



Chairman Brett J. Butz
16 Jan Sebastian Drive
Sandwich, MA 02563

Dear Chairman Butz,

The Cape Cod & Islands Association of REALTORS® appreciates the opportunity to provide input on the proposed regulations being considered by the Sandwich Conservation Commission. As an organization, we strive to protect private property rights across Cape Cod, and, for our members that live and work in Sandwich on behalf of Sandwich property owners.

One of our public policy priorities for Sandwich, and all of Cape Cod, is coastal resiliency. We recognize the need and value in addressing this issue and applaud towns for prioritizing coastal resiliency. However, all coastal resiliency efforts should be grounded in a fact-based approach that also respects and values property rights.

To that end, we have conducted an extensive review of the proposed regulations; their legality, impact on private property rights, and property owners' ability to comply with the proposed regulations. Quite frankly, we believe the proposed regulations are an overreach of authority by the Conservation Commission, ignores facts to regulate based on percentage increases for additions, and severely restricts the property rights of those who would be subject to the new regulations.

CCIAOR asks the Conservation Commission to amend the proposed regulations and review processes to do the following:

- Keep the proposed regulation within the authority of the Conservation Commission. As written, the proposed regulations exceed that authority in several instances;
- Revise the proposed regulations to eliminate lowering the percentage increase due to fairness and look at alternative ways to ensure fairness among property owners is created;
- Permit allowing some exceptions of development within 50 feet of the dune as the proposed regulations are too burdensome as drafted;
- Provide a redline copy of all future proposed changes versus the current regulations to provide the transparency needed for public review.

Regulations Exceed Authority of Conservation Commission

The review standards for additions exceed the authority of the Conservation Commission. The Commission purports to regulate these vertical additions based on whether they conform to the Town's zoning requirements and the state building code. However, the regulatory authority of the Commission to review development is based on the town wetland bylaw and the Massachusetts Wetland Protection Act and its implementing regulations, not on the zoning bylaw or the state building code.



Simply put, the Commission does not have authority to interpret or apply zoning requirements. Nor does it have any authority to interpret or apply the state building code.

These regulations also state that the Commission may approve vertical additions if they do not increase wastewater flow except in “full compliance with” state Title 5 and Town Board of Health septic system requirements, “excepting only compliance with property line setbacks.” This would apparently prevent the Commission from approving a vertical addition if the expansion of a septic system to accommodate the additional wastewater flow needed variances from Title 5 or local Board of Health requirements (other than from setback requirements) and would also be the case even if the septic system were located outside of areas under the Commission’s jurisdiction (i.e., more than 100 feet from a wetland resource).

The Commission also does not have authority to administer Title 5 and Board of Health regulations. If a homeowner who wants to add a second story bedroom to an existing one-story home obtains a variance from the Board of Health for the septic system that will serve the expanded home, the Commission should not be able to use the fact that the septic system needed (and received) a Board of Health variance as grounds for refusing to allow the expansion under the local wetlands bylaw.

The proposed regulations also include the same references to zoning, Building Code, Title 5, and Board of Health requirements for to existing buildings on dunes other than vertical additions. We believe the Commission equally lacks authority to regulate based on these factors.

Unfairly Lowers Percentage Increase of Home Size

The Proposed Regulations would limit the expansion of existing residential structures and accessory structures based on a percentage of the floor area of the structure. In some cases, the maximum expansion amount is measured with reference to the floor area in 1978 or at the time of construction. In other cases, the maximum expansion is based on existing size of the structure. For example, under Regulation No.13, Part III.B.a, the owner of a 3,000 square foot home would be able to add up to 1,800 square feet (60% of 3,000), while the owner of an 800 square foot cottage on the same size lot would be limited to a maximum addition of only 480 square feet (60% of 800). Using a percentage approach only exacerbates the difference between those who have already expanded home size versus those who have not.

By lowering the percentage, the Commission is picking winners and losers between property owners based on when they expanded, they chose to expand their property. Furthermore, the Commission has not outlined any data to show that by lowering the percentage threshold accomplishes the objective of limiting impact on the coastal resources. This approach is problematic because it is not based on a distinction that furthers the stated purpose of the Proposed Regulations, which is to protect coastal dunes and barrier beaches “in the interests of storm damage prevention and flