted in the underlying zoning districts except those specifically listed as prohibited.

2) Prohibited:

- a) Landfills, open dumps and junkyard.
- b) Municipal and private wastewater treatment plants.
- c) Land application or storage of sludge or septage.
- d) Automobile graveyards, used car lots and auto salvage.
- e) Sales, storage or transportation of liquid petroleum products of any kind, except those incidental to (i) normal household use, (ii) the heating of a structure, (iii) required waste oil retention facilities or (iv) emergency generators required by statute, rule or regulation, provided that such storage is either in a free standing container within a building or in a free standing container above ground level with protection adequate to contain a spill the size of the container's total storage capacity.
- f) Storage of pesticides, herbicides, fertilizers and soil conditioners except for normal household use or for use in agriculture, horticulture, floriculture or viticulture on parcels of land of more than five (5) acres, provided storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

g) The use, generation, storage, treatment or disposal of toxic or hazardous materials or wastes in quantities greater than those associated with normal household use.

h) Storage of sodium chloride, calcium chloride, chemically treated abrasive or other chemicals for the purpose of snow or ice removal from roads, or the stockpiling and disposal of snow or ice containing these substances.

i) Car washes, commercial laundries, dry cleaning facilities and metal plating establishments.

j) Boat or motor vehicle service or repair establishments.

k) Sewage disposal systems with a wastewater flow (as determined by Title V of the State Environmental Code) exceeding 110 gallons per day per 10,000 square feet of lot area, or exceeding 15,000 gallons per day regardless of lot size.

l) Chemical and biological laboratories.

m) Any use which involves on-site disposal of process wastes from operations other than personal hygiene and food for residents, patrons and employees.

n) Animal feedlots or the stockpiling of animal manures, except in a structure with an impermeable cover and liner designed to prevent the generation and escape of contaminated runoff or leachate.

o) Except for excavations for the construction of building foundations or the installation of utility works, the removal of soil, loam, sand, gravel or any mineral substances within four feet of the historical high groundwater level, as determined by the Board of Health, unless the substances removed are within 45 days redeposited on site to achieve a final grading greater than four feet above the historical high groundwater level.

p) Commercial or recreational uses that require the wholesale removal of natural vegetation or the application of fertilizers, herbicides or other chemicals in excess of normal household use.

### 3. District 3:

a. Lot Requirements: All lots are required to meet the following conditions, and a site plan showing compliance with these conditions must be approved by the Building Inspector prior to the commencement of any site clearing or construction:

1) At least 30% of a lot area shall be retained in its natural state except for minor removal of existing trees and ground vegetation.

2) No more than 40% of a lot area may be rendered impervious.

b. The Board of Appeals may grant a Special Permit allowing a lot requirement contained in § 164-17D(3)(a) to be reduced, provided the Board of Appeals makes the findings required under §§ 164-17E and 164-44.

c. Land Uses:

1) Allowed: All uses permitted in the underlying zoning districts except those specifically listed as Special Permit or prohibited uses.

2) By Special Permit, provided the Board of Appeals makes the findings required under §§ 164-17E and 164-44:

a) Sales, storage or transportation of fuel oil or gasoline as a principal use.

b) Any use which involves on-site disposal of process wastes from operations other than personal hygiene and food for residents, patrons and employees.

c) Any use, other than a single-family dwelling, with a sewage flow, as determined by Title V of the State Environmental Code, exceeding 110 gallons per day per 10,000 square feet of lot area or exceeding 15,000 gallons per day regardless of lot area.

d) Any use involving generation, use or disposal of toxic or hazardous materials in quantities greater than associated with normal household use.

3) Prohibited:

a) Sanitary landfills, open dumps and junkyard.

b) Municipal sewage treatment facilities with on-site disposal of secondary-treated effluent.

c) Road salt stockpiles.

d) Car washes, laundries, dry cleaning and metal plating facilities.

e) Boat and motor vehicle service and repair.

f) Chemical and biological laboratories.

g) Any other use which involves as its principal activity the manufacture, use, storage, transportation or disposal of toxic or hazardous materials.

d. Within District 3 the following design and operations guidelines shall be observed, except for lots containing single family dwellings:

1) Safeguards: Provisions shall be made to protect against toxic or hazardous materials discharge or loss through corrosion, accidental damage, spillage or vandalism through such measures as provision for spill control

in the vicinity of chemical or fuel delivery points, secure storage areas for toxic or hazardous materials and indoor storage provisions for corrodible or dissolvable materials.

2) Location: Where a lot is partially in both Districts 3 and 4, such potential pollution sources as on-site waste disposal systems shall, to the degree feasible, be located in District 4.

3) Disposal: For any toxic or hazardous wastes to be produced in quantities greater than those associated with normal household use, the availability and feasibility of safe disposal must be demonstrated.

4) Drainage: All runoff from impervious surfaces of a lot shall be recharged on that lot and diverted towards areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are not feasible and shall be preceded by oil, grease and sediment traps to facilitate removal of contamination.

e. The cultivation, propagation and harvesting of cranberries will not be subject to the restrictions of this § 164-17D(3).

4. District 4:

a. No lot requirements in addition to those existing for the underlying zoning districts are applied to District 4.

b. All land uses permitted in the underlying zoning districts are permitted in District 4.

E. Special Permits.

1. Criteria: Uses or reductions in lot requirements which require a Special Permit under § 164-17D, if consistent with this §§ 164-17E and 164-44 in all other respects, may be granted by the Board of Appeals, only after it has given due consideration to any comments received from other Town agencies as specified in § 164-17E(2). In granting a Special Permit, the Board of Appeals must determine that the benefits outweigh the adverse effects. This determination shall be based on consideration of at least the following:

a. The impact on the quality of groundwater.

b. The impact on the recharge volume of groundwater.

c. The reliability and feasibility of any control measures proposed.

d. The impact on groundwater quality and recharge volume if the proposed control measures fail.

2. Procedure: Upon receipt of a Special Permit application which has also been filed with the Town Clerk, the Board of Appeals shall transmit one copy each to the Water Superintendent, Board of Health, Planning Board and Conservation Commission for their written comments. Failure to respond in writing

within thirty days shall indicate approval by said agencies. The necessary number of copies of the application shall be furnished by the applicant.

3. Submittals: In applying for a Special Permit under this Section, the following information shall be submitted:

a. Complete description of the proposed Special Permit use or requested reduction in lot requirements.

b. Where applicable, one or more of the following:

1) Complete list of all chemicals, pesticides, fuels and other toxic or hazardous materials including an estimate of quantities to be used or stored on the premises in amounts greater than those associated with normal household use, accompanied by a description of measures proposed to protect such materials from vandalism, corrosion and leakage, and to provide for control of spills.

2) For storage of toxic or hazardous materials, evidence of qualified professional supervision of system design and installation and a plan for leak monitoring and containment during system use.

3) Description of toxic or hazardous wastes to be generated, indicating quantities and storage and disposal methods.

4) Evidence of approval by the Massachusetts Department of Environmental Protection or successor agency of any industrial waste treatment or disposal system or any wastewater treatment system over 15,000 gallons per day capacity.

5) Analysis by a professional sanitary or civil engineer registered in the Commonwealth of Massachusetts certifying compliance with the applicable portions of § 164-17.

**TABLE I  
SCHEDULE OF USE REGULATIONS**

**ORLEANS GROUNDWATER PROTECTION DISTRICTS**

**(Consult text of § 164-17D for details)  
[Amended 5-9-2005 ATM, Art. 29]**

Land Use	<u>District</u>			
	<u>#1</u>	<u>#2</u>	<u>#3</u>	<u>#4</u>
1. Landfills, open dumps & junkyard	O	O	O	P
2. Wastewater treatment:				
a. Muni plant + on-site disposal of secondary-treated effluent:	O	O	O	P
b. All other wastewater treatment plants:	O	O	P	P
3. Land application or storage of	O	O	P	P



sludge or septage:				
4. Automobile graveyards, used car lots & auto salvage:	O	O	P	P
5. Petroleum/gasoline sales/storage/transport:	O*	O	A	P
6. Non-household storage of pesticides/herbicides/fertilizers/etc:				
a. Minor activity:	O	O	P	P
b. Principal activity:	O	O	O	P
7. Non-household use/generation/storage/disposal of hazardous materials:				
a. Minor activity:	O*	O	A	P
b. Principal activity:	O*	O	O	P
8. Road salt storage:	O	O	O	P
9. Car washes, laundries, dry cleaning & metal plating facilities:	O	O	O	P
10. Boat/motor vehicle service/repair:	O	O	O	P
11. Sewage flow greater than 110 gpd per 10,000 sq. ft:				
a. Single-family home:	O	O	P	P
b. All other structures:	O	O	A	P
12. Chemical and biological laboratories:	O	O	O	P
13. Process waste disposal:	O	O	A	P
14. Animal feedlots/manure stockpiling:	O	O	P	P
15. Surface soil removal:	O	O	P	P
16. Certain commercial/recreational uses:	O	O	P	P
17. Commercial and Non-Commercial Wind Energy Facilities	A**	A	A	A
18. All other uses:	O*	P	P	P

NOTES:

P = Allowed use, subject to any applicable restrictions for underlying zoning districts.

A = Special Permit use, subject to any applicable restrictions for the underlying zoning districts.

O = Prohibited use.

\* = Except for uses directly or indirectly related to the protection or production of Town drinking water.

\*\* = Special Permit Use, subject to any applicable restrictions for the underlying zoning district and subject to the provisions of § 164-35.1 and to the provisions of § 164.17.D1.

§ 164-18. Shoreline District S.

A. To protect use of shoreline areas, a Shoreline District is hereby created covering areas so designated on the Zoning Map by Town Meeting vote. Such Shoreline District shall be considered to be superimposed over any other districts established in this chapter. Land in the Shoreline District shall be subject to the requirements of this section in addition to those applicable to the underlying zoning districts.

B. Use regulations. Uses shall be authorized only if they are allowed in the underlying district and they also meet the following:

(1) To be allowed without necessity of a Special Permit, a use must meet all of the following:

(a) Be functionally dependent upon water body access, for example, a marina or aquaculture, or be unequivocally oriented to and substantially benefitting from water body access or visibility, such as a motel or restaurant designed to take advantage of waterfront views.

(b) Provide opportunity for pedestrian access to the water side of any buildings.

(c) Cover less than ten percent (10%) of the lot area with buildings.

(d) Place no building, parking area or disposal facility within one hundred (100) feet of mean high water unless functionally dependent upon the closer proximity.

(2) All other uses require a Special Permit from the Board of Appeals. Such permit shall be granted only if the Board of Appeals makes the following determinations:

(a) The proposal takes good advantage of the unique qualities of that location, including proximity to a water body.

(b) Pedestrian access to the water and water visibility are reasonably provided for, unless precluded by safety or similar concerns arising from the nature of the use.

(c) Shoreline ecology is carefully protected through location of proposed alterations and any compensatory or mitigating measures proposed.

(d) Every reasonable effort has been made to provide for visibility of the shoreline and water from public ways and nearby developed properties and to avoid visual dominancy by man-made features as viewed from the water body or opposite shorelines.

C. Design regulations.

(1) Storm drainage. All surface runoff from parking and service areas shall be collected and either recharged or have its impurities removed through oil skimmers, suspended solids settlement or other necessary means before discharge to surface waters.

(2) Visibility. Shoreline visibility shall be promoted through orientation of the long dimension of any building or group of buildings so as to approximately parallel potential sight lines to the shoreline from public ways and by maintaining as a view corridor at least one-third (1/3) of the width of the lot measured perpendicular to those sight lines.

§ 164-19. Floodplain District F. [Amended 5-6-1986 ATM, Art. 83; 5-13-2002 ATM, Art. 31]

The following requirements apply in the Floodplain District:

A. Purpose. The purposes of the Floodplain District are to:

1. Ensure public safety through reducing the threats to life and personal injury;
2. Eliminate new hazards to emergency response officials;
3. Prevent the occurrence of public emergencies resulting from water quality contamination, and pollution due to flooding;
4. Avoid the loss of utility services which if damaged by flooding would disrupt or shutdown the utility network and impact regions of the community beyond the site of flooding;
5. Eliminate costs associated with the response and cleanup of flooding conditions;
6. Reduce damage to public and private property resulting from flooding waters.

B. Floodplain District Boundaries. The Floodplain District is hereby established as an overlay district. The district includes all special flood hazard areas designated on the Orleans Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) dated July 2, 1992 as Zone A, AE, AH, AO, A1-30, A99, V, V1-30, and VE. The exact boundaries of the district may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Flood Insurance Study dated December 3, 1991. The FIRM and Flood Insurance Study are incorporated herein by reference and are on file with the Town Clerk, Planning Department, Building Official, and Conservation Commission.

C. Base Flood Elevation Data. Base flood elevation data are required for subdivision or other developments greater than fifty (50) lots or five (5) acres, whichever is the lesser, within unnumbered A zones.

D. Notification of watercourse alteration. The Town 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 Ste 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. Reference to existing regulations. The Floodplain District is established as an overlay to all other districts. All development in the 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:

- (1) Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 3107.0, "Flood resistant Construction");
- (2) Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- (3) Inland Wetlands Restrictions, DEP (currently 302 CMR 6.00);
- (4) Coastal Wetlands Restriction, DEP (currently 302 CMR 4.00);
- (5) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above-referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

F. Other use regulations.

1. Within Zones AH and AO on the FIRM, adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures are required.
2. Man-made alteration of sand dunes within Zones V1-30, VE, and V which would increase potential flood damage is prohibited.
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.

G. Unnumbered Zone A. Within the unnumbered Zone A (near Baker's Pond), since the base flood elevation is not provided on the Flood Insurance Rate Map (FIRM), the applicant shall obtain any existing base flood elevation data, and it shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.

H. Zone V.

(1) No building shall be erected within areas designated as coastal high-hazard areas (Zone V) since these areas are extremely hazardous due to high-velocity waters from tidal surges and hurricane wave wash.

(2) All new construction within the V Zones shall be located landward of the reach of mean high tide.

(3) (Reserved)

(4) (Reserved)

(5) The use of fill for structural support of buildings within the V Zones is prohibited.

(6) Man-made alteration of sand dunes within the V Zones is prohibited.

§ 164-19.1. Village Center District VC. [Amended 5-8-1989 ATM, Art. 14; 5-13-2002 ATM, Art. 24; 5-7-2007 ATM, Art. 23]

Within the Village Center District, the following use and dimensional limitations shall apply, regardless of the provisions of § 164-13, Schedule of Use Regulations:

A. Auto/pedestrian conflict. No use shall have a drive-in, drive-through, fuel pumps, or other facility servicing autos.

B. Fast food restaurants: Fast food restaurants are prohibited in the Village Center District.

C. Building transparency. For nonresidential buildings, at least one-third (1/3) of the area of the first-floor facade facing the street shall permit visibility of the building interior or window displays, unless exempted on Special Permit from the Board of Appeals, upon the Board's determination that an alternative means of maintaining pedestrian visual interest will be provided.

D. Sidewalks and planting areas. Sidewalks and planting areas shall be provided on all street frontages upon construction of a new principal building or additions or alterations resulting in an increase of fifty percent (50%) or more in required off-street parking, except as exempted on Special Permit by the Board of Appeals, upon the Board's determination that topography or other specific site

conditions would preclude sidewalk usefulness. Such sidewalks shall be constructed of granolithic concrete, bituminous concrete, brick or other material providing all-weather pedestrian service, found to be comparable by the Site Plan Evaluation Board, if having jurisdiction, or by the Building Inspector in other cases. The sidewalk shall be located so as to connect with any adjacent sidewalks, preserve existing trees and provide as close to four (4) feet as feasible of planting space between it and the traveled way. The planting space shall be provided with topsoil and plantings.

E. Third Floor Housing. The purpose of this subsection is to allow increased building height in the Village Center District for the development of accessory dwelling units within commercial buildings. Up to four (4) dwelling units shall be allowed on lots when a portion of the units are located on the third floor of a commercial building. The following shall apply:

1. The vertical distance from the average undisturbed natural grade at the foundation on the street side of the building to the mean height between the bottom of the eave and the highest point of each ridge on a pitched roof shall not exceed 30 feet. In no instance shall the height to the top of the ridge exceed 42 feet.
2. Roof pitch. In accordance with this subsection, the roof must have a pitch greater than or equal to 8/12 (rise of eight for every twelve inch run). Flat roofs are prohibited under this section. No utility equipment may be placed on the roof other than that for solar collection.
3. Finished space on the third floor of the structure shall be used for residential purposes and in no case shall it be used for commercial purposes other than storage of goods.
4. Gabled and eyebrow dormers are permitted but the face of the dormer shall be set back at least 2 feet from the eave.
5. A site plan shall be submitted and reviewed as provided in § 164-33.
6. Architectural Review Committee approval is required, as provided in § 164-33.1
7. Where detached residential dwellings exist or are proposed on a lot, this third floor housing provision shall not be applicable for further development, unless authorized by the Zoning Board of Appeals through the issuance of a Special Permit.

§ 164-19.2. Residential Affordable Housing District (RAH). [Added 5-12-1998 ATM, Art. 32]

The purpose of the RAH District is to provide affordable housing for the inhabitants of the Town of Orleans. It is an overlay district which preserves the underlying zoning of the area covered by the RAH District and is intended to permit all uses currently permitted in the underlying zone subject to the applicable area height and bulk regulations for that district.

No. 1 – Permitted Uses. The following uses are permitted in the RAH District:

A. Affordable detached single family residential dwellings subject to the special bulk regulations contained herein. For the purpose of this Section the term “affordable” shall mean dwellings sold or leased by a nonprofit corporation, a governmental agency, and/or a limited dividend corporation which meets the requirements of Massachusetts General Laws chapter 40B, provided the principal purpose of said entity is to provide housing to eligible tenants and/or buyers.

B. Any other use currently allowed in the underlying district subject to the applicable lot, yard and bulk requirements.

#### Schedule of lot, yard and bulk Requirements for Affordable Housing

The following shall be the lot, yard and bulk requirements for Affordable Housing in the RAH District.<sup>1</sup>

RAH District	Minimum Lot Size (square feet) <sup>1</sup>	Minimum Frontage (feet)	Minimum Yard Dimensions (feet)			Maximum Building Height (feet)
			Front	Side	Rear	
	17,000 <sup>2,3</sup>	70 <sup>4</sup>	20	20	20	30

<sup>1</sup> Unless specifically provided for in the RAH District, all applicable lot, yard, and bulk requirements provided for in this bylaw for the underlying Residential District shall apply.

<sup>2</sup> The maximum number of lots created in the RAH District shall not exceed twelve (12).

<sup>3</sup> Lot area may be reduced to 10,000 square feet upon the approval by the Planning Board of an Open Space Residential Development under Section 164-40.1. Provided however, the total number of lots in any such Open Space Residential Development shall not exceed twelve (12). [Amended 5-9-2005 ATM, Art. 32]

<sup>4</sup> Lots may be created having a frontage of thirty (30) feet of arc frontage on a dead-end turnaround.“

#### ARTICLE IV Area Regulations

§ 164-20. General requirements. [Amended 5-9-2005 ATM, Art. 36]

Subject to the provisions of §§ 164-4 and 164-43, a dwelling or structure hereafter erected shall be located on a lot having not less than the minimum requirements set forth in the schedule in § 164-21. For each dwelling unit or guesthouse on a lot, there shall be required forty thousand (40,000) square feet of contiguous upland as set forth in § 164-23 unless otherwise provided within this chapter. No lot occupied by a dwelling or structure shall be reduced in area to less than the minimum requirements, nor shall any lot be divided so that the distance between an existing dwelling or structure and the new lot line or new ways shall be less than the minimum requirements set forth in the schedule in § 164-21. In no case shall the

total number of single family dwellings, accessory apartments and guesthouse(s) on any lot in the Residence District or on any lot in any other zoning district in which single family dwelling(s), accessory apartments(s) or guesthouse are permitted, exceed two (2).

§ 164-21. Schedule of Lot, Yard and Bulk Requirements. [Amended 10-23-1985 STM, Art. 40]

A. The following shall be the lot, yard and bulk requirements: [Amended 5-5-1981 ATM, Art. 49; 5-15-1989 ATM, Art. 62; 11-18-1991 ATM, Art. 3; 5-19-1997 ATM, Art. 29; 5-12-1998 ATM, Arts. 28, 29; 5-13-2002 ATM, Art. 24; 5-10-2004 ATM, Art. 24; 5-7-2007 ATM, Art. 23]

District	Minimum Lot Size (square feet)	Minimum Frontage (feet)	Minimum Yard Dimensions (feet)			Maximum Building Height <sup>8,10</sup> (feet)	Maximum Lot Shape Number
			Front	Side	Rear		
R	40,000 <sup>5</sup>	150 <sup>1,2</sup>	25	25	25	30	22
RB	— <sup>3</sup>	100 <sup>1</sup>	25	25	25	30	N/A
LB <sup>11</sup>	—	—	25	10	10	30	N/A
GB <sup>11</sup>	—	—	25	10	10	30	N/A
VC <sup>11</sup>	—	—	See § 164-22, Sub-section 1			30 <sup>12</sup>	N/A
I <sup>11</sup>	30,000	100	25	10 <sup>7</sup>	10 <sup>7</sup>	30	N/A
CD	—	—	See § 164-15B(7)			—	—
SC	—	—	See § 164-14			—	—
MB <sup>11</sup>	— <sup>3</sup>	100 <sup>4</sup>	25	25	25	30	N/A

NOTES:

<sup>1</sup> Refer to § 164-22H.

<sup>2</sup> Unless granted a Special Permit by the Board of Appeals for buildings in existence at the time of the passage of this amendment, i.e., March 1973.

<sup>3</sup> The building coverage may not exceed fifteen percent (15%) of the lot.

<sup>4</sup> Minimum frontage requirements shall not apply to lots with less than one hundred (100) feet and more than fifty (50) feet of frontage which existed prior to the creation of the RB and MB Districts and which are not in common ownership with any abutting lot.

<sup>5</sup> The building coverage in a Residential District shall not exceed fifteen percent (15%) of the buildable upland. However, building coverage in a Residential District shall not exceed four thousand (4,000) square feet without the issuance of a Special Permit under the provisions of § 164-44. In no event shall the Board of Appeals be authorized to grant a Special Permit which would result in building coverage which exceeds fifteen percent (15%) of the buildable upland.

<sup>7</sup> Except 50' set back from any wetland as defined in the Massachusetts Wetlands Protection Act, MGL C. 131 Sec. 40 and the Regulations issued thereunder, 310 CMR 10.04 as of April 1, 1983, or land shown on Assessor's Maps 8, 9, 10, and 11 as Town of Orleans Watershed.

<sup>8</sup> See § 164-40.2 for the dimensional requirements for educational, municipal and religious uses.

<sup>10</sup> Refer to § 164-39C(9) Height for communication structure height limitations.

<sup>11</sup> See also paragraph D, subparagraphs (3) and (4) in Section 164-34 for gross floor area ratio and impervious surface coverage.



<sup>12</sup> See Section 164-19.1 E for alternative building height in the Village Center.

B. Building separation. Any building intended for human habitation, except in licensed boys' or girls' camps, shall be separated from any other such building on the same lot by a distance equal to two (2) times the required side yard unless connected with a solid roofed structure with a permanent floor to create usable space fit for occupancy or access between the two buildings. [Amended 10-15-1986 STM, Art. 34; 5-10-2004 ATM, Art. 25]

C. In all zoning districts, all construction, with the exception of water-dependent facilities, such as piers, docks, floats, boathouses, structures used in conjunction with fishing and shellfishing and structures used for agricultural purposes, shall be set back a minimum distance equal to one and one-half (1 1/2) times the building height from any coastal bank, coastal beach, coastal dune, salt marsh, inland pond, lake or inland bank bordering on any pond or lake. "Building height," for the purpose of this section, shall be the vertical distance from the preexisting natural grade at the foundation on the side of a building facing the coastal bank, coastal beach, coastal dune, salt marsh, inland pond, lake or inland bank bordering on any pond or lake, as defined herein, to the highest point of the building(s). Notwithstanding anything contained in this section, no building shall be required to be set back more than fifty (50) feet from any coastal bank, coastal beach, coastal dune, salt marsh, inland pond, lake or inland bank bordering on any pond or lake. The terms "coastal bank," "coastal beach," "coastal dune," "salt marsh," "inland bank," "pond" or "lake," as used in this section, shall be defined as in the Massachusetts Wetlands Protection Act, MGL C. 131, § 40, and the regulations issued thereunder, 310 CMR 10.04, as of April 1, 1983. [Added 5-5-1987 ATM, Art. 44]

#### § 164-22. Modifications.

##### A. Exempted lots.

(1) A lot or parcel of land in a Residential District having an area, frontage, width or depth less than that required by this section may be developed for single residential use, provided that such lot or parcel complies with the specific exemptions of MGL C. 40A, § 6.

(2) One (1) 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, at the time this subsection was adopted, March 9, 1971, contained at least fifteen thousand (15,000) square feet and had a minimum frontage of one hundred (100) feet or has fifty (50) feet of frontage on a cul-de-sac and the proposed structure is to be located on such lot so as to conform to the minimum requirements for such structures in effect at the time of the building.

(3) One (1) 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 existed on August 2, 1973, which contained at least twenty thousand (20,000) square feet and had a minimum frontage of one hundred twenty (120) feet or has fifty (50) feet of arc frontage on a cul-de-sac and is one hundred twenty (120) feet wide at the building line and the proposed structure is to be located on such lot so as to conform to the minimum requirements of front, side

and rear yard setbacks and to all other requirements for such structures in effect at the time of the building.

(4) Such nonconforming lots exempted under Subsections A(1), (2) and (3) may be increased in size or shape or their land area recombined without losing this exemption, so long as the change does not increase the actual or potential number of lots.

(5) [Amended 5-9-1989 ATM, Art. 25; 5-12-1992 ATM, Art. 18] Panhandle Lots. The Planning Board may waive the lot frontage requirements for up to two (2) lots on a subdivision plan of land located in the Residence District R. Each lot shall be served by a separate access area, although the Planning Board may require the use of common driveways. These access areas must be approved by the Planning Board and clearly shown on the plan. The access area shall not be used in determining minimum lot area. Any panhandle lot shall be limited to one single-family dwelling. Each such lot must meet the following requirements:

(1) The lot shall be capable of containing a circle with diameter equal to the frontage normally required in that district.

(2) Panhandle frontage shall be at least thirty feet.

(3) The width of the lot, at any point between the street line and the proposed building setback line, shall be no less than twenty (20) feet.

(6) One (1) 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, at the time this subsection was adopted, May 6, 1982, contained at least forty thousand (40,000) square feet and had a minimum frontage of one hundred fifty (150) square feet or fifty (50) feet of arc frontage on a dead-end turnaround and is one hundred twenty (120) feet wide at the building line or was an approved panhandle lot under Subsection A(5) above and contained at least twenty thousand (20,000) square feet of buildable upland and the proposed structure is to be located on such lot so as to conform to minimum requirements for such structures in effect at the time of the building.

(7) Two (2) single-family dwellings, or one (1) single-family dwelling and one (1) guesthouse, or one (1) two-family dwelling may be erected on any lot which, at the time this subsection was adopted, May 6, 1982, contained at least forty thousand (40,000) square feet and had a minimum frontage of one hundred fifty (150) feet or fifty (50) feet of arc frontage on a dead-end turnaround and is one hundred twenty (120) feet wide at the building line and contained at least forty thousand (40,000) square feet of buildable upland and the proposed structures are to be located on such a lot so as to conform to minimum requirements for such structures in effect at the time of the building. This subsection shall become null and void as of May 6th 2008 and shall thereafter be deleted from the bylaw in its entirety. [Amended 5-9-2005 ATM, Art. 35]

(8) One (1) single-family dwelling may be erected on any lot in a Residential District which, at the time this subsection was adopted, May 7, 1984, contained at least forty thousand (40,000) square feet, of which a minimum of thirty thousand (30,000) square feet shall be of contiguous upland, as set forth in § 164-20, General requirements.

(9) Commercial Lots. A lot or parcel of land in the Industrial District which existed at the time this amendment was adopted may be developed for commercial use provided the structure is located on the lot so as to conform with the minimum setbacks in effect at the time of construction. [Added 5-15-1989 ATM, Art. 62; amended 5-10-1999 ATM, Art. 20]

(10) One single-family dwelling may be erected on any lot pre-existing the passage of Section 164-22A(5) which had less than the required frontage and was shown on an approved subdivision plan. [Added 5-9-1989 ATM, Art. 25]

B. Corner lots. A corner lot shall maintain front yard requirements for each street frontage, and at least one (1) of the remaining yards shall be a rear yard.

C. Appurtenant open space. No yard or other open space required for a building by this chapter shall, during the existence of such building, be occupied by or counted as open space for another building.

D. Projections. The projection of steps eaves, chimneys, cornices, bay windows, and other building elements into any required yard shall be allowed. In no event shall the projection of steps and stoops exceed 30 square feet in area nor shall it be covered by a structure. [Amended 5-7-2007 ATM, Art. 25]

E. Visual corner clearance. In any district, no structure, fence, planting or off-street parking [except a transparent fence in which the solid area is not more than five percent (5%) of the total area] shall be maintained between horizontal parallel planes two and one-half (2 1/2) feet and eight (8) feet above street level within the triangular area prescribed by two (2) street lines and a straight line connecting points on such lines fifteen (15) feet distant from the point of intersection.

F. Location of accessory buildings. No accessory building shall be located within a required front yard, nor in a Residence, Rural Business or Marine Business district shall any accessory building be located closer to any principal building or any lot line than a distance equal to the height of such accessory building. No fence or other structure enclosing animals, except house pets, shall be within fifty (50) feet of any lot line. [Amended 5-8-1995 ATM, Art. 14]

G. Location of recreational facilities. Ground-level tennis courts, other paved game surfaces and unenclosed ground-level swimming pools shall be no closer to any lot line than ten (10) feet. Elevated court games and elevated or enclosed swimming pools shall be considered accessory buildings.

H. Lots may be created having a frontage of fifty (50) feet of arc frontage on a dead-end turnaround, provided that the lot in every other respect meets the requirements of § 164-21 and is at least one hundred twenty (120) feet wide at the building line. The "building line," for the purposes of this subsection, shall be defined as follows: a line which measures at least one hundred twenty (120) feet between the side lot lines measured perpendicular to mid-lot road frontage radial.

I. Yard requirements in the VC District. [Added 10-23-1985 STM, Art. 40]

(1) The minimum setback for a front yard shall be fifteen (15) feet or, if smaller, the front yard existing on the premises on October 1, 1985, or, if smaller,

the average of the front yards existing on adjacent lots. The maximum setback for a front yard shall be twenty-five (25) feet or, if greater, the shallowest setback where the distance between lot line, measured parallel to the street, exceeds fifty (50) feet. However, no maximum setback is required for development where a building exists and is to be retained on the lot. The required minimum front yard may contain pedestrian areas, terraces, landscaped areas and required driveways approximately perpendicular to the street. [Amended 10-15-1986 STM, Art. 34]

(2) Side and rear yards shall be a minimum of ten (10) feet or more, except that, by Special Permit by the Board of Appeals, following consultation with the Fire Chief and Board of Health, said side and rear yards may be reduced to zero (0) for party wall or similar construction, provided that adequate access is assured for fire or other emergency and public services and that satisfactory provisions have been made for storm drainage and sewage disposal.

(3) Side yards shall contain no parking spaces.

#### § 164-23. Minimum lot size conditions.

The minimum required area of a lot, when used for building purposes, shall not be less than the minimum required by this chapter for the district in which it is located. Said lot shall not be interpreted to include any area below mean water level on freshwater and below mean high water on tidal water or within the limits of any defined way, nor shall less than forty thousand (40,000) square feet consist of contiguous upland (see § 164-4), exclusive of marsh, bog, swamp and wetland, except as provided for in § 164-22A.

### ARTICLE V Special Regulations

#### § 164-24. Soil removal.

A. No topsoil, gravel, loam or stone in the town may be removed to be transported outside the Town of Orleans except, from an established pit, stockpile or surplus, unless authorized by a Special Permit from the Board of Appeals.

B. No topsoil, subsoil, gravel, loam, sand, stone or other earth in the town may be removed to be transported either outside the town or from place to place within the Town of Orleans, nor may any land be filled, unless the entire area of such removal or filling shall be graded and replanted with soil-improving plants, with a permanent cover crop or by reforestation so that any scars resulting from such removal shall not remain unplanted for a period of longer than six (6) months, with the exception of the town disposal area.

#### § 164-25. Tidewater marshland areas.

The removing, filling, dredging, excavating, obstructing or otherwise altering of tidewater marshland areas or inland wetland areas and areas of exposed groundwater table in the town shall be prohibited unless authorized by a Special Permit from the Board of Appeals. The Board shall establish such rules, regulations

and standards consistent with state or federal law as may be necessary to establish the basis upon which permits shall be granted under authority of this section.

§ 164-26. Motels.

The following provisions shall apply to the design and use of hotels, motels or motor inns wherever provided for in this chapter and wherever the words “motel” or “motels” appear, it shall apply equally to hotels, inns, motels and other accommodations for tourists and guests.

A. For each lot upon which a motel is to be erected, there shall be a minimum frontage of two hundred (200) feet and a minimum of three thousand (3,000) square feet of contiguous buildable upland lot area for each of the first ten (10) motel units. For each motel unit in excess of ten (10) motel units, there shall be provided an additional two thousand (2,000) square feet of contiguous buildable upland lot area. [Amended 5-13-2002 ATM, Art. 26]

B. No motel or addition to a motel shall be erected or placed on a lot which will result in the covering by all buildings of more than twenty-five percent (25%) of the lot.

C. For each lot upon which a motel is erected, there shall be provided a front yard or setback distance of not less than fifty (50) feet, a side yard on each side of not less than twenty-five (25) feet and a rear yard of not less than twenty-five (25) feet. No other uses are permitted in these yard areas except that of a driveway in the front or side yard, provided that said driveway is not within five (5) feet of the property side line. All yard areas shall be appropriately landscaped and adequately maintained.

D. A site plan for each proposed motel shall be submitted to the Building Inspector with the request for a building permit. Said site plan shall show, among other things, all existing and proposed buildings, structures, parking spaces, driveway openings, driveways, service

areas and other open uses, all facilities for sewage, refuse and other waste disposal and for surface water drainage and all landscape features, such as fences, walls, planting areas and walks, on the lot. Three (3) copies of the site plan shall be filed with the Building Inspector, one (1) of which shall be forwarded forthwith to the Architectural Advisory Committee for its review and recommendations. In reviewing a site plan, the Architectural Advisory Committee and the Building Inspector shall consider, among other things, the following:

(1) Protection of adjoining premises and the general neighborhood from any detrimental use of the lot.

(2) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements.

(3) Adequacy of the methods of disposal for sewage, refuse and other wastes and of the methods of drainage and surface water.

(4) Provision for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the lot.

(5) Adequacy of all other municipal facilities relative to fire and police protection, education, recreation and other municipal services.

§ 164-27. Tents, trailers and mobile camping units.

A. No person shall park, store or occupy a tent or trailer for living or business purposes except in a garage or other accessory building or in the rear half of a lot owned or occupied by the owner of the tent or trailer, if placed so as to conform to the yard requirements for main buildings in the same district, but its use for living and/or business purposes is prohibited, unless temporary occupancy for a period not exceeding six (6) months in any one (1) calendar year is permitted by the Board of Selectmen in connection with the construction of a permanent home.

B. Trailers used for the purpose of storing goods, materials, equipment and the like or warehousing are prohibited unless the use is incidental to the construction of a permanent home or business. A temporary permit may be issued by the Building Inspector for a period not to exceed six (6) months with one (1) six-month renewal allowed. [Amended 5-12-2003 ATM, Art. 24]

§ 164-28. Conversion of existing dwellings to multiple dwellings.

A. Existing dwellings may be converted to multiple dwellings of not more than three (3) apartments subject to the provisions herein.

B. The area of any lot shall provide not less than seven thousand five hundred (7,500) square feet for each apartment unit and off-street automobile parking space in accordance with the provisions of § 164-34.

C. There shall be living quarters of not more than two (2) stories above finished grade level and none below said level.

D. Exterior additions, not to exceed fifteen percent (15%) of the ground area of the existing dwelling, shall be permitted, provided that front line setback and abutter's line requirements are maintained.

E. There shall be not less than a five-foot buffer strip of planting of grass between any driveway or parking area and the abutter's line and around the dwelling, and no parking area shall be less than ten (10) feet from the side line of the street or way.

F. The sewage disposal system shall be approved by the Board of Health before a permit may be granted for any such remodeling.

§ 164-29. Cottage colonies.

An existing nonconforming cottage colony may not be converted to single-family dwelling use under separate ownership unless the lot upon which each dwelling 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 or cooperative ownership unless the lot meets the minimum zoning requirements for single-family dwellings in the zoning district in which the land is located.

§ 164-30. Time-sharing and interval ownership.

Time-sharing or interval ownership of a building or structure shall be permitted only after a Special Permit has been granted by the Board of Appeals. When granting a Special Permit hereunder, the Board of Appeals must find the use involved will not be detrimental to the established or future character of the neighborhood and the town. In making its determination, the Board of Appeals shall consider, among other things, the following:

- A. Adequacy of the site, in terms of size, for the proposed use.
- B. Suitability of the site for the proposed use.
- C. Impact on traffic flow and safety.
- D. Impact on the neighborhood visual character, including views and vistas.
- E. Adequacy of the method of sewage disposal, source of water and drainage.
- F. Adequacy of utilities and other public services.
- G. Noise and litter.

§ 164-31. Apartment development. [Amended 5-5-1987 ATM, Art. 47]

A. [Amended 5-12-1998 ATM, Art. 31] Applicability. Apartments may be developed only in districts as provided in Section 164-13. A special permit for apartments shall be granted only in accordance with Subsections B through D of this section and only upon these findings being made by the Board of Appeals:

(1) By virtue of its sponsorship, financing or design, the housing will serve an important unmet housing need of the community, such as the need of area residents for year-round housing, and there is enforceable assurance that the housing will continue to meet such need for at least twenty (20) years.

(2) The housing will not adversely affect business operations on that or other premises within the district or be detrimentally affected by such uses.

B. Lot Area. Minimum lot area shall equal sixty thousand (60,000) square feet contiguous buildable upland area. Seven Thousand (7,000) square feet of contiguous buildable upland area shall be provided per dwelling unit, except that in the Rural Business District fourteen thousand (14,000) square feet of contiguous buildable upland area shall be provided per dwelling unit. Alternatively, in each structure in which the floor area devoted to dwellings is less than that devoted to

business, minimum lot area shall equal three thousand five hundred (3,500) square feet contiguous buildable upland area per dwelling unit, plus the area covered by the building, plus the area required for parking servicing the business use. [Amended 5-13-2002 ATM, Art. 26; 5-7-2007 ATM, Art. 26]

C. Other dimensional requirements. The normally applicable district frontage, yard and building height requirements shall be observed.

D. Design requirements. No structure shall contain more than twelve (12) dwelling units. No dwelling unit shall have its lowest floor below grade at its entire perimeter.

E. No Special Permit shall be issued by the Zoning Board of Appeals for an apartment or other multi-family housing development where the density exceeds two (2) units per acre of buildable upland area unless the Board of Health certifies that the septic system is designed to achieve an effluent nitrogen concentration of 19 milligrams per liter (mg/l) or less, as measured at the discharge. [Added 5-13-2002 ATM, Art. 30]

§ 164-32. Dwellings in commercial structures or accessory to commercial uses. [Amended 5-15-1989 ATM, Art. 62; 5-7-2001 ATM, Art. 33; 5-7-2007 ATM, Art. 22]

Dwellings in commercial structures or accessory to commercial uses may be permitted where allowed under § 164-13, subject to the following conditions:

1. General Requirements

- a. A site plan shall be submitted and reviewed as provided in § 164-33.
- b. Architectural Review Committee approval is required, as provided in § 164-33.1
- c. Prior to occupancy of any dwelling unit in a commercial structure, screening as described in § 164-34D(1) and as required under Site Plan approval must be installed along side and rear lot lines, except in the Village Center District.

2. Village Center District

Up to three (3) units may be permitted on a lot either within the commercial structure or in a separate structure located on the same lot<sup>1</sup>. The following criteria must be met:

- a. In mixed use buildings, first floor units fronting on streets shall be reserved for commercial uses.
- b. Any building used exclusively for residential purposes must be located behind other buildings that have frontage on the street. In no case shall any building used exclusively for residential purposes front the street.



- c. In the event of a corner lot the Site Plan Review Committee shall determine which street frontage will be the primary street frontage.
- d. At least 30% of the floor area on the parcel shall be used for commercial purposes.
- e. One (1) off-street parking space will be required for each dwelling unit. When units with two (2) or more bedrooms are proposed parking must be provided that meets the requirements of § 164-34 or an affidavit must be supplied to the building commissioner indicating the provision, through a shared parking agreement or other means, of the off-street parking spaces.

3. Other Business Districts

No more than two (2) dwelling units may be allowed on a lot within a structure used for commerce through new construction, addition, or conversion. The following criteria must be met:

- a. The principal use of the structure must be devoted to the commercial use.
- b. Lot area shall equal at least two thousand two hundred (2,200) square feet for each dwelling unit in addition to the area required for the commercial use.
- c. Off-street parking shall be provided for the dwelling units as per requirements of this chapter.
- d. For each dwelling unit having in excess of one (1) bedroom, unpaved open space of at least four hundred fifty (450) square feet shall be provided.

1 Up to four (4) units may be allowed, see Section 164-19.1. E.

§ 164-33. Site plan review. [Amended 5-6-1986 ATM, Art. 69; 10-15-1987 STM, Art. 58; 5-8-1990 ATM, Art. 40; 5-9-1994 ATM, Art. 32; 5-12-1998 ATM, Art. 33]

I. PURPOSE. The purpose of site plan review is to provide a forum to familiarize project applicants with applicable Town requirements and to ensure the design and layout of certain developments permitted as a matter of right or by special permit will constitute suitable development and will not be detrimental to the neighborhood or the environment. The Site Plan Review Committee is also intended to provide an inexpensive forum to familiarize the applicants with the requirements that pertain to a project.

II. APPLICABILITY.

A. The provisions of this section shall not apply to any construction, reconstruction, alteration or extension to single or two family residential dwellings and permitted accessory structures thereto, nor to subdivisions or divisions of land.

- B. The provisions of this section shall apply to:
1. Any project that requires a special permit.
  2. Any new construction and any addition or alteration to existing structures which expands the gross floor area 1000 square feet or more.
  3. Any activity that will alter parking, if there is a total of twenty or more existing spaces or ten proposed spaces or alters egress therefor.
  4. Any activity that would affect drainage, utilities, lighting or sewage disposal requirements.
  5. Any change of use of an existing structure or land, except for a change of use of a structure to a single or two family dwelling or any use accessory thereto.
- C. Applicants with prospective projects that would otherwise be exempt from these provisions may apply for an Informal Site Plan Review to assist them in their planning.

### III. PROCEDURES.

A. APPLICATIONS. Applications for meeting with the Site Plan Review Committee are available at the Planning and Building Departments. Appointments with the Site Plan Review Committee can be scheduled at the Planning Department.

B. RULES AND REGULATIONS. The Site Plan Review Committee may, following a properly advertised public hearing, adopt and from time to time amend regulations for the administration of this section, including establishing a schedule of fees sufficient to defray the costs of technical services and other expenses of the Committee. Copies of the Committee's regulations will be available at the Town Clerk's Office.

C. INFORMAL REVIEW. Any applicant may request an informal review of a proposed project. The purpose of informal review is to provide an applicant with information early in the project planning process as to what approvals will be needed from local or state boards, committees or agencies. It is intended to save the applicant time and money by providing information in one location pertinent to the local permitting process.

1. Submission Requirements for Informal Review. The applicant shall submit the following documents at least five business days prior to meeting with the Site Plan Review Committee:

- a. completed application form
- b. plot plan (copy of Assessor's Map is acceptable)
- c. sketch of proposed development showing buildings, improvements, parking and other features which may be of assistance to the Committee in understanding the proposal.

2. Informal Review Meeting. The Site Plan Review Committee shall give the applicant information and feedback on the feasibility and applicable regulations for the proposed project at the Informal Review meeting. The feedback shall include written comments prepared by each participating committee member.

3. Waiver of Formal Review. The Site Plan Review Committee may, after review and comment from each committee member, waive the Formal Review required by Section 166-33, III.D., if they find that the project's impacts do not require Formal Review or the informal plan submitted meets the requirements for Formal Review.

D. FORMAL REVIEW.

1. Unless a waiver is granted under Section III, Paragraph C, Subparagraph 3, Informal Review, the Committee shall require an applicant to proceed with the Formal Review for projects meeting the thresholds set forth in Section II, Paragraph B, Subparagraphs 1 through 5.

2. Submission Requirements for Formal Review. The applicant shall submit the following documents at least five (5) business days prior to meeting with the Site Plan Review Committee:

- a. completed application form
- b. site plan prepared by a professional engineer or a licensed land surveyor which shall include one or more appropriately scaled maps or drawings of the property clearly and accurately indicating such elements of the following information as are pertinent to the development activity proposed:
  1. boundaries of lot
  2. adjacent streets
  3. existing and proposed structures, fences, and walls
  4. existing and proposed topography at 2' contour intervals
  5. walkways, driveways, parking areas, loading and service areas, parking space dimensions, screening
  6. proposed landscaping showing the size, type and location of plantings
  7. on-site wells, water lines and all other underground utilities
  8. sewage disposal systems
  9. dumpster
  10. existing and proposed stormwater drainage system

11. wetlands/resource areas as defined by local conservation commission regulations
12. architectural plans with elevations of buildings
13. proposed erosion control measures
14. drawings of proposed signs
15. location and type of proposed outdoor lighting.

c. The committee may waive certain site plan requirements if the applicant presents sufficient evidence that the requirements are not applicable or necessary for their application.

3. Prior to the scheduled meeting date the Planning Department shall distribute copies of the Site Plan to the members of the Site Plan Review Committee and to such other Town agencies or departments as he/she deems necessary to properly review the project.

4. Site Plans shall be reviewed by the appropriate committee member(s) for consistency with zoning and other applicable regulations and standards including the criteria set forth in Section IV. herein.

5. Within thirty (30) calendar days of receiving a Site Plan, the Site Plan Review Committee shall render a decision to approve, approve with conditions or disapprove the Site Plan. The Committee shall notify the applicant in writing of any approval, conditional approval or disapproval, stating the reasons therefor. The Committee may disapprove a site plan if the applicant fails to submit the required documents.

6. Any decision on a Site Plan under this section may be appealed to the Zoning Board of Appeals by any party having standing, including town officers and boards, as provided in Massachusetts General Laws Chapter 40A, § 8.

7. Approval of a Site Plan shall expire one (1) year after the date of approval unless, in the case of construction, a special permit or building permit has been applied for within said one year period and ultimately issues; or in the case of change of use, the new use has commenced within said one year period, or, if required, a special permit has been applied for within said one year period and ultimately issues. The Site Plan Review Committee may grant such extensions of time as it deems necessary to carry any site plan into effect; the Committee shall notify the Building Inspector of any such extension of time and the date on which it shall expire.

8. Performance Guarantee. Prior to issuance of a certificate of occupancy, or certification of compliance with zoning in accordance with section 164-42 B., all work associated with an approved site plan, including installation of all required improvements, facilities, and structures must be completed as per the approved site plan. The Building Commissioner and the Director of Planning and Community Development, jointly, may issue a certification that work has been completed in accordance with the approved site plan. The Site Plan Review Committee may authorize the granting of an occupancy permit prior to the completion of work associated with the approved site plan if the completion of such

work is secured by the posting of a bond, sufficient in the opinion of the Site Plan Review Committee, to secure completion of the required improvements. The Site Plan Review Committee shall specify the time within which such improvements shall be completed. After such time, if the required improvements have not been completed, the Site Plan Review Committee may cause work to be done to complete the improvements. Following full or partial completion of the required improvements, the bond may be either fully or partially released by the Site Plan Review Committee. [Added 5-7-2001 ATM, Art. 34]

#### IV. REVIEW CRITERIA.

A. Site development shall provide for access to each structure for fire service equipment and shall provide for stormwater drainage on site without erosion or ponding.

B. A reasonable effort shall be made to conserve and protect natural features that are of some lasting benefit to the site, its environs and the community at large.

C. The placement of buildings, structures, fences, lighting and fixtures on each site shall not interfere with traffic circulation, pedestrian use, safety and appropriate use of adjacent properties.

D. Every reasonable effort shall be made to place buildings, structures, fences, lighting and fixtures on each site in such a manner to provide for visibility of the shoreline and water from public ways or adjacent developed properties.

E. Stormwater drainage shall be contained on the development site, away from wetland resources and designed to handle calculated flows from a 25 year storm. See Section 164-34, C-7.

F. Existing trees of six inch caliper at chest level shall be incorporated into landscape areas when their retention will not prevent the provision of the required minimum number of parking spaces without the need for other relief. See Section 164-34, C-4.

G. New driveways shall oppose existing ones where offsets of 100 feet cannot be attained. See Section 164-34, C-4.

H. No more than one curb cut at the major street frontage shall be permitted unless the total number of parking spaces on the site does or will exceed 50 spaces and no other access is proposed. See Section 164-34, D-1.

I. Parking areas shall be screened from the street and adjacent properties used or zoned for residential use. Screening shall be installed in the manner described in § 164-34.D.1. [Amended 5-7-2001 ATM, Art. 34]

J. Sight distance at site driveways shall be in accordance with Section 164-34, C-4.

K. Parking Interconnections. Parking areas of twenty (20) or more spaces shall provide, or provide future planned accommodations for, interconnections, where feasible, to adjacent parking areas. As a result the total number of parking

spaces required for the proposed project can be reduced by 10%. [Added 5-8-2006 ATM, Art. 26]

V. SITE PLAN REVIEW COMMITTEE. The Site Plan Review Committee shall consist of the following officials or their designees:

- A. Building Commissioner
- B. Director of Planning and Community Development
- C. Health Agent
- D. Conservation Administrator
- E. Highway/Disposal Area Manager
- F. Water Superintendent
- G. Fire Chief

H. Such other officials as may be determined by the Site Plan Review Committee to be necessary to review the proposed project, including but not limited to the Traffic Study Committee and the Old Kings Highway District Committee.

VI. APPROVED SITE PLAN/WHEN REQUIRED.

A. No building permit, special permit, or occupancy permit shall be issued for any activity or use within the scope of § 164-33 II.B. herein unless a Site Plan Review has been approved therefor or the deadline for action has expired.

B. No activity within the scope of § 164-33 II.B. herein shall be carried out without an approved Site Plan therefor. Any work done in deviation from an approved Site Plan shall be a violation of this Bylaw, unless such deviation is approved in writing by the Building Commissioner as being of no significant detriment to the achievement of the purposes set forth in Section 164-33-I herein.

§ 164-33.1. Architectural review. [Added 5-8-1990 ATM, Art. 40]

Whereas the Town of Orleans contains a number of buildings from the eighteenth and nineteenth centuries which reflect its unique past as a rural coastal community and nineteenth century commercial center, and whereas the architectural styles of these eras and its later twentieth century Colonial-revival brick buildings give the town its distinct character of a desirable community for summer visitors and year-round residents alike, the following Architectural Review process is intended to promote the continuation of attractive building and landscaping styles, with good blending of the old and the new.

A. Purpose. The purpose of this bylaw is to preserve and enhance the town's cultural, economic and historic resources by providing for a detailed review of the appearance of structures and sites which may affect these resources. The intent of the review process is to:

- (1) Prevent new construction or alterations that are incompatible with older, existing building styles or that are of inferior quality or appearance;
- (2) Promote conservation of buildings and groups of buildings that have aesthetic or historic significance;
- (3) Enhance the social and economic viability of the town by preserving property values and promoting visual attractiveness; and
- (4) Encourage flexibility and variety in future development.

B. Architectural Review Committee. An Architectural Review Committee is hereby created and shall consist of five members appointed by the Board of Selectmen, preferably including at least two members with professional or educational backgrounds in design or architecture, two members with professional or educational backgrounds in historic preservation or with an appreciation for local history, and one additional member. Two associate members shall be appointed to act as alternates in case of the absence of regular members. After initial appointments with staggered terms, future appointments shall be for three years.

C. Applicability. The review process described in this § 164-33.1, shall apply to all building permit and Special Permit applications, including those for alterations, renovations, additions, demolitions and relocations, except those for new or existing one- and two-family dwellings intended for continued residential use, buildings or structures accessory to them, any building permit or Special Permit application involving property in the Industrial District or the Old Kings Highway Regional Historic District, or any interior alteration not visible from the exterior of a building. Changes which affect the appearance of a building whether or not such work requires a building permit, including but not limited to changes in the color, design or character of exterior building materials, windows or doors, light fixtures, signs and appurtenant elements shall be subject to review as provided in the sections on Preliminary and Final Plan Review below. [Amended 5-10-1999 ATM, Art. 20]

D. Procedure.

(1) Preliminary Review. The Architectural Review Committee shall provide Preliminary Review of proposed buildings or alterations at their regular meetings later than two weeks of receipt of an application. A brief description of the proposed construction or improvements shall be included on the applications, which shall be available in the Building Department. Plans or sketches are required.

