

Article #12 - Definition of **Horses** and **Stables**

To see if Town Meeting will vote to amend Use Definition, Article 3; Sec. 340; subsection 340.2 Riding Stable, or take other action relative thereto, as follows:

Remove: 340.2 ANIMAL RELATED USES

~~Riding Stable~~

~~Any structure and/or land used for the maintenance or rental of horses, mules, ponies, or donkeys either with or without a bridle path or riding area, but excluding structures and/or land used for the maintenance of horses and the like used exclusively for agricultural purposes.~~

And insert:

340.2 ANIMAL RELATED USES

Riding Stable

Any structure and/or land used for a stable where horses, ponies, mules, or donkeys are maintained or kept for hire. This shall include the renting of a horses, ponies, mules, or donkeys for rides, drives, or trail rides including their use as part of camp or ranch activities, and the use of these animals for hay rides or pony rides.

Article #13 – To see if Town Meeting will vote to replace all of Article 13: Zoning Protection of the Zoning By-Law with the following, or take any action relative thereto.

1310 APPLICABILITY

These by-laws shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by MGL c. 40A, § 5, at which these bylaws, or any relevant part hereof, were adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder

1330 RESTORATION OF DAMAGED OR DESTROYED STRUCTURES

Any lawfully non-conforming building or structure which has been damaged or destroyed by fire or other accident or natural disaster may be repaired or rebuilt to its original dimensions, either in its original location or in a more conforming location, provided that the owner shall apply for a building permit to start operations for restoring and rebuilding of said premises within 18 Months after such catastrophe. An extension of time for 180 days may be requested through the Zoning Board of Appeals for matters beyond the applicant's control. Further, said reconstruction shall comply with all other state laws, codes, and regulations in place at the time of permit application. Extensions for reasonable

1340 RESTORATION OF UNSAFE STRUCTURES

Nothing shall prevent the strengthening or restoring to a safe condition of any structure, or part thereof, declared unsafe by the inspector of buildings. Once made safe, all required permits must be applied for and secured prior to any reconstruction activities. If unsafe, a deck, porch, or stairway may be torn down and reconstructed to the same height and footprint providing that the applicant can prove existing dimensions at the time of permitting.

1350 NONCONFORMING STRUCTURES

- 1351 A lawfully pre-existing, non-conforming, single or two family residential structures may be altered or extended by right if the Building Official determines that it meets the following criteria:
1. The proposed addition/extension will conform to current setbacks and coverage for the zoning district in which the existing structure and addition/extension are located; and
 2. The nonconformance concerns the size of the lot in question and or the frontage of said lot and/or an encroachment of the existing structure.
- 1352 If the Building Official determines that a proposed addition, alteration, or extension to a lawfully non-conforming single or two family residential structure increases the non-conforming nature of the structure, a denial letter will be issued and the applicant must make application to the Board of Appeals for a new determination in order to proceed. If the Board of affirms the Building Officials decision, no such alteration or extension may occur unless the Board of Appeals issues a Special Permit for alteration or extension after finding that the alteration or extension will not be substantially more detrimental to the neighborhood than the existing non-conformity. An addition, alteration, or extension that increases the non-conforming nature would include but not be limited to:
1. A nonconforming structure built in the same footprint to an increased building height.
 2. A structure that continues along the same line as an existing encroachment without increasing the encroachment.
 3. A nonconforming structure rebuilt that decreases the pre-existing non-conforming setback.

- 1353 An addition, alteration, extension, or structural change that is found to increase the non-conforming nature of the structure and is found by the Zoning Board of Appeals to be substantially more detrimental to the neighborhood will require a Variance.
- 1354 A lawfully pre-existing non-conforming single or two family residential structure may, by right, be demolished and replaced with a new structure on the same site provided that:
1. The proposed new construction will conform to current building height, setbacks, and coverages for the zoning district in which it is located; and
 2. The nonconformance concerns the size of the lot in question and/or frontage of said lot.
- 1355 A lawfully pre-existing non-conforming single or two family residential structure may, by Special Permit, be demolished and replaced with a new structure on the same site provided that the Zoning Board of Appeals determines:
1. The replacement structure will not be substantially more detrimental to the neighborhood than the existing structure.
 2. The replacement of the structure will not cause or contribute to any undue nuisance, hazard, or congestion in the neighborhood, zoning district, or town.
 3. The replacement structure will not intensify any of the following existing non-conformities: building coverage, impervious coverage, or setback encroachment.
 4. The replacement structure will not create any new non-conformities.
- 1356 A proposal to demolish and replace a single or two family residential structure that is found to be substantially more detrimental to the neighborhood will require a Variance from the Zoning Board of Appeals pursuant to M.G.L. c 40A §10.
- 1357 Any proposed change that adds a new non-conformity will require a Variance from the Zoning Board of Appeals.
- 1358 For the purposes of this section, determination of "substantially more detrimental" shall include consideration of impacts to the general and immediate neighborhood from the resulting height, building coverage,

impervious coverage, and width of the altered, reconstructed, extended, or structurally changed structure. Additionally, in determining whether an altered, reconstructed, extended, or structurally changed structure will be substantially more detrimental to the neighborhood, additional considerations may include impacts to abutting properties, increases in traffic, noise, surface water runoff, and related site planning issues.

1360 ALTERATION OR EXTENSION OF OTHER STRUCTURES

- 1361 A lawfully pre-existing non-conforming structure, other than a single or two family residential structure may be altered or extended provided that:
1. The alteration, extension, or structural change itself conforms to the current requirements of the Zoning By-law.
 2. A finding by the Zoning board of Appeals is made that the change will not be substantially more detrimental to the neighborhood than the existing non-conforming structure.
 3. The nonconformance concerns the size of the lot in question and/ or the frontage of said lot. If the only non-conformity is lot size and/ or frontage, a building permit may be allowed by right provided that all other aspects of the Zoning By-law are met.
 4. Any proposed change that adds a new non-conformity or aggravates and/ or intensifies an existing nonconformity will require a Variance from the Zoning Board of Appeals.

1370 NON-CONFORMING USES

- 1371 A non-conforming Use of a building or of land which has been abandoned shall not thereafter be returned to such non-conforming Use. A non-conforming Use shall be considered abandoned when said Use has been discontinued for a period of two years, or when the characteristic equipment and furnishings of the non-conforming Use have been removed from the premises and have not been replaced by similar equipment within two years.
- 1372 Once changed to a conforming Use, no structure or land shall be permitted to revert to a non-conforming Use.
- 1373 In no case shall a non-conforming Use be converted to another non-conforming Use.
- 1374 The lawful Use of any structure or land existing at the time of the enactment or subsequent amendment of the By-law may be continued, although such structure or Use did not conform to the provisions of the By-law as adopted or amended.

1380 NON-CONFORMING LOTS

- 1381 Existing lots lawfully laid out by plan or deed which complied at the time of layout with applicable provisions of zoning by-laws, if any, may be built upon for single or two family residential purposes, provided that:
1. Said lots have at least 5000 square feet, 50 feet of frontage, and were not held in common ownership and/or control after November 19, 1951.
 2. For lots that were held in common ownership or under common control, said lots may be buildable for single or two family residential Use provided that such lots have 7500 square feet and 75 feet of frontage and were lawfully laid out by plan or deed prior to November 19, 1951 or conformed to setback requirements in effect as of January 1, 1976. This protection is available to not more than three adjoining lots.
 3. The buildings to be located thereon are to be set back equal to the setback in effect at the time of lot creation or endorsement. For lots laid out prior to November 19, 1951, structures must meet the setback requirements of the first published regulation in effect for the applicable zoning district.
 4. Said lots are buildable under other applicable state and local regulations i.e. conservation, Health, Fire, etc.
 5. If said lots are shown on a subdivision plan as defined in Subdivision Control Law, and have been approved by the Planning Board, said lots must be in compliance with all applicable sections of M.G.L. Ch. 40A, Ch. 41, and all of the aforementioned provisions noted in this By-law.

1390 DE MINIMIS

- 1391 Regardless whether there are increases in the non-conforming nature of a structure, the following alterations, enlargements, extensions, or structural changes to lawfully existing single or two family residential structures may be allowed in accordance with the procedures set forth below; provided that:
1. Relief is limited solely to that portion of the building or structure which is presently dimensionally non-conforming.
 2. The resulting changes on the non-conforming side will be no closer than five feet from the side or rear property line.
 3. The resulting distance to the nearest residence at the side where the proposed construction will take place is equal to or greater than the sum of the required setbacks of the adjacent lots.

4. The resulting construction will meet all building, fire, safety, conservation, and health requirements for said zoning district.

1392 In accordance with the aforementioned provisions, the following de Minimis alterations are allowed:

1. Dormers that do not extend above the height of the existing roof peak and do not add more than 400 square feet of floor area.
2. Enclosing an existing porch of any size.
3. Bay windows in the side and rear setbacks which are cantilevered and do not have foundations.
4. Bay windows which protrude no more than two feet into the required front yard setback and are no less than five feet from the front property line.
5. A balcony or bay window limited to half the length of the building: not more than two feet.
6. Open terrace or steps, stoop, or similar structure under four feet in height: up to half the required setback.
7. Window sill, chimney, roof eave, fire escape, fire tower, storm enclosure or similar architectural structures or steps or stoops over four feet in height: not more than two feet.

Article #14 – To see if Town Meeting will vote to amend and add the following sections in the Zoning By-Laws under Article 14: Administration, or take any action relative thereto.

1460 SPECIAL PERMIT

The Board of Appeals shall have the authority to hear and decide applications for all changes, alterations, or extensions of a non-conforming structure or Use that requires a Special Permit. Special Permits shall only be issued following a public hearing held within 65 days after filing of an application with the Board of Appeals or Planning Board, a copy which shall forthwith be given to the Town Clerk by the applicant, and all notices and other requirements provided by the Zoning Act shall govern said hearing.

