

**DRAFT**  
**Article XII. Salisbury Beach Overlay District****§ 300-61. Purpose.**

The Salisbury Beach Overlay District is intended to spur redevelopment of under-utilized beachfront commercial property, to establish design guidelines for new development, to unlock the potential of creative development and architecture, to enhance the value of land and buildings, to provide a foundation for long-term private reinvestment and create incentives for new mixed-use development while preserving the character of this historically lively oceanfront district at Salisbury Beach.

**§ 300-62. Boundaries; subdistricts.**

The boundary of the Salisbury Beach Overlay District is shown on the Salisbury Beach Overlay District Map, which map is hereby incorporated in and made part of this section.

- A. The Salisbury Beach Overlay District is comprised of the following three overlay subdistricts, which are delineated on the Salisbury Beach Overlay District Map:<sup>1</sup>
- 1) Beach Center Development Subdistrict. This overlay subdistrict is generally comprised of certain parcels along Oceanfront North, Ocean Avenue, Railroad Avenue, Driftway, Central Avenue, Shea Street, North End Boulevard and Cable Avenue.
  - 2) Broadway Revitalization Subdistrict. This overlay subdistrict is generally comprised of certain parcels along Broadway.
  - 3) Oceanfront South Revitalization Subdistrict. This overlay subdistrict is generally comprised of certain parcels along Oceanfront South.
- B. Overlay district map and lot listing. The Salisbury Beach Overlay District, the Beach Center Development Subdistrict, the Broadway Revitalization Subdistrict and the Oceanfront South Revitalization Subdistrict are delineated on the Salisbury Beach Overlay District Map and the lot listing attached as Exhibit I.

**§ 300-63. Existing zoning.**

- A. The Salisbury Beach Overlay District shall be overlaid over the existing Beach Commercial District within the boundaries shown on the Town of Salisbury Zoning Map. The owners of property in the Salisbury Beach Overlay District shall continue to possess all current zoning rights and be subject to the requirements applicable in the Beach Commercial District. In the event an owner desires to construct a building greater than 35 feet in height, as defined in § 300-5 of the

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<sup>1</sup> We recommend that you eliminate the Oceanfront South Revitalization District and merge it with Beach Center to create one subdistrict, such that the Salisbury Beach Overlay District would include a total of two subdistricts: the merged subdistrict and the Broadway Revitalization Subdistrict. This draft contains other comments about the recommended consolidation of Oceanfront south and Beach Center. For now, however, we have retained Oceanfront South.

Zoning Bylaw, or to use his property for mixed-use development, as defined in § 300-64 herein, the rules and regulations of the Salisbury Beach Overlay District shall apply and by filing an application for site plan review or a special permit for a development subject to such rules and regulations, the owner shall be deemed to accept and agree to them. It is intended that the Zoning Board of Appeals shall not grant height variances for development of habitable space over a height of 35 feet in the Beach Commercial District that would exempt the development from the Salisbury Beach Overlay District. Where the Salisbury Beach Overlay District provisions are silent on a zoning rule or regulation, the requirements of the underlying Beach Commercial District zoning shall apply.

- B. Underlying zoning. The underlying zoning for the Beach Commercial District shall remain an integral part of the Salisbury Zoning Bylaw and shall be neither modified, repealed nor amended by this article.

#### **§ 300-64. Definitions.**

Definitions of the underlying Beach Commercial District shall apply to all developments subject to the Salisbury Beach Overlay District Bylaw, except for the following:

#### **HABITABLE SPACE**

An area of any structure that is legally accessible and intended for human occupancy for residential or commercial uses. Mechanical rooms, parking areas, storage areas and other passive accommodations shall not constitute habitable space.

#### **HEIGHT**

The vertical distance from the top of the lowest horizontal structural support member (excluding grade beams, cross-bracing and other foundation elements) as required under the State Building Code for construction in the flood hazard zone in which the property is located to the average height of the main roof structure. The referenced elevation for the lowest horizontal structural support member shall be based on the minimum height required under the State Building Code even if the actual elevation of the lowest horizontal structural support member is higher.<sup>2</sup>

#### **MIXED-USE DEVELOPMENT**

Development that contains a combination of residential use and one or more permitted principal commercial uses which are retail ~~and/or~~ professional in nature. A combination of commercial parking facilities and residential uses shall not constitute a mixed use.<sup>3</sup>

#### **SHADOW IMPACT**

A significant adverse shadow impact occurs when the incremental shadow added by a proposed project falls on a sunlight-sensitive resource and substantially reduces or completely eliminates direct sunlight

<sup>2</sup> We do not recommend deleting the last sentence of the definition of “height.” The Town needs a consistent, uniform standard as the starting point for measuring maximum height compliance.