Signs, new or modified, decks, accessory structures such as fences, flagpoles and trellises, and installation of siding or roofing, door and window replacements, and work which does not require a building permit are generally subject only to Preliminary Review. A Plan Review Report will be forwarded to the Building Department. In all other cases, Preliminary Review will be optional, but available at the request of the applicant for exchange of information and ideas before plans for Final Review are submitted. [Amended 5-8-2006 ATM, Art. 27]

(2) Application for Final Plan Review. Application for plan approval under Final Plan Review shall be made by submitting an application and sufficient copies of the Site Plan and other required materials as described below to the Building Department or Committee Recording Secretary. Applications shall be

available in the Building Department. Notice of the time, date, and place of review and the location of proposals scheduled for Final Plan Review shall be published in a local newspaper not less than seven (7) days prior to the date of the review. [Amended 5-8-2006 ATM, Art. 27]

(3) Drawings and Materials for Final Plan Review.

a. Site Plan. Site plans shall include boundaries and dimensions of the lot; parking areas, driveways, walkways and loading areas; existing and proposed structures; information relating to the intensity and extent of proposed lighting; a landscaping plan showing location of trees 6" or greater in diameter to be removed or retained, and type and location of other existing or proposed plantings; existing or proposed benches, footpaths or other pedestrian amenities; and principle dimensions of signs.

b. Architectural Elevations. Building facades, building height, roof pitch, fenestration, doors, floor to floor height shall be shown at a minimum of 1/8" = 1' 0" scale.

c. Photographs. Polaroid or other photographs of the site and abutting properties shall be required.

d. Samples. Samples of exterior building materials including color shall be part of the application.

e. Historical Information. Information on year built, historical significance, if any, and historic use shall be included in materials for review. [Added 5-8-2006 ATM, Art. 27]

(4) Final Plan Review Report and Recommendations. Within thirty (30) days of their receipt of the application for Final Plan Review, the Architectural Review Committee shall review applications and forward a Final Plan Review Report containing its description and recommendations to the Building Inspector. This deadline may be extended at the request of the applicant. The Final Plan Review Report shall be based on consideration of the design criteria in Subsection E below and shall state in all cases the Committee's decision to approve, approve with modifications or disapprove of the plan and shall contain specific written findings relating to compliance with the design criteria.

The committee may disapprove a proposal if it fails to meet the design criteria in Subsection E and there is a resultant negative visual impact on the town. In the case of disapproval, the committee shall state clearly how the proposal fails to comply and describe the resultant negative impact. A copy of this report shall be hand delivered or mailed by certified mail to the applicant no later than the day it is forwarded to the Building Inspector. If the proposal requires a variance or Special Permit, the Building Inspector shall immediately transmit the Architectural Review Committee's report to the Special Permit Granting Authority.

(5) Issuance of Building or Special Permits. Neither the Building Inspector nor the Special Permit Granting Authority shall issue a building permit or Special Permit for construction subject to these requirements unless the Architectural Review Committee has approved the plans, the deadline for action has expired, or an appeal of this bylaw or an Exemption from Final Plan Review has been granted. In the event of Architectural Review Committee disapproval of a



proposal, the Building Inspector shall not issue a building permit nor shall the Special Permit Granting Authority issue a Special Permit.

(6) Appeals. Any decision by the Architectural Review Committee under this section may be appealed to the Board of Appeals by any party having standing, including town officials and boards, as provided under M.G.L. Ch. 40A, § 8.

E. Design Criteria. The following criteria shall be used as a guide for the Architectural Review Committee when reviewing applications. No project shall be approved unless the Architectural Review Committee finds that it meets the overall intent of the design criteria described in this bylaw. [Amended 5-8-2006 ATM, Art. 27]

(1) Character. The proposal shall complement the existing Cape Cod community character that is illustrated by the variety of architectural styles set throughout Orleans. Contemporary or nontraditional designs should not be discouraged if they can be shown to be compatible with the surrounding environment.

(2) Distinguishing Features. Original stylistic features or examples of skilled craftsmanship of historic or aesthetic significance on a building shall be preserved and maintained or replaced with similar elements where possible and where desirable.

(3) Architectural Details. The architectural details, including signs and use of building materials, should be harmonious with the building's overall architectural style and preserve and enhance the character of the surrounding area.

(4) Scale. The proposal demonstrates balanced proportions in relation to height and width, roof shape and pitch, and windows and doors. Scale should be consistent with other structures in the surrounding area.

(5) Massing and Bulk. There should be an overall relationship between the building size & scale and the lot that is consistent with surrounding properties. Nearby structures built in proportion to one another are desirable.

(6) Setback. The proposed setback from the street re-enforces the existing building setbacks in the surrounding area where the existing setbacks are desirable. Providing continuity of this setback line maintains the character of the street.

(7) Height. There should be a relationship between the height of the proposed structure and that of adjacent properties that is consistent within the surrounding area.

(8) Building Materials. The exterior siding, roof, windows, doors, and trim should be compatible with desirable and traditional materials used in the community. Exterior building materials such as stucco and exposed concrete, though in existence, are not desirable. The use of innovative building materials shall not be discouraged by this criteria provided they are compatible with traditional Cape Cod style.

(9) Roof. The shapes and angles of roofs should be consistent with surrounding roof shapes and pitches to maintain a visual balance.

(10) Fenestration. The patterns of windows and doors should maintain a balance that conveys a sense of function and scale to the structure.

(11) Color. Building exteriors, including signs, should have colors consistent with traditional Cape Cod designs and complement the function of the elements and their locations.

(12) Signs. All aspects of signs including but not limited to shape, size, font style, color, design and construction, are subject to the design criteria listed in this bylaw. For buildings containing more than one business, continuity in sign design is desirable (see section 164-35).

(13) Lighting. Light shall be contained on site through adequate shielding and downward direction. All outdoor lighting shall comply with Chapter 122 of the Orleans Town Code.

(14) Landscaping. Grade changes, plantings, fencing, and other aspects of landscaping, should complement the existing area landscaping as well as integrate buildings with their environment and provide amenities for pedestrians. Plantings on the street-facing side of buildings, window boxes and planters are desirable. Benches or other seating arrangements, distinctive treatment of walkways, and links with other buildings for pedestrians are encouraged. Plants that are native to Cape Cod and provide habitat value are preferred.

#### § 164-34. Off-street parking regulations.

##### A. General provisions.

(1) Off-street parking space shall be provided as specified in this chapter and shall be furnished with necessary passageways and driveways. All such space shall be deemed to be required space on the lot on which it is situated and shall not be encroached upon or reduced in any manner. All parking areas, passageways and driveways, except when provided in connection with one-family residences, shall be surfaced with a dustless, durable, all-weather pavement clearly marked for car spaces and shall be adequately drained, all subject to the approval of the Building Inspector. An area of three hundred (300) square feet of appropriate dimensions for the parking of an automobile, including maneuvering area and aisles, shall be considered as one (1) off-street parking space. Except in the VC District, in no case shall a driveway, maneuvering area, aisle or parking space, except a loading or service area, be closer than ten (10) feet to a building in any business district. Said ten-foot setback area is to be used only for green area and pedestrian walkways, raised or lowered or otherwise protected. Landscaping consisting of attractive trees, shrubs, plants and grass lawns shall be required and planted in accordance with the site plans. Special buffer planting shall be provided along the side and rear property lines so as to provide protection to adjacent properties when such lot lines abut residential districts or uses. [Amended 10-23-85 STM, Art. 40]

(2) None of the off-street parking facilities that are required in this chapter shall be required for any existing building or use unless said building or use shall be enlarged, in which case the provisions of this chapter shall apply only to the

enlarged portion of the building or use. Authorization by the Board of Selectmen, acting on the advice of the Highway Surveyor, is required for all curb cuts. A site plan shall be filed with the building permit application where off-street parking facilities are required or permitted under the provisions of this chapter in connection with the use or uses for which application is being made.

(3) No off-street parking area, loading area or driveway, except those serving one- or two-family residences, shall be located closer than ten (10) feet to any lot or street line, except as provided below. Such ten-foot setback shall be considered a green area. These buffer areas may be crossed by appropriate driveways and walkways as shown on the site plan. However, driveways crossing said buffer areas shall cross at right angles only. In addition, the requirement for setback may be waived by the Building Inspector in consultation with the Planning Board for the purpose of establishing common parking areas for two (2) or more businesses or other reasons, provided that an equivalent buffer area is provided and designated elsewhere on the site plan.

(4) The collective provision of off-street parking area by two or more buildings or uses located on adjacent lots is permitted, provided that the total of such facilities shall not be less than the sum required of the various buildings or uses computed separately, and further provided that the land upon which the collective facilities are located is owned or leased by one or more of the collective users. In the VC District, parking requirements may be satisfied through paying an annual access fee to the town in lieu of providing some or all of the required on-site parking spaces. The access fee per space shall equal five hundred dollars (\$500.), indexed to the United States Cost of Living Index subsequent to 1985. No permit for construction or occupancy shall be approved if relying on access fees to satisfy parking requirements, and no access fees shall be charged on previously permitted premises unless town appropriations and authorizations for acquisition and/or construction of off-street parking exceed the total of access fees charged or scheduled to be charged, summing both fees and appropriations and authorizations from fiscal year 1986 to the time in question. [Amended 10-23-85 STM, Art. 40]

#### B. Number of spaces

(1) Performance requirement. Off-street parking must be provided to service the net increase in parking demand created by new construction, additions or change of use. Buildings, structures and land uses in existence on May 4, 1981, are not subject to these requirements so long as they are not enlarged or changed to increase their parking needs. A site plan shall be filed with any permit or Special Permit application involving or requiring parking, identifying individual spaces, access lanes and egress.

Notwithstanding anything contained herein to the contrary any addition or alteration or change in use of an existing building, structure or use of land which is in compliance with this chapter, that results in an increase in required off-street parking of less than 6 spaces, shall not be required to provide those spaces. If an increase of six or more spaces is required, all of the spaces must be provided. [Amended 5-8-2006 ATM, Art. 25]

New Construction for the purposes of paragraph B(1) shall include alterations of existing buildings or structures, or the construction of any new building or structure, and the establishment of the use thereof. [Amended 5-13-1996 ATM, Art. 23]

(2) The standards below must be met for new construction and for any increase in parking demand created by additions, alterations, or changes of use if the proposed additions or changes of use would require an increase of six or more parking places.

Existing parking places may be used to fulfill parking requirements for new construction, additions, alterations, or changes of use only if those spaces are in excess of the number required for the existing building's use according to current parking requirements and regardless of requirements in effect at the time those spaces were created.

For mixed uses, the requirements for each use are added together, e.g. for a motel and a restaurant on the same premises, the parking requirement for rooms and the parking requirement for the restaurant are added together. [Amended 5-13-1996 ATM, Art. 24]

(3) [Amended 11-18-1991 STM, Art. 3] Special Permits. The required number of spaces may be reduced below these standards on Special Permit from the Board of Appeals upon the Board's determination that special circumstances, such as shared use of a parking lot by activities having different peak demand times, render a lesser provision adequate for all parking needs. Any Special Permit reducing the required number of spaces issued pursuant to this Section in the case of educational, municipal and religious uses shall:

(a) be limited to two years, renewable upon demonstration that the reduced parking is still adequate and

(b) be issued only upon assurances that if the special circumstances change, sufficient land will be available in the future to meet the parking requirements otherwise applicable at the time the Special Permit is issued, such assurances to be in the form of a recorded restriction or other land in the same ownership or other written assurance deemed adequate by the Board of Appeals. The Board of Appeals may, in its discretion, impose similar conditions on Special Permits reducing the number of parking spaces for other uses.

For uses allowed only on Special Permit, the Special Permit Granting Authority may similarly require a larger number of spaces to be provided than indicated below if necessary to service anticipated demand.

C. Parking area, design and location.

(1) Location. Required parking shall be located either on the same lot as the activity it serves or located on other lots within 500 feet of the lot upon which the activity is located, provided said off-premises lot(s) is not located in the Residence District R. [Amended 5-10-1989 ATM, Art. 38; 5-13-1996 ATM, Art. 22]

(2) Surface. All required parking areas, except those serving single-family or two-family residences, shall be dustless, durable, with an all-weather surface and with drainage provided for, designed to prevent dust, erosion, water accumulation or unsightly conditions. In parking areas with ten (10) or more spaces, individual spaces shall be marked by painted lines, individual wheel stops or other means.

(3) Backing. Parking areas shall be designed and located so that their use does not involve vehicles backing onto or off of a public way.

(4) Egress. There shall be not more than two (2) driveway openings onto any street from any single premises unless each opening center line is separated from the center line of all other driveways serving twenty (20) or more parking spaces, whether on or off the premises, by two hundred (200) feet, measured at the street line. No such opening shall exceed thirty (30) feet in width at the street line unless necessity of greater width is demonstrated by the applicant and the opening is designed consistent with Massachusetts Department of Public Works regulations. No driveway side line shall be located within fifty (50) feet of the street line of an intersecting way. All driveways serving five (5) or more parking spaces shall be constructed with a minimum edge radius of five (5) feet on both sides. All driveways serving forty (40) or more parking spaces must have not less than two hundred fifty (250) feet of visibility in each travel lane entering a state-numbered or –maintained highway and not less than one hundred fifty (150) feet of visibility on other streets. Authorization by the Board of Selectmen, acting on advice of the Highway Surveyor and Chief of Police, is required for all curb cuts. Said authorization shall take into consideration the safety hazard, if any, caused by the curb cut.

(5) Parking lot plantings. Parking lots containing ten (10) or more parking spaces shall have at least one (1) tree per eight (8) parking spaces, such trees to be located either within the lot or within five (5) feet of it. Such trees shall be at least two (2) inches in trunk diameter, with no less than forty (40) square feet of unpaved soil or permeable surface area per tree. At least five percent (5%) of the interior of any parking lot having twenty-five (25) or more spaces shall be maintained with landscaping, including trees, in plots of at least four (4) feet in width. Trees and soil plots shall be so located as to provide visual relief and sun and wind interruption within the parking area and to assure safe patterns of internal circulation.

(6) Bicycle racks. For parking areas of twenty (20) or more spaces, bicycle racks facilitating locking shall be provided to accommodate one (1) bicycle per twenty (20) parking spaces required or fraction thereof.

(7) Control of Runoff from Commercial and Multifamily Parking Lots.  
[Added 5-8-1990 ATM, Art. 41]

On all lots proposed for other than one- or two-family residential use, stormwater runoff shall be directed in such a way as to recharge the groundwater beneath the lot and in such a manner as not to increase the flow of runoff into, wetlands as defined by MGL Ch. 131, § .40 as of January 1, 1990. Since in a given storm event the first inch of rainfall, known as the “first flush,” contains approximately ninety percent (90%) of all contaminants, this portion of runoff shall be contained on the lot.

To demonstrate these capabilities, the applicant shall show proposed catch basins or other drainage facilities sufficient to contain runoff from a twenty-five-year storm flowing over man-made areas on the lot, on plans submitted to the Building Inspector or Plan Evaluation Board. The applicant shall also submit drainage calculations for the site for a twenty-five-year storm prepared by a registered professional engineer. Plans shall show how contaminants likely to reach

groundwater, such as hydrocarbons, may be removed by currently available methods.

D. Business and Industrial District requirements.

(1) Screening. Off-street parking areas in Business and Industrial Districts shall be effectively screened on each rear lot line which adjoins an institutional use or a Residence District and also on each side lot line. Such screening shall consist of an area at least four (4) feet in width densely planted with a mixture of evergreen and deciduous trees and shrubs four (4) feet or more in height when planted [three (3) feet if within twenty (20) feet of a street line] or a landscaped earth berm of equivalent height, or equivalent visual interruption shall be provided through retained existing vegetation or through difference in elevation between potential viewers and the screened areas. Fences or walls may be a part of such screening but must, in themselves, be landscaped. Any parking area within ten (10) feet of a school, hospital or other institutional building shall be screened by a solid masonry wall. [Amended 5-10-1999 ATM, Art. 20]

(2) Front yard landscaping. In Business and Industrial Districts (other than the VC District), a minimum depth of six (6) feet from the street line shall be landscaped appropriately and maintained in a slightly condition at all times, crossed only by walks not over eight (8) feet in width and driveways not more than thirty (30) feet in width. [Amended 10-23-85 STM, Art. 40; 5-10-1999 ATM, Art. 20]

(3) Floor area ratio: The ratio of gross floor area to lot area shall not exceed 100% in the Village Center District or 40% in the LB, GB, C and MB districts. [Added 10-23-1985 STM, Art. 10; amended 5-12-1998 ATM, Art. 27]

(4) Impervious surface. Except in the Village Center District, not more than seventy-five percent (75%) of the lot area shall be covered with buildings, paving and other constructed surfaces substantially preventing absorption of water. [Added 10-23-85 STM, Art. 40]

E. Loading requirements.

(1) Performance requirement. Adequate off-street loading facilities and space must be provided to service all regular needs created by new construction, whether through additions or change of use. Facilities shall be so sized and arranged that no vehicles need regularly back onto or off of a public way or be parked on a public way while loading, unloading or waiting to do so.

(2) Application requirements. Prior to the issuance of a permit for construction of a new structure, addition to or alteration of an existing structure or change of use, the Building Inspector may require that the applicant submit information concerning the adequacy of existing or proposed loading facilities on the parcel. Such information may include a plan of the loading area showing its size and its relationship to buildings, parking areas and public ways, documentation of the types of goods and/or persons being loaded and unloaded from vehicles, the expected types of vehicles to be serviced at the loading area and the expected normal hours of operation. The Building Inspector shall use such information to determine whether or not the requirements of Subsection E(1) are met.

§ 164-35. Signs.

A. Purpose. It is the purpose of this section to regulate the size, location and appearance of signs within the Town of Orleans in order to facilitate a smooth flow of traffic within the town while preserving the essential character of the neighborhoods in which signs are located.

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

**BACK LIT SIGN** — A sign illuminated by a non- visible light source consisting of non-translucent lettering and where the only visible light is light reflected off the background creating a “halo” effect. The average face brightness of the sign must not exceed thirty (30) foot-lamberts, and the total light output from the sign must not exceed fifteen thousand (15,000) lumens, as measured with an exposure meter. In all cases, the primary source of light must not be visible to the public. The sign fabricator or his designated agent will certify after installation that the average face brightness of the sign does not exceed the specifications of the article. [Added 5-9-2005 ATM, Art. 33]

**DOUBLE-FACED SIGN** — Shall have two (2) advertising surfaces of identical shape and size, on shared supports and separated by a distance of not more than eighteen (18) inches. The planes of such advertising shall be parallel.

**INTERNALLY ILLUMINATED SIGN** — A sign illuminated by a light source, either incandescent, fluorescent, neon, or other light that is enclosed by the sign panel(s) or within the sign. [Added 10-13-1987 STM; amended 5-9-2005 ATM, Art. 33]

**LADDER SIGNS** — On any lot on which three (3) or more businesses are located, all freestanding signs shall be of the ladder type, and no business shall be permitted a freestanding sign other than a sign located on the ladder.

**MOBILE SIGN** — A sign attached to a vehicle or trailer and located in a stationary position primarily for use as an advertising or identifying device. Such signs may be considered either temporary or permanent.

**PERMANENT SIGN** — One which is used to identify or advertise a principal use or activity for the property with which it is associated.

**SIGN** — Any device, including recognizable logos, pictographs and objects of similar nature, which is used to identify or advertise a permitted use, service or activity in the zone in which it is located.

**SIGN AREA** — The area of the smallest single horizontal or vertical rectangle which will totally enclose the face of a sign, including any borders, or, in the case of a sign painted or otherwise applied directly to the sides of buildings, the smallest vertical or horizontal rectangle which will completely enclose the identifying or advertising information. Support structures for freestanding signs shall not be considered in determining “sign area” unless they are deemed to contribute significantly to the advertising content of the sign or are of such construction that they would contribute to the limiting of vision of oncoming traffic. The area of a two-faced sign shall be figured using one (1) face only.

**TEMPORARY SIGN** — One which is used to identify or advertise a use or activity which is not a principal use or activity for the property with which it is associated and which is intended for removal when such use or activity stops. Such signs shall include but are not limited to sale, rent or lease signs erected by a property owner or licensed real estate broker, yard sale, garage sale or open house signs.

**WINDOW SIGN** — Any temporary or permanent sign visible on or through a window, affixed to the window or with any part situated closer than two (2) feet from the interior surface of a window. “Window signs” for an identified business shall not obscure more than twenty-five percent (25%) of the surface area of the windows on any one (1) side of the building or portion of a side of a building occupied by the business. Temporary “window signs” exceeding this amount of area may be displayed for up to fourteen (14) consecutive days two (2) times per year. “Window signs” shall be measured according to the method in the definition of “sign area” in this subsection. The surface area of a window shall include the gross area within the exterior frame of the window. “Window signs” shall not be included in the total number of signs allowed per business and shall not be limited in number. Requirements of the definition of “internally illuminated signs” shall apply to “window signs.” No fee or permit shall be required. [Added 5-9-1988 ATM, Art. 65]

C. Sign permits.

(1) No sign shall be erected or altered without a permit granted by the Building Inspector, except as otherwise provided herein.

(2) All applications for sign permits shall include a sketch or photograph of the proposed sign showing size, colors and materials used and a site plan for the associated property showing the height and proposed location of the sign, as well as locations of buildings, driveways, street lines and pavement edges, as well as the location of any trees or shrubbery which might interfere with traffic visibility. [Amended 5-6-1986 ATM, Art. 69]

(3) Preexisting, nonconforming signs. Permanent signs which do not conform to this section, lawfully erected before enactment of this section, or permanent signs not yet erected but for which permits have been granted prior to enactment of this section may be erected and/or maintained, provided that such erection shall take place within ninety (90) days of enactment of this section.

(4) Sign permits shall be deemed to be associated with the use, service or activity with which the sign is associated and shall become void thirty (30) days after such use, service or activity ceases. Signs whose permits have become void under this principle shall be removed promptly by the end of this thirty-day period. Signs for uses, services or activities of a seasonal nature which are removed during the off-season may be reerected, and their permits remain in effect, provided that a period of one (1) year has not elapsed since removal of the sign.

(5) The following signs may be erected without a permit granted by the Building Inspector, provided that they conform in all respects to height, setback and other restrictions as set forth elsewhere in this section:

(a) One (1) permanent sign, not to exceed four (4) square feet in area, identifying the principal occupant of a dwelling in a residential or other zone.



(b) One (1) temporary sign not to exceed six (6) square feet in area, advertising property for sale, rent or lease. Such sign shall be removed within ten (10) days of a transfer of title or signing of a lease or rental agreement.

(c) Permanent signs, not exceeding four (4) square feet in area, whose purpose is solely for direction of traffic, such as "Enter," "Exit," "Parking" and the like, and which contain no advertising information.

(d) Accessory signs, such as "Open," "Closed," "Sale" and the like, not exceeding three (3) square feet in area, which are attached to signs for which permits have been issued.

(e) Signs within the confining walls of a building or window sign. [Amended 5-9-1988 ATM, Art. 65]

(f) Legal notices or informational signs erected or required by governmental bodies.

(g) Church, school, municipal, historical and ladder-type signs for property owners' group listings.

(6) Temporary sign permits. Upon at least twenty-four (24) hours' notice, the Building Inspector may issue, with the concurrence of the Selectmen and without advisory review, permits for the erection of signs advertising yard or garage sales, open houses, special events and the like. Such signs shall conform to this section in all other respects and shall be removed within twenty-four (24) hours after the end of the event.

(7) Fees. Fees may be charged for the issuance of a sign permit in accordance with a schedule as may be determined from time to time by the Selectmen.

D. Signs for customary or self-employed home occupation. One (1) sign not to exceed six (6) square feet in area shall be permitted for a customary self-employed or home occupation in any zone for which a Special Permit or variance has been granted by the Board of Appeals, subject to any restrictions as to lighting, etc., imposed by the Board of Appeals, provided that such sign conforms in all other respects to the provisions of this section.

E. Prohibited signs. The following types of signs shall be prohibited:

(1) In all zones, any sign which employs intermittent or flashing lights, whirling or similar moving devices or which emits noises or other loud sounds.

(2) In all districts, any internally illuminated sign or sign employing illuminated gas-filled types or any other sign for which the primary source of light is visible to the public.

(3) Off-premises signs, except subdivision identification signs at entrances to subdivisions.

(4) Billboards of a general advertising nature.

(5) Signs attached to trees or utility poles.

(6) Sandwich-board or A-frame-type signs, except as provided for in Subsection B, definition of “temporary sign.”

F. Size, height, setback and other restrictions.

(1) No sign shall project over any public way intended for vehicular traffic nor more than four (4) feet over any sidewalk or public right-of-way intended for pedestrian use.

(2) No sign affixed to any building shall project more than four (4) feet in any direction beyond the exterior walls of such building.

(3) Size and location.

(a) Signs shall be governed as to size and location according to the following table:

<b>Setback From Street Line (feet)</b>	<b>Maximum Height for Freestanding or Projecting Sign (feet)</b>	<b>Maximum Sign Area (square feet)</b>
1 — 3	3	6
3 — 10	6	15
10 — 25	10	32
Over 25	12	60

\*NOTE: Area for signs on ladder-type signs shall be computed individually without regard for open space between signs, and maximum aggregate sign area shall be as set forth above, except that the maximum aggregate area for ladder signs required in Subsection B, definition of “ladder signs,” may be increased up to one-third (1/3) by special permit from the Board of Appeals.

(b) No sign shall be located closer than ten (10) feet to any side lot line, except panhandle lots.

(4) Waiver of setback requirement. In cases where the distance from the pavement edge to the street line exceeds ten (10) feet, the setback requirement may be waived on recommendation of the Planning Board and Traffic Study Committee, and setbacks

may be computed from the pavement edge instead of the street line. In no case shall any sign be located closer than one (1) foot to any street line, and all permits for signs for which setback requirements have been waived shall be subject to review and modification.

(5) Number of signs. No business shall have more than three (3) signs other than accessory signs not requiring permits as described elsewhere in this section. No residence shall have more than one (1) sign.

G. Erection time, inspection and removal of violations.

(1) A sign permit shall become void for any sign which is not erected within six (6) months of issuance of such permit.

(2) All signs for which permits are required shall be subject to inspection to check conformance to site plan and bylaw restrictions. Requests for inspection shall be made to the Building Inspector within ten (10) days of erection of any sign requiring a permit.

(3) The Building Inspector shall cause to be removed or modified within ten (10) days of such finding any sign which is found to be in violation of this section.

H. Notwithstanding anything else contained in Section 164-35 to the contrary, banners advertising civic, or cultural and/or athletic events conducted by a non-profit entity, may be placed at location(s) across Main Street and/or Eldredge Park Way provided that any such banner, and its location, is approved by the Board of Selectmen or, if designated by the Board of Selectmen, the Town Administrator. In the event multiple requests are made for a common time period the Board of Selectmen or the Town Administrator, as the case may be, may give preference in scheduling and location to Town sponsored events. Banner(s) shall be no more than twenty feet in length and two feet in height and shall be strung in such a manner so the bottom of the banner is fifteen feet off the road surface. Banner(s) shall be temporary in nature and removed as soon as practicable after the event to which it refers has ended. The Board of Selectmen is hereby authorized to promulgate rules and regulations as they deem necessary to carry out the provisions of this paragraph. [Added 5-19-1997 ATM, Art. 46; amended 10-25-2004 STM, Art. 10]

§ 164-35.1. Commercial and Non-Commercial Wind Energy Facilities. [Added 5-10-2004 ATM, Art. 23]

A. Purpose. The purpose of this bylaw is to minimize the adverse impacts of wind turbines on the character of neighborhoods, property values, scenic, historic, environmental resources of the Town; and to protect health and safety while allowing wind energy technologies to be utilized.

B. Applicability. Any application to erect a structure that utilizes energy from the wind shall comply with this section.

C. Definitions. As used in this section, the following terms shall have the meanings indicated:

**WIND FACILITY** — All equipment, machinery and structures utilized in connection with commercial and non-commercial wind-generated energy production and generation, including related transmission, distribution, collection, storage or supply systems whether underground, on the surface or overhead, and other equipment or byproducts in connection therewith and the sale of the energy produced thereby, including but not limited to, wind turbine (rotor, electrical generator and tower), anemometers (wind measuring equipment), transformers, substation, power lines, control and maintenance facilities, site access and service roads.

For purposes of this definition, the term “commercial” shall mean those facilities which have less than fifty percent (50%) of their electrical output used on site.

**WIND TURBINE** — Equipment used in wind-generated energy production. Wind turbines capture the kinetic energy of the wind and convert it into electricity. Primary components are the rotor (blade assembly), electrical generator, and tower. Wind turbines are mounted on lattice or tubular steel towers.

D. Requirements.

1. No Wind facility shall be erected, constructed or installed without approval under 164-33, Site Plan Review and the issuance of a Special Permit from the Zoning Board of Appeals.

2. Minimum lot area. Wind facilities shall be located on a parcel of land that contains at least 5 acres of land, of which at least 4 acres must be buildable upland.

3. Height. The height of any wind turbine as measured from average grade shall be less than three hundred (300) feet and have a minimum blade clearance from the ground immediately below each wind turbine of thirty (30) feet. A waiver from this provision may be granted if the Zoning Board of Appeals makes a finding

that the additional height is necessary for adequate operation of the wind facility.

4. Height calculation. For purposes of calculating the overall height of a wind turbine, the total height shall be measured from average grade to the uppermost extension of any blade or the maximum height reached by any part of the wind turbine.

5. Setbacks from adjacent parcels. A minimum setback for each wind turbine shall be maintained equal to the overall engineer designed fall zone plus one hundred (100) feet, or three hundred (300) feet, whichever is greater, from all boundaries of the site on which the wind facility is located.

6. Fencing. Shall be provided to control access to the site of the wind turbine and related structures.

7. Signs. There shall be no signs except a sign identifying the wind facility, the owner and operator and an emergency telephone number; no-trespassing signs; and any signs required to warn of danger. All signs shall comply with the requirements of the Zoning Bylaw.

8. Noise. Except during short-term events such as high windstorms or utility outages, noise from the proposed wind turbine shall not exceed 60 dBA as measured from the nearest property line. This standard can be achieved through a six hundred (600) foot setback from any property line or must be otherwise demonstrated by the applicant through scientific analysis to the satisfaction of the Zoning Board of Appeals.

9. Removal. The owner shall remove any wind facility that's use has been abandoned or discontinued for 12 months. If removal is required, all wind

turbines and appurtenant structures shall also be removed and the wind facility site shall be re-vegetated. The Zoning Board of Appeals may require that an escrow account be established and annual deposits made to ensure adequate funds are available for removal.

10. Communications. A wind turbine may be used as a communication structure, subject to the requirements of Section 164-39 herein.

Non-Commercial Wind Facilities When issuing a Special Permit for a non-commercial wind facility, the Zoning Board of Appeals may waive any of the requirements of Section D., provided the Board finds that the criteria for issuance of a Special Permit as set forth in Section 164-44 are met.

§ 164-36. Open-air art businesses.

No person shall operate a commercial open-air or sidewalk art business, including painting, sketching, silhouetting or molding of likenesses or objects of any material, within fifteen (15) feet of the side line of a public street or sidewalk except in a Business District on Special Permit by the Board of Appeals.

§ 164-37. Existing residential dwellings in General Business GB or Limited Business LB Districts.

An existing residential dwelling in a General Business (GB) District and a Limited Business (LB) District may be altered or modified in conformity with the regulations pertaining to a residential dwelling in a Residence R District.

§ 164-38. Commercial regulations.

Commercial uses requiring Special Permits under § 164-13, if consistent with this section in all other respects, shall be authorized only if the Board of Appeals determines that the proposal's benefits to the town or vicinity will outweigh any adverse effects, after consideration of the following:

A. Locations are best if:

(1) The proposal will be located near uses which are similar to the proposed use, or, if not, the nearby uses will be ones likely to benefit from rather than be damaged by having the proposed activity nearby.

(2) They are not more sensitive to environmental stress from erosion, siltation, groundwater or surface water contaminants or habitat disturbance than are most similarly zoned locations.

B. Activity type and mix are best if:

(1) The proposed activity will contribute to the diversity of services available in the town.

(2) The proposed activity will provide service to the town's year-round residents and will strengthen off-season employment opportunities.

(3) The proposal will add relatively little to summer traffic congestion in relation to its size, considering the location, the number of single-purpose trips likely to be attracted and any special access provisions committed, e.g. bike-storage facilities, employee ride sharing.

(4) The proposal poses no environmental hazard because of use or storage of explosive, flammable, toxic or radioactive materials.

(5) The proposal will not result in air pollution or excessive noise.

C. Site design is best if:

(1) Scenic views from public ways and other developed properties are considerately treated in the design of the site.

(2) Topographic change is minimized.

(3) Unnecessary removal of existing trees or other important natural features is avoided.

(4) Pedestrian movement within the site and to other places is well provided for.

(5) Vehicular movement within the site is safe and convenient and arranged so as not to disturb abutting properties.

(6) Visibility of parking and service areas from public streets is minimized through facility location and the use of topography and vegetation.

(7) Potential disturbances such as noise, glare and odors are effectively confined to the premises through buffering or other means.

D. Facility design is best if:

(1) Scenic views from public ways and other developed properties are considerately treated in the design of buildings.

(2) Primary exterior materials match the appearance of materials commonly found on existing buildings within the town (not to be construed by the Board of Appeals as authority to regulate or restrict materials regulated by the State Building Code).

(3) Domestic scale is produced in the building's design through massing devices such as breaks in wall and roof planes and through the design of architectural features.

§ 164-39.<sup>3</sup> Communication Structures, Buildings and Appurtenances [Added 5-19-1997 ATM, Art. 29]

A. Purpose. The purpose of this Bylaw is to minimize adverse impacts of communication structures, towers, monopoles, buildings and appurtenances on

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3. Editor's Note: Former § 164-39, Development rate limitation, was repealed 5-8-1995 ATM, Art. 13.

adjacent properties and residential neighborhoods; to limit the number and height of such facilities to only what is essential; to protect, to the maximum extent practicable, the rural character and aesthetic qualities of the Town of Orleans, the property values of the community and the health and safety of citizens.

B. Exemptions.

The following uses and activities are specifically exempt from this bylaw.

- (1) Antennas used by a federally licensed amateur radio operator for that sole purpose.
- (2) Communication appurtenances for governmental uses.
- (3) Television antennas – see § 164-4 definition of building height.

C. Requirements.

(1) No Communication tower, monopole, building or appurtenance shall be erected, constructed or installed without first submitting a plan to the Site Plan Review Committee as described in § 164-33.

(2) Setbacks. Any supporting structure for a communication tower or monopole, such as a guy wire, shall be set back a minimum of 25 feet from any property line.

Setbacks for communication towers and monopoles shall be equal to the engineered design fall zone of the structure plus 50 feet to any property line where the structure is located.

Communication towers and monopoles shall provide a minimum setback equal to the height of the structure plus 100 feet from any residential zoning district.

The setbacks for a communication building shall comply with the setback requirements of the underlying zoning district unless otherwise regulated by section 164-22F.

(3) Safety. Communication structures, buildings and appurtenances shall be installed, maintained and operated in accordance with applicable federal, state, local codes, standards and regulations and shall be designed to withstand sustained winds and gusts of a category 5 hurricane.

(4) Removal. Communication structures, buildings or appurtenances that have not been operated for four consecutive months shall be removed by the owner within six months of the cessation of the originally permitted use.

(5) Fencing. Fencing shall be provided to control access to the site of the communication structure (except guy wires) and buildings. Fencing is not required for antennas or other appurtenances mounted on a pre-existing structure.

(6) Lighting. Communication structures and appurtenances shall be lighted only if required by the Federal Aeronautics Administration (FAA).

Communication buildings and the site may be lighted for safety and security reasons. All lighting shall be shielded to prevent undue impact on the surrounding neighborhood.

(7) Signs. There shall be no signs except a sign identifying the facility, the owner and operator and an emergency telephone number; no-trespassing sign; and, any signs required to warn of danger. All signs shall comply with the requirements of the Zoning Bylaw.

(8) Visual. The installation of communication structures, building and appurtenances shall be designed to minimize visual impact; the maximum amount of natural vegetation shall be preserved; details of construction and finish shall blend with the surroundings; additional vegetation screening shall be employed where practical and particularly to screen abutting residential properties. All communications buildings require the approval of the Architectural Review Committee as described in section 164-33.1.

(9) Height.

The following are maximum height restrictions for all communication structures and appurtenances.

(a) Communication Towers – 150 feet.

(b) Communication Monopole – 75 feet in the General Business zone, 150 feet in the Industrial zoning district.

(c) Communication Appurtenance – 10 feet above the existing structure.

The height of communications structures, including antennas, microwave dishes, wiring or other devices attached thereto, shall be determined by measuring from the elevation of the naturally existing grade at the foundation of the structure to the highest point of the structure.

Proposed communications structures and appurtenances that are higher than the maximum heights listed above can only be authorized by a Special Permit issued by the Zoning Board of Appeals.

(10) Regional Criteria. Siting shall be consistent with regional siting criteria established by the Cape Cod Commission.

(11) Siting Standards.

(a) Communication structures and appurtenances shall, if feasible, be located on pre-existing structures, provided such installation shall preserve the character of the structure and painted or designed in such a way that its visibility is minimized to the maximum extent feasible.

(b) If there are no feasible pre-existing structures, then communication monopoles or towers, buildings and appurtenances shall, if feasible, be located on public land.



(c) To the extent feasible, all service providers shall co-locate on communication structures. Communication structures shall be designed to structurally accommodate the maximum number of foreseeable users (within a ten year period) if technically practicable.

#### D. Procedures

Prior to applying for a special permit, or building permit for the construction of a communications structure, building or appurtenance the applicant must receive the approval of the Site Plan Review committee as described in section 164-33.

In addition to the information required in section 164-33 the applicant shall also provide the following to the Site Plan Review Committee and, if a Special Permit is required, to the Zoning Board of Appeals:

(1) A statement of the services to be supported by the proposed communication structure, building or appurtenance;

(2) A description of the special design features utilized to minimize the visual and noise impacts of the proposed communication structure, building and appurtenances;

(3) A certification that the applicant has complied with all federal and state requirements to provide the proposed service;

(4) A description of efforts to co-locate on existing and proposed structures, or consolidate telecommunications antennas of public and private services onto the proposed facility;

(5) A landscape plan showing the proposed site before and after development including topography and screening proposed to minimize adverse visual impacts to abutting properties;

(6) If a communications tower or monopole is proposed, prior to the meeting with the Site Plan Review Committee, the applicant shall arrange to fly a brightly colored three foot diameter balloon at the site that is at the maximum height of the proposed installation. The date and location of the flight shall be advertised at least 14 days, but not more than 21 days, before the flight in a newspaper with a general circulation in the Town of Orleans. The applicant shall provide written notification to the Site Plan Review Committee, at least ten days in advance, of the time and date of the flight.

(7) Following completion of the site plan review process the applicant should proceed with applying for a special permit, if required, as described in section 164-13 or a building permit.

#### § 164-39.1 Amateur Radio Towers. [Added 5-8-2000 ATM, Art. 17]

A. Purpose. The purpose of this bylaw is to provide for the minimum practicable regulation necessary to protect the health, safety, and aesthetics of the Town of Orleans from potential negative impacts resulting from the installation and use of amateur radio towers.

B. Requirements.

(1) Setbacks. Any supporting structure for an amateur radio tower, such as a guy wire, shall be set back a minimum of twenty-five (25) feet from any property line. Any amateur radio tower shall be setback a distance equal to the engineered fall zone for the tower from any property line.

(2) Safety. Amateur radio towers shall be installed, maintained, and operated in accordance with applicable federal, state, and local codes, standards and regulations.

(3) Access Control. Fencing, an anti-climbing device, or other form of access control determined by the building commissioner to be adequate to protect public safety shall be provided.

(4) Lighting. Amateur radio towers shall be lighted only if required by the Federal Aviation Administration (FAA).

(5) Aesthetics. Amateur radio towers shall be designed and installed to minimize visual impact; the maximum amount of natural vegetation shall be preserved; the design and finish of the tower shall be made to blend with the surroundings to the greatest extent practicable.

(6) Height. The height of an amateur radio tower shall not exceed that which is necessary to effectively accommodate amateur radio communications. Amateur radio towers exceeding thirty-five (35) feet in height shall require a special permit granted by the Zoning Board of Appeals subject to § 164-44.

§ 164-40. Uncommon housing.

A. Accessory dwellings shall be permitted subject to the following provisions: [Amended 5-13-1991 ATM, Art. 33; 5-7-2001 ATM, Art. 31]

(1) The accessory dwelling shall contain no more than eight hundred (800) square feet of floor area.

(2) Any building addition which is involved shall not increase existing lot coverage by more than two percent (2%) of the lot area.

(3) The Board of Health must have documented to the Building Commissioner that sewage disposal will be satisfactorily provided for in accordance with the provisions of Title 5 and local Board of Health regulations, including provisions for an appropriate reserve area on the site.

(4) Lot area must equal at least forty thousand (40,000) square feet of contiguous buildable upland.

(5) Either the dwelling to which the accessory dwelling is to be attached or the accessory dwelling must be occupied by the owner of the property as a principal residence and the remaining dwelling unit shall be leased for periods of not less than 12 months. The property owner shall be required to file an affidavit with the Building Inspector, annually, stating that either the dwelling or the

accessory dwelling will be used as the principal residence of the owner for the next 12 month period and that the remaining dwelling will be leased for a period of not less than 12 months.

B. Congregate housing.

(1) Lot area requirements. Minimum lot area per congregate housing unit shall be the same as required for any dwelling unit at that location, except that lot area per congregate housing unit need not exceed the average lot area per dwelling unit for legally existing dwellings located within five hundred (500) feet of the proposed premises.

(2) Structure size limitation. No structure shall contain more than two (2) congregate housing units, except that up to six (6) congregate housing units may be authorized in a single congregate dwelling if the gross floor area of the proposed structure is not more than fifty percent (50%) larger than that of the largest structure within five hundred (500) feet of the one proposed. Congregate dwellings located in the Residence District shall be limited to one congregate housing unit unless residency is restricted to persons 55 years of age or older. [Amended 5-7-2001 ATM, Art. 32]

(3) Locational limitation. No congregate dwelling shall be located within one thousand five hundred (1,500) feet of two (2) or more other congregated dwellings authorized under these provisions.

§ 164-40.1. Open Space Residential Development. [Added 5-8-1990 ATM, Art. 42]

A. Objectives.

The objectives of the Open Space Residential Development bylaw are to preserve in perpetuity open space which provides views and scenery which enhance property values and increase the town's attractiveness to vacationers and year-round residents, as well as providing wildlife habitat; and to allow greater opportunities for development harmonious with a site's existing topography and natural features.

B. Applicability. In accordance with the procedures set forth herein, the Planning Board may approve an Open Space Residential Development on any parcel of land containing a minimum of 120,000 square feet of buildable upland. [Amended 5-9-2005 ATM, Art. 32]

C. Procedure. [Amended 5-9-2005 ATM, Art. 32]

Open Space Residential Developments may be permitted upon review and approval of the Planning Board pursuant to the applicable provisions of M.G.L. c. 41, §§ 81K to 81GG, inclusive, and in accordance with the Town of Orleans Rules and Regulations Governing the Subdivision of Land.

The Planning Board shall require the submittal of a plan showing the subdivision of the property in both clustered and conventional fashion.

D. Design Standards for Open Space Residential Developments.

1. Housing Type. Only detached, single-family dwellings shall be allowed.
2. Lot Area. Each lot shall contain a minimum of 20,000 square feet of buildable upland and fifty (50) feet of frontage, except that one hundred fifty (150) feet of frontage shall be required for lots fronting on preexisting streets.
3. Setbacks. Minimum building setbacks shall be twenty-five (25) feet from front, side and rear lot lines, except that the front setbacks from preexisting streets shall be fifty (50) feet.
4. Improvements. Access, drainage, utilities and road grading shall meet functional standards equivalent to those of the Orleans Subdivision Rules and Regulations of December, 1987, except that road pavement width may be reduced to sixteen (16) feet where the Planning Board finds this will be in the best interest of the town, i.e. to reduce the impact of runoff on wetlands. In such cases, the Planning Board shall make written findings of the reason waivers were granted. All other applicable sections of the Orleans Zoning Bylaw and Subdivision Rules and Regulations shall apply.
5. Density. The number of dwelling units on the parcel shall not exceed the maximum that would be built under ordinary residential zoning using a conventional subdivision, as demonstrated on a Preliminary subdivision plan submitted by the applicant.
6. Designated Open Space. Land set aside as open space shall consist of buildable upland equal or greater than thirty-five (35) percent of the parcel's buildable upland. This area shall be set aside to be maintained as open space in perpetuity and shall not include land set aside for roads and/or parking uses. Walking trails with pervious surfaces are encouraged. When these are proposed, width and type of surface shall be shown on plans submitted to the Planning Board.

Open space shall be planned as contiguous areas wherever possible, including buffers around wetlands or boundaries of the parcel.

Designated open space shall be conveyed to:

- (a) The town, if accepted by it for park or open space use and any such acceptance is approved by the Board of Selectmen;
- (b) A nonprofit corporation, the principal purpose of which is the conservation of open space; or
- (c) A corporation or trust owned or to be owned by the owners of lots or residential units within the development.

If a corporation or trust owned by the owners of lots or residential units is utilized, ownership thereof shall pass with the conveyance of the lots or units.

In cases where the designated open space is not conveyed to the town, a restriction enforceable by the town shall be recorded providing that such land be kept in an open or natural state and not be built upon for residential use or

developed for accessory uses such as parking or roadways. In these cases, a management plan shall be submitted describing how the existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.

The management plan shall include an agreement empowering the town to perform maintenance of the common open space in the event of failure to comply with the maintenance program. This agreement shall provide that if the town is required to perform any maintenance, the owners of lots or units within the Open Space Residential Development shall pay any costs and that cost shall constitute a lien upon their properties until said cost has been paid.

7. All dwellings and accessory buildings erected under the provisions of this Section shall conform to all other provisions of this bylaw not addressed in this section. [Amended 5-9-2005 ATM, Art. 32]

§ 164-40.2. Educational, Municipal and Religious Uses. [Added 11-18-1991 STM, Art. 3]

A. Dimensional and Other Requirements for Educational, Municipal and Religious Uses. Minimum lot size, frontage, lot coverage, yard dimensions, and requirements for drainage and plantings for educational, municipal and religious uses shall conform to the standards within the districts where they are located.

B. Height of Structures for Educational, Municipal and Religious Uses. Except as otherwise provided in § 164-15B(7) and as provided below, building height of buildings for educational, municipal or religious uses shall not exceed 35 feet. Notwithstanding the foregoing, the building height of a building used as a house of worship shall not exceed 45 feet. Such building may have a spire, steeple, cupola, dome or tower which exceeds 45 feet, provided that:

(a) the portion above the otherwise applicable 45 foot limit for building height is not intended for human occupancy other than incidental use such as for repairs or bell-ringing;

(b) such higher structure meets public safety standards established by the fire chief from time to time consistent with the limitations of the Town's public safety equipment and facilities; and

(c) no portion of such building exceeds in height the lesser of (i) one and a half times the building height to the ridge or (ii) an amount equal to the distance to the nearest residence located on a lot which may be separately conveyed, such distance measured on the ground to such residence from a point directly beneath the center of the spire, steeple, cupola, dome or tower, such height being measured as the vertical distance from the average undisturbed natural grade at the foundation on the street side of the building to the top of the spire, steeple, cupola, dome or tower.

C. Parking for Educational, Municipal and Religious Uses.

All of the provisions of § 164-34, including the dimensional and design requirements for parking, shall apply to educational, municipal and religious uses.

ARTICLE VI  
Administration

§ 164-41. Enforcement; violations and penalties.

A. This chapter shall be enforced by the Building Inspector, with the Planning Board acting in an advisory capacity.

B. Any person, firm or corporation violating any section or provision of this chapter shall be fined not more than one hundred dollars (\$100.) for each offense. Each day that such offense continues shall constitute a separate offense.

§ 164-42. Permits.

A. Building permit. No building permit shall be issued until the plans for construction or alteration of a building or structure, as proposed, shall comply in all respects with the provisions of this chapter or with a decision rendered by the Board of Appeals. Any application for such a permit shall be accompanied by a plan, accurately drawn, showing the actual shape and dimensions of the lot to be built upon, the exact location and size of all buildings or structures already on the lot, the location of new buildings to be constructed, together with the lines within which all buildings and structures are to be erected, the existing and intended uses of each building or structure and such other information as may be necessary to provide for the execution and enforcement of this chapter.

B. Land may not be substantially altered or changed in use without certification by the Building Inspector 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. Responsibility for obtaining permits and certification shall be that of the owner of the premises.

C. Professional inspection. Construction on projects under a single building permit involving either one (1) or more structures, other than one- and two-family dwellings, each containing thirty-five thousand (35,000) cubic feet of volume or more or involving fifty (50) or more

dwelling units, irrespective of type, shall be done with the inspection of a registered professional engineer or architect retained by the developer. Such engineer or architect shall periodically, if requested by the Building Inspector, attest that all work being done under his supervision is being done in accordance with the plans as approved for a building permit, in accordance with any Board of Appeals stipulations and in accordance with all applicable town and state codes and regulations. Discrepancies from the above, noted by such engineer or architect, shall be reported forthwith to the Building Inspector.

D. Occupancy permits. No certificate of use and occupancy, as required by Section 120.0 of the State Building Code, shall be issued until all requirements of this chapter and of permits issued under it have been satisfied, including site improvements. A temporary certificate of occupancy may be issued as provided in Section 120.0.

§ 164-43. Board of Appeals.

A. Establishment. The Board of Appeals shall consist of five (5) members and two (2) associate members, who shall be appointed by the Selectmen and shall act in all matters under this chapter in the manner prescribed by Chapters 40A, 40B and 41 of the General Laws.

B. Powers. The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B and 41 of the General Laws and by this chapter. The Board's powers are as follows:

(1) Special Permits. To hear and decide applications for Special Permits upon which the Board is empowered to act under this chapter, in accordance with § 164-44.

(2) Variances. To 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 variances shall be granted only in cases where the Board finds all of the following:

(a) A literal enforcement of the provisions of this chapter would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.

(b) 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.

(c) Desirable relief may be granted without either substantial detriment to the public good, or nullifying or substantially derogating from the intent or purpose of this chapter.

(3) Appeals. Other appeals will also be heard and decided by the Board of Appeals when taken by the following:

(a) Any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of Chapter 40A of the General Laws.

(b) The Cape Cod Planning and Economic Development Commission.

(c) Any person, including any officer or board of the Town of Orleans or of any abutting town, if aggrieved by any order or decision of the Building Inspector or other administrative official, in violation of any provision of Chapter 40A of the General Laws or this chapter.

C. Public hearings. The Board of Appeals shall hold public hearings in accordance with the provisions of Chapters 40A, 40B and 41 of the General Laws on all appeals and petitions brought before it.

D. Repetitive petitions. Repetitive petitions for Special Permits, appeals and petitions for variances and applications to the Board of Appeals shall be limited as provided in MGL C. 40A, § 16.

E. Procedures. The Board of Appeals shall establish rules and regulations consistent with the provisions of this chapter and with the provisions of Chapter 40A or other applicable provisions of the General Laws and shall file a copy thereof with the Town Clerk.

§ 164-44. Special permits.

A. Special Permit Granting Authority. Unless specifically designated otherwise, the Board of Appeals shall act as the Special Permit Granting Authority.

B. Public hearing. Special Permits shall only be issued following public hearings held within sixty-five (65) days after filing with the Special Permit Granting Authority and application, a copy of which shall forthwith be given to the Town Clerk by the applicant.

C. Criteria. Special Permits may be granted when it has been found that the use involved will not be detrimental to the established or future character of the neighborhood and the town and when it has been found that the use involved will be in harmony with the general purpose and intent of the chapter and shall include consideration of each of the following:

- (1) Adequacy of the site, in terms of size, for the proposed use.
- (2) Suitability of the site for the proposed use.
- (3) Impact on traffic flow and safety.
- (4) Impact on neighborhood visual character, including views and vistas.
- (5) Adequacy of the method of sewage disposal, source of water and drainage.
- (6) Adequacy of utilities and other public services.
- (7) Noise and litter.
- (8) Impact on groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies. [Added 11-18-1991 STM, Art. 2]

D. Conditions. Special Permits may be granted with such reasonable conditions, safeguards or limitations on time or use as the Special Permit Granting Authority may deem necessary to serve the purposes of this chapter.

E. Expiration. Special Permits shall lapse if a substantial use thereof or construction has not begun, except for good cause, within twenty-four (24) months of Special Permit approval, plus such time as required to pursue or await the determination of an appeal.

§ 164-45. Amendments.



This chapter may from time to time be changed by amendment, addition or repeals by the Town Meeting in the manner provided in MGL C. 40A, § 5, and any amendments therein.

§ 164-46. Severability.

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision hereof.