1461 The Board of Appeals or Planning Board shall not approve any application for a Special Permit unless it finds that in its judgement, all of the following conditions are met:

1. The Use as developed will not adversely affect the neighborhood.
2. The specific site is an appropriate location for such a Use, structure, or condition
3. There will be no nuisance or serious hazard to vehicles or pedestrians

4. Adequate and appropriate facilities will be provided for the proper operation of the proposed Use. This includes the provision of appropriate sewage treatment facilities which provide for denitrification, when the permit granting authority deems such facilities necessary for protection of drinking water supply wells, ponds, or saltwater embayments.
5. The Use or structure as proposed does not pose a substantial detriment to the town or neighborhood in which it is proposed.
6. The proposal, as approved, conforms to all other applicable provisions of the Wareham Zoning By-law.

1470 VARIANCES

The Board of Appeals shall have the power to hear and decide applications for Variances from the provisions of the Zoning By-Laws, including the power to grant a Variance authorizing a Use or activity not otherwise permitted in the district in which the land or structure is located. A Variance may be granted when factors relating to soil conditions, lot shape, or topography of such land creates an impracticality or limits the location or positioning of a new structure or addition on a site or location that previously conformed to zoning requirements. An applicant must demonstrate that a literal enforcement of the By-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

Renumber section 1460 USE VARIANCES to section 1471 USE VARIANCES

Article #15 – To see if Town Meeting will vote to amend the Zoning By-Law Article 3; Drive-throughs, or take other action relative thereto, as follows:

	R130	R60	R43	R30	MR30	WV1	WV2	OV1	OV2	CS	CG	CP	CNF	MAR	INS	IND
Restaurant Drive-through	N	N	N	N	N	N	N	N	N	N	SPZ	N	N	N	N	N

And add the following Special Permit criteria under section 390:

"A Drive-through Restaurant shall only be permitted in the General Commercial district by Special Permit issued after the following conditions are met:

1. Internal site circulation is found to be safe for cars and pedestrians, with well-defined lanes and minimal crossing of lanes.

2. Site access provides enough space for vehicles to enter and queue and for vehicles exiting to pause and queue for exit.
3. Trash receptacles are available for disposal from a vehicle.

There is no direct entrance or egress onto or from a State highway, arterial or collector road."

Article #16 – To see if Town Meeting will vote to amend the Zoning By-Law Article 16; Definitions, or take other action relative thereto, as follows:

Non-conforming Building or Lot: *A building or lot that does not conform to a dimensional regulation prescribed by this By-law for the district in which it is located or to regulations for signs, off-street parking, off-street loading, or accessory buildings but which building or lot was in existence at the time the regulation became effective and was lawful at the time it was established.*

Non-conforming Use: *A use of a building or lot that does not conform to a use regulation prescribed by this By-law for the district in which it is located, but which was in existence at the time the use regulation became effective and was lawful at the time it was established.*

Lot: *A parcel of land used or set aside and available for use as the site of one or more buildings and buildings accessory thereto or for any other definite purpose, in one ownership and not divided by a street, nor including any land within the limits of a public or private way upon which such lot abuts, even if the fee to such way is in the owner of the lot. As used herein, ownership shall mean either"*

a. legal title in fee or

b. a tenancy under a written lease, the term of which is for a period of not less than 99 years of which term there are not less than 50 years remaining unexpired, at the time of issuance of any permit, building, special or otherwise, under and as provided by this Zoning By-law or

c. any combination of paragraph a. and b. above

Article #17 - To see if the Town will vote to adopt the "Stretch Energy Code" and create a Town By-Law pursuant to Appendix 115.AA of the Massachusetts Building Code, 780 CMR, the Stretch Energy Code, including future editions, amendments or modifications thereto, with an effective date of July 1, 2018 a copy of which is on file with the Town Clerk, or take any other action relative thereto.

Division IV Article V

STRETCH ENERGY CODE

Section 1. Definitions:

International Energy Conservation Code (IECC) - The International Energy Conservation Code (IECC) is a building energy code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency, and is updated on a three-year cycle. The baseline energy conservation requirements of the MA State Building Code are the IECC with Massachusetts amendments, as approved by the Board of Building Regulations and Standards.

Stretch Energy Code - Codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA of the Massachusetts building code, the Stretch Energy Code is an appendix to the Massachusetts building code, based on further amendments to the International Energy Conservation Code (IECC) to improve the energy efficiency of buildings built to this code.

Section 2. Purpose:

The purpose of 780 CMR 115.AA is to provide a more energy efficient alternative to the Base Energy Code applicable to the relevant sections of the building code for new buildings.

Section 3. Applicability:

This code applies to residential and commercial buildings. Buildings not included in this scope shall comply with 780 CMR 115.AA, as indicated.

Section 4. Stretch Code:

The Stretch Code, as codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA, including any future editions, amendments or modifications, is herein incorporated by reference into the Town of Wareham General By-Laws, Division IV Article V.

The Stretch Code is enforceable by the Building Commissioner and effective as of July 1, 2018.