<sup>3</sup> Removed parentheses and made this a separate sentence.

exposure, thereby significantly altering the public's use of the resource or threatening the viability of vegetation or other resources.<sup>4</sup>

## **PARKING SPACE**

An on-site, or off-site, space having an area of not less than 162 square feet, with minimum dimensions of nine feet wide by 18 feet long measured from center to center.

### **§ 300-65. Permitted uses.**

Uses permitted in the Salisbury Beach Overlay District shall include all uses permitted in the underlying Beach Commercial District, except those specified in § 300-66 herein. Mixed-use development shall be a permitted use. Fish and shellfish, wholesale and retail sale, may be permitted by a special permit granted by the Zoning Board of Appeals.

### **§ 300-66. Prohibited uses.**

In addition to those uses prohibited in the underlying Beach Commercial District, the following additional uses shall be prohibited in the Salisbury Beach Overlay District:<sup>5</sup>

- A. Drive-through retail establishment. Any commercial use which utilizes a vehicular drive-up window.
- B. Casino. Any facility or establishment where any gambling or gaming occurs, with the exception of arcade-type establishments which tender coupons or tokens for on-site redemption for noncash prizes or novelties. Gambling and gaming include, without limitation, any other game of chance or skill, or both, played with cards, with dice or with any mechanical, electromechanical or electronic device or machine for currency, check, credit, or any other thing of value, including, without limitation, roulette, 21, blackjack, craps, poker, slot machines, and any other electronic gaming devices and any other games classified as Class II or Class III gaming under the Indian Gaming Regulatory Act, U.S.C. § 2701 et seq., but excluding the game of bingo conducted pursuant to MGL c. 271, any lottery game conducted by the State Lottery Commission in accordance with MGL c. 10, § 24, and games played with cards in private homes or residences in which no person makes money for operating the game, except as a player.
- C. Automobile repair, sales, and service.
- D. Car wash.

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<sup>4</sup> We have added this definition to address concerns that have been raised about shadow impacts. It is best to avoid being overly prescriptive in the definition or the regulations. Although we have added a shadow study requirement only for buildings over 65 feet (the height you already allow by right), please note that for frame of reference, New York reserves the right to require a shadow study for any building over 50 feet if the building requires any form of discretionary approval, or any building located adjacent to or across the street from a sunlight-sensitive resource (such as a beach, public open space, wetlands, and so forth). In Toronto, the threshold is six stories.

<sup>5</sup> We recommend that the Town revisit the list of prohibited uses and decide whether other allowed uses in the BCD should be added to it.

- E. Chemical warehouse.
- F. Motorcycle repair, sales and service.

**§ 300-67. Dimensional regulations.**

Dimensional regulations of the underlying Beach Commercial District shall apply in the Salisbury Beach Overlay District, except for the following:

- A. Maximum height allowed: 65 feet and five stories of habitable space, except that the Planning Board may grant a special permit to increase the maximum allowable height to 89 feet and seven stories of habitable space upon finding that:
  - 1) The incremental shadow, if any, of the proposed structure will not have a significant adverse shadow impact on existing structures or landscaping, or cast any incremental shadow on Salisbury Beach prior to 5 pm;
  - 2) In addition to the upper floor setback required under Subsection E below, the proposed building provides for an upper floor setback in the front façade of an additional five feet commencing no higher than the ceiling height of the fourth story;<sup>6</sup>
  - 3) The proposed upper floor setbacks, building width and height ratio, building spacing, and roof treatments are sufficient to mitigate the impact of the increase in height on surrounding properties, the street, and views of the water, and from the vantage point of pedestrians;
  - 4) The proposed increase in height occurs in one or more prominent locations, such as a street intersection or the corner of a building on the interior of a site, thereby providing distinction and contributing to a variety of heights in the district;
  - 5) The proposed building addresses all applicable components of the Design Guidelines in § 300-71; and
  - 6) The proposed increase in height is necessary to achieve the purposes of the Salisbury Beach Overlay District.

Unoccupied architectural appurtenances to which there is no permanent access (cupolas, spires, chimneys, flagpoles, etc.) and comprising not more than 25% of the building footprint in plan view shall be exempt from maximum height limits.

