

Approved at May 8, 2017 Annual Town Meeting

ARTICLE ##. AMEND ZONING BYLAWS SECTION 164-31. Apartment Development

To see if the Town will vote to amend Section 164-31 Apartment Development, by amending the section as follows:

Bold underline = new language ~~strikethrough~~ = language removed

§164-31 Apartment Development

A. Applicability. Apartments may be developed only in districts as provided in §164-13. A Special Permit for apartments shall be granted only in accordance with Subsections B through ~~DE~~ of this section and only upon these **specific** findings being made by the Board of Appeals:

- (1) By virtue of its sponsorship, financing, or design, the **housing development** 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.~~
Any housing that is deed restricted for individuals or families that earn 80% or less of the Area Median Income (AMI) for Barnstable County shall be so restricted for a minimum of thirty (30) years;
- (2) The ~~housing~~ **development** will not adversely affect business operation on that **the subject property** or other premises within the **zoning** district or be detrimentally affected by such uses;
- (3) **The development will provide for adequate traffic circulation on and off-site, including pedestrian safety and convenience;**
- (4) **The development is designed to result in an appropriately lighted neighborhood, and meet the requirements of Chapter 122, Outdoor Lighting;**
- (5) **The development has complied with Sections 164-33 and 164-33.1 with, respectively, the Architectural and the Site Plan Review Committees reporting to the Board of Appeals. Building design shall provide for variation in building height between large buildings and other buildings on the same lot, or adjacent lots;**
- (6) **The development is consistent with the Orleans Comprehensive Plan;**
- (7) **The development meets all requirements of a Special Permit under Section 164-44; and**

(8) A copy of any Special Permit application under this section shall be filed with the Planning Board when the application is filed with the Town Clerk, and the Planning Board shall review it and make recommendations to the Board of Appeals within forty-five (45) days of the filing date. The Board of Appeals shall consider any such recommendation in its review of the project.

B. Dimensional Requirements

Lot Area. Minimum lot area shall equal sixty thousand (60,000) square feet contiguous buildable upland area, except in the Village Center District, where minimum lot area shall equal twenty thousand (20,000) 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.

1. Lot Area and Density

a. Lot Area. Minimum lot area for apartment development shall be as follows:

<u>RB District</u>	<u>60,000 s.f. of contiguous buildable upland</u>
<u>LB, GB Districts:</u>	<u>30,000 s.f. of contiguous buildable upland</u>
<u>VC District:</u>	<u>20,000 s.f. of contiguous buildable upland</u>

b. Residential Density in dwelling units per acre of contiguous buildable upland:

<u>RB District:</u>	<u>3 dwelling units per acre</u>
<u>LB and GB Districts:</u>	<u>8 dwelling units per acre</u>
<u>VC District:</u>	<u>10 dwelling units per acre</u>

c. In mixed residential and commercial developments in the GB, LB, and VC Districts, one-half (1/2) of the total lot area that is covered by the commercial building plus the parking area required to support the commercial use, shall be subtracted from the lot area for the purposes of calculating allowed density of residential units. Any required parking that is located under or within project buildings shall increase the lot area available for calculating unit density by reducing the parking lot area required to support the commercial use. (In calculating required parking, each space shall be equal to 300 square feet of area).

2. Additional Units for Meeting Community Goals

In addition to the density allowed herein, projects with the following components that support community goals shall be allowed additional dwelling units as follows:

- a. **For each (one) 1-bedroom dwelling unit – 1 additional (one) 1-bedroom dwelling unit;**
- b. **For each Affordable Housing Unit¹ - 1 additional dwelling unit; and**
- c. **For each 1,500 sq. ft. of preserved Significant Building² - 1 additional dwelling unit.**

The above additional units may be permitted, up to a total project density of 14 dwelling units per acre of contiguous buildable upland in the VC District, and 12 dwelling units per acre of contiguous buildable upland in the GB and LB Districts.

**¹as defined in Chapter 104, Affordable Housing, of the Orleans Town Code.
²as defined in Chapter 106, Demolition of Historic Structures, of the Orleans Town Code.**

3. Affordable Housing Requirement

In order to further Town goals and meet the need for affordable housing, any apartment development with 10 or more dwelling units shall include 1 Affordable Housing Unit, as defined in Chapter 104 of the Orleans Town Code, for each 10 units of housing. Any fraction of a required Affordable Housing Unit shall be rounded up to the nearest whole unit.

- C. Other Dimensional Requirements. The normally applicable district frontage **and** yard **requirements**, and building height requirements shall be observed. With **third floor housing, the building height provisions of Section 164-19.1. E. 1 through E. 7 may be utilized in the Village Center, General Business, and Limited Business Districts for apartment development. In such instances the mean height measured between the bottom of the eave and the highest point of the ridge on a pitched roof shall not exceed 35 feet.**
- D. Design Requirements. No structure shall contain more than ~~twelve (12)~~ **fifteen (15) dwelling units, except that in the Village Center District, up to twenty (20) dwelling units in a single structure may be allowed.** No dwelling unit shall have its lowest floor below grade at any point within its entire perimeter.
- E. **Nitrogen Discharge Limits.** No Special Permit shall be ~~issued~~ **granted** by the Zoning Board of Appeals for an apartment or other multi-family housing development ~~where~~ **when** 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~~ **can** achieve an effluent nitrogen concentration of 19 milligrams per liter (mg/l) or less, as measured at the **point of** discharge.
- F. **Master Plan Special Permit.**

The Board of Appeals may grant a Special Permit for phased apartment development on one or more adjacent parcels in a coordinated fashion. Review of these proposals shall conform to the requirements for a Special Permit (Section 164-44), Site Plan Review (Section 164-33), and Architectural Review (Section 164-33.1) as applicable. Additionally, the following procedures and standards shall apply:

1. The Master Plan Special Permit review shall run concurrently with all Special Permits required for the proposal. The other Special Permits required may include, but are not limited to, Special Permits for parking reduction (Section 164-34 B.3), uses allowed through Special Permit (Schedule of Use Regulations), an increase in the number of units per structure (164-31.D), and exemptions for sidewalks (Section 164-19.1.D). The approval of a Master Plan Special Permit shall include all applicable Special Permits by reference and shall be administered in accordance with subsections 2-4 below.
2. After the initial Master Plan Special Permit is final, subsequent phases of development shall only require Site Plan approval (Section 164-33) if the Building Commissioner determines that the phase is consistent with the terms of the Special Permit, and that no major changes are proposed. For the purposes of this section, a major change is defined as:
 - a. An increase in the number of residential units such that it would exceed the number of residential units originally approved.
 - b. A decrease of more than 10% of the aggregate amount of parking that was originally approved.
 - c. A change that would eliminate elements of the original proposal needed in order to earn incentive housing units under Section 164-31.B.2 (Additional Units for Meeting Community Goals).

If the Building Commissioner determines that the phase being reviewed qualifies as a major change, a modification to the original Master Plan Special Permit from the Board of Appeals pursuant to Section 164-44 shall be required for the approval of the change.

3. Any Master Plan Special Permit granted under this section shall be subject to the expiration provisions of §164-44. Special permits. E.
4. For the purposes of coordinating development across multiple parcels, the Board of Appeals may treat adjacent properties as a single property for measuring setbacks and other dimensional standards. Proposed buildings, travel lanes, parking areas, and other site features may cross interior property lines or be sited closer to those lot lines than what would otherwise be allowable. The Board of Appeals shall require that these adjacent parcels be in common ownership as a condition of the Master Plan Special Permit.

And further, to amend Section 164-34 B. (3) to read as follows:

- (3) Special Permits-Shared Parking

The required number of spaces may be reduced below these standards upon determination that special circumstances 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. Such written determination may be made by the Building Commissioner for up to 20% reduction of the required number of parking spaces. The Planning Board shall consult with and advise the Building Commissioner if it is requested.

Parking space reduction of greater than 20% shall require a Special Permit from the Board of Appeals, pursuant to Section 164-44.

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 (2) 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 large number of spaces to be provided than indicated below if necessary to service anticipated demand.~~

[Note - Table of Minimum Parking Requirements intentionally not included, is intended to remain in bylaw]

Bold underline = new language ~~strike through~~ = language removed

ARTICLE ##. AMEND ZONING BYLAWS SECTION 164-33.1 ARCHITECTURAL REVIEW

To see if the Town will vote to amend Section 164-33.1 Architectural Review, Sections D and E, by amending sections as follows:

164-33.1 Architectural Review.

D. Procedure

- (1) Preliminary Review. The Architectural Review Committee shall provide Preliminary Review of proposed buildings or alterations at their regular meetings **within 30 days** ~~no later than two weeks~~ of receipt of an application. A brief description of the proposed construction or improvements shall be included on the application 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.
- (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)~~ **six (6)** days prior to the date of the review.
- (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.
- (4) Final Plan Review Report and Recommendations. Within ~~thirty (30)~~ **sixty (60)** 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.

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 non-traditional 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~~ **compatible** 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~~ **compatible** with surrounding properties. Nearby structures built in proportion to one another are desirable.
6. Setback. The proposed **building front maintains or builds a street front where possible to reinforce the character of the area wherever possible and desirable.** ~~setback from the street re-enforces the existing building setbacks in the surrounding area where the existing setbacks are desirable. Providing continuity of this set back 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~~ **compatible** 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~~ **compatible** 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 compliment 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.

Article X: Amend Zoning Bylaw to add Temporary Moratorium

To see if the Town will vote to amend the Town's Zoning Bylaw by adding a new Section 164-40.4, "Temporary Moratorium on Recreational Marijuana Establishments and Marijuana Retailers" that would provide as follows, and further to amend the Table of Contents to add Section 164-40.4:

Section 164-40.4. Temporary Moratorium on Recreational Marijuana Establishments and Marijuana Retailers

§1. Purpose.

By vote at the State election on November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for recreational purposes. The law provides that it is effective on December 15, 2016 and the Cannabis Control Commission is required to issue regulations regarding implementation by September 15, 2017. Chapter 351 of the Acts of 2016, approved by the Governor on December 30, 2016 and effective immediately as an emergency law, extends the time period for the issuance of the regulations by six months to March 15, 2018. (See Section 11 of Chapter 351 of the Acts of 2016.)

Currently under the Zoning Bylaw, Recreational Marijuana Establishments and Marijuana Retailers are not permitted uses in the Town and any regulations promulgated by the Cannabis Control Commission are expected to provide guidance to the Town in regulating Recreational Marijuana Establishments and Marijuana Retailers.

The regulation of Recreational Marijuana Establishments and Marijuana Retailers raise novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and Marijuana Retailers and address such novel and complex issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Recreational Marijuana Establishments and Marijuana Retailers and other uses related to the regulation of recreational marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments and Marijuana Retailers so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to adopt provisions of the Zoning Bylaw in a manner consistent with sound land use planning goals and objectives.

§2. Definitions.

"Manufacture", to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

"Marijuana accessories", equipment, products, devices or materials of any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body.

"Marijuana cultivator", an entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.

"Marijuana establishment", a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business. (k) "Marijuana product manufacturer", an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

"Marijuana products", products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

"Marijuana testing facility", an entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

"Marijuana retailer", an entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

§3 Temporary Moratorium.

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for Recreational Marijuana Establishments and Marijuana Retailers. The moratorium shall be in effect through June 30, 2018. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments and Marijuana Retailers and related uses, determine whether the Town shall restrict any, or all, licenses for Recreational Marijuana Establishments and Marijuana Retailers, determine whether the Town will prohibit on-site consumption at Recreational Marijuana Establishments and Marijuana Retailers and shall consider adopting new provisions of the Zoning Bylaw to address the impact and operation of Recreational Marijuana Establishments and Marijuana Retailers and related uses.

§4 Severability.

The provisions of this Bylaw are severable. In the event that any provision, paragraph, sentence, or clause of this Bylaw is hereafter judicially found to be invalid, such decision, invalidity or voidance shall not affect the validity of the remaining portion of this Bylaw.

or to take any other action relative thereto. (Board of Selectmen)