- B. Off-street parking requirements. Minimum of one space per studio or one-bedroom unit and two-spaces for units with two or more bedrooms, and for every four required residential parking spaces, there shall be 0.25 visitor parking spaces, except that in a mixed-use development with at least 20% of the gross floor area for commercial use (other than parking) on the ground floor level, the requirement shall be a minimum of one space per dwelling unit and one space per 300 square feet of commercial floor area. At least one of the required parking spaces for each dwelling unit shall

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<sup>6</sup> For a seven-story building, there should be at least one additional upper-story setback (in addition to the one the bylaw already requires).

be an on-site space. For purposes of this Article XII, an on-site space shall be located on the premises of the development, and an off-site space shall mean a parking space located on another lot within 1000 feet of the development and within the SBOD.<sup>7</sup>

C. Mixed-use development. To encourage mixed-use development at Salisbury Beach, the following requirements shall apply:

- 1) Beach Center Development Subdistrict: mixed-use development is optional in this subdistrict.
- 2) Broadway Revitalization Subdistrict:
  - a) Mixed-use development shall be required in this subdistrict.
  - b) The ground floor of the façade facing Broadway shall be occupied by commercial uses only (other than parking).
  - c) No off-street parking shall be visible from Broadway or any public sidewalk or pedestrian pathway.
- 3) Oceanfront South Revitalization Subdistrict:<sup>8</sup>
  - a) Mixed-use development is optional and encouraged in this subdistrict.
  - b) At least 15% gross floor area of habitable space on the ground floor level shall be elevated to the minimum elevation required under the State Building Code and shall include a ceiling height of not less than 13 feet measured floor to floor. The Planning Board may grant a special permit to waive this requirement if it determines that such waiver will not derogate from the purposes and intent of the Salisbury Beach Overlay District.

D. Hotel and motel uses. Hotel or motel developments shall provide a minimum of one parking space per room, all of or part of which may be off site anywhere in the Beach Commercial District.

E. Upper floor setbacks. A building with a height in excess of 35 feet shall have an upper floor minimum setback in the front facade of at least five feet commencing no higher than 35 feet or the ceiling height of the second story, whichever is lower, with the exception of access elements

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<sup>7</sup> We recommend retaining a minimum commercial floor area standard for purposes of granting off-street parking flexibility to mixed-use developments. A project with a small amount of commercial space should not have the same access to reduced residential parking as a project that provides significant commercial space. We suggest 20% as the minimum commercial floor standard. This does not mean that a mixed-use building must have 20% commercial space. It means that if a mixed-use building has less than 20% commercial space, it is not eligible for the parking space reductions provided in Par. B.

<sup>8</sup> Again, we recommend that you eliminate the Oceanfront South Revitalization District and merge it with Beach Center to create one subdistrict called the Salisbury Beach Revitalization District (or something similar). However, if the Planning Board wishes to retain three subdistricts and the first floor ceiling height rule in Oceanfront South, the bylaw should include a provision to waive the ceiling height requirement by special permit. If the regulation simply doesn't work, there is no point in casting it in concrete.

(stairways or elevator shafts) and unoccupied architecture features not to exceed 25% of the front facade area, in aggregate.

**§ 300-68. Public Improvements Fund.<sup>9</sup>**

For any development utilizing the Salisbury Beach Overlay District, the applicant shall make payments to the Town as set forth in Subsections A and B below to the Salisbury Beach Overlay District Public Improvements Fund.<sup>10</sup> This fund, administered by the Town Manager, shall be used for qualified public capital improvements to any area open to the general public within the Salisbury Beach Overlay District, including, but not limited to, utility upgrades, sidewalks, streets, period lighting, landscapes, hardscapes, boardwalks, benches or canopies. The fund shall be a special ~~revolving account~~ revenue fund separate from the Town's general fund.<sup>11</sup> Water and sewer improvements shall not be considered qualified improvements for the purpose of this section as those facilities are addressed under a different fund.

**A. Town-administered improvements.**

- 1) A one-time payment equal to \$3,000 per permitted dwelling unit shall be paid to the Town of Salisbury Beach Overlay District Public Improvements Fund. Payment shall be made with respect to each unit prior to issuance of an occupancy permit for the unit, provided that payment may be made at the time of conveyance of each unit to an end user or upon occupancy by any tenant if appropriate security arrangements to guarantee such payment have been made as part of the site plan review process for the development. Such payments shall not exempt developers from providing any on-site or pedestrian- or vehicle-related improvements that are required as part of the site plan review process.
- 2) To guide and prioritize public infrastructure improvements a Public Realm Infrastructure Investment Plan<sup>12</sup> identifying and estimating the costs of the desired improvements shall be prepared and maintained by the Town Manager. Such plan and changes in it shall be subject to consultation with the Planning Board.

**B. Developer-administered improvements.** As an alternative to, or in partial satisfaction of, the required contributions to the Town of Salisbury Beach Overlay District Public Improvements Fund, with the written approval of the Town Manager, a developer, or group of developers, may perform public improvements included in the Public Realm Infrastructure Investment Plan, the cost of which will be credited against the infrastructure contribution per dwelling unit specified above. Creditable public improvements shall be agreed upon as part of the site plan review process and shall consist of capital improvements to any property which is open to the general public, but shall not include replacement of existing sidewalks and/or curbing along the frontage of a proposed development which shall be the responsibility of the developer. The developer shall be credited an

<sup>9</sup> We have made no changes to this section, but see our comments on page 11.

<sup>10</sup> Has this fund been established and if so, under what authority?

<sup>11</sup> We assume the fund should be a special revenue fund, not a revolving account. We defer to the Town Manager.

<sup>12</sup> Has this plan been developed? If it exists, where is it on file?

amount equal to 115% of the direct cost of all qualified public improvements performed in advance of unit conveyances or occupancy and for which reasonable proof of actual cost is provided to the Town Planner. Any dispute as to the final amount credited to the developer for approved public improvements shall be decided by the Town Manager whose decision shall be final and binding. The developer shall be required to post a one-hundred-percent performance and payment bond satisfactory to the Planning Board, with advice from the Town Planner, prior to undertaking any of the improvements contemplated herein.

**§ 300-69. Site plan review.**

- A. All projects developed within the Salisbury Beach Overlay District shall be subject to the site plan review by the Planning Board in accordance with Article XVIII of the Zoning Bylaw. Prior to the Planning Board approving any application for a development plan under this bylaw, the Board shall find that:
  - 1) The plan meets the applicable planning standards established in Article XVIII of the Zoning Bylaw and the Design Guidelines established in § 300-71.
  - 2) The proposed development plan is consistent with the Public Realm Infrastructure Investment Plan for the Beach Commercial District.<sup>13</sup>
  - 3) Proposed elevations and drainage improvements are consistent with federal, state and local storm damage prevention and stormwater ~~control~~ management guidelines or regulations.
  - 4) Required contributions will be made to the Salisbury Beach Overlay District Public Improvements Fund and to the Town's Utility Access Fee Funds.
- B. The Planning Board's approval and any conditions of the approval of any application for site plan review of a development under this bylaw shall be submitted in writing to the Building Inspector, the applicant and the Town Clerk. No occupancy permit shall be issued for any building or structure or portion thereof until all conditions of the Planning Board's site plan approval have been met and until a certificate of completion, in a form approved by the Planning Board, is completed and signed by the Board's inspector.

**§ 300-70. Planning Board regulations.**

The Planning Board shall adopt administrative rules and regulations for the purpose of carrying out this Article XII and shall file a copy of such rules with the Town Clerk. The Planning Board's rules and regulations may provide for reasonable administrative fees for special permits and site plan review, and fees for employing outside consultants to assist the Board with technical review of applications submitted under this Article XII.

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<sup>13</sup> If this plan does not exist, the Town needs to create it or delete this criterion for site plan review.



**§ 300-71. Design guidelines.**

As part of the required site plan review process or, where applicable, special permit process, applicants seeking to utilize the Salisbury Beach Overlay District shall submit text, narrative, plans, elevations, and/or section drawings to the Planning Board in accordance with the following guidelines:<sup>14</sup>

- A. Buildings, structures and site layout shall reflect traditional neighborhood design, with pedestrian friendly street design and that is inviting and pleasant for walking, bicycling, and other non-vehicular means of getting around, and safe and convenient for individuals with disabilities; discernible edges, a mix of densities and land uses, and high-quality public realm. Buildings may reflect both traditional and modern interpretations of vernacular coastal New England architecture for the purposes of promoting appropriate waterfront scale and character, including building materials, massing, density, scale, and roof lines.
- B. Large expanses of blank walls shall not be allowed. Facades shall have frequent architectural articulation. Major such articulations shall be spaced no farther apart than 25% of the building length at street level (but in no case farther apart than 70 feet). Street levels lined with extensive windows and frequent well-designed entrances to street level uses are encouraged, permitting continuous public views and access in and out of buildings in order to create a lively street atmosphere. Window designs in a vertical orientation are encouraged.
- C. Screening of ground floor parking from pedestrian view with appropriate doors, building elements and/or landscaping features is required for parking areas along public ways.
- D. All projects shall be designed to minimize the size and number of curb cuts. Full-width curb cuts will not be allowed. In keeping with the theme of screening parking from the public view, efficient traffic patterns are encouraged to support ingress and egress from lots. Curb cuts may not exceed an aggregate of 24 feet for every 100 feet of frontage. Lots with less than 100 feet of frontage may have one curb cut, 14 feet in length.
- E. Underground utilities for new and redeveloped buildings are required unless physically restricted or blocked by existing underground obstructions.
- F. A straightforward use of natural, traditional or sustainable building materials is encouraged. Brick, stone, high-quality metals, cast concrete, wood, and cement fiberboard will achieve the greatest level of compatibility with the surrounding area and will best stand the test of time in terms of both changing community tastes and withstanding the historically vibrant commercial climate of the Salisbury oceanfront. Exterior material substitutions, in particular products and applications that are of higher quality than those described in these guidelines, are encouraged.

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<sup>14</sup> This entire section could be condensed significantly. It would be better to handle most of what is here through Planning Board regulations. The bylaw simply needs to provide authority for the Board to adopt design guidelines, and in doing so, the bylaw should identify the permissible scope of the guidelines, e.g., architectural design, open space, pedestrian facilities, location and design of parking areas, and so forth.



- G. Building facades shall include architecturally distinct styles promoting diverse design, particularly with rooftop appurtenances such as cupolas, turrets, spires, widow walks, etc.
- H. A diversity of roof heights, gable orientations, and volumes in new buildings is required.
- I. Traditional arrangement of facade components into base, middle, and top composition may be used to achieve compatibility and continuity within the surrounding architectural context. Additionally, projecting bays, recessed balconies, and roof shape variation shall be utilized to provide interest, individuality, and appropriate scale to new development.
- J. Sidewalk amenities such as street furniture, lighting and awnings that encourage year-round pedestrian use and sidewalk-cafe-style seating to enhance the public realm are encouraged.
- K. Rear vehicular access to ground floor parking is preferred to minimize curb cuts on principal streets. Use of streets other than Broadway and Oceanfront South for vehicle access is preferred. Use of shared access points is encouraged to minimize the number of curb cuts.
- L. Placing buildings oriented parallel with the front setback line is required to keep a consistent "street wall," with primary entries oriented towards the street.
- M. Building setbacks may be varied and are encouraged to recognize the siting and scale of adjacent development.
- N. At the intersection of the building line with crossover streets, there may be variation to the building edges to allow for corner elements and circulation functions. The building edges may be articulated and organized in such a way to achieve an architecturally rich and contextually varied composition. Variation in the building edge beyond the minimum setback is encouraged.
- O. The facade proportions used in new development shall incorporate compatible architectural details, storefront design, window openings, and roof shapes to balance the proportions of facades into pleasant and cohesive compositions.
- P. Building elevations are required to incorporate architecturally appropriate techniques to articulate the massing of the proposed building, such as projecting bay windows, different material for the ground floor base, cornice lines, and/or material changes, etc.
- Q. To the extent feasible, provisions shall be made to accommodate the construction and use of an elevated pedestrian walkway (boardwalk) along the oceanfront within the Salisbury Beach Overlay District boundaries stipulated in Exhibit I and to accommodate the future extension of the walkway along the oceanfront to the north and south of the overlay district.
- R. To the maximum extent reasonably possible, the ground floor levels in mixed-use buildings ~~the Broadway Revitalization Subdistrict and the Oceanfront South Revitalization Subdistrict~~ shall be elevated to the minimum elevation stipulated by the State Building Code, and such elevations shall permit continuous sidewalks and/or boardwalks to be constructed along the building frontages that

will permit easy access for pedestrians to building entrances and easy access to and from the boardwalks, the street, and the beach.

- S. Ground floor noncommercial habitable spaces provided at the base of buildings in the Oceanfront South Revitalization Subdistrict ~~shall~~ should be initially designed so as to be capable of conversion at a later date to commercial use. The Planning Board encourages design features necessary for such conversion include, but are not limited to, proper ceiling height, construction assemblies meeting building codes for mixed uses, and accommodation for provision of future handicapped access.
- T. Buildings and sites shall incorporate sustainable building practices, both in choice of construction materials and technology for ongoing operations, as evidenced by participation in the Massachusetts Residential New Construction Program and achieving ENERGY STAR certification or meet equivalent energy efficiency and energy conservation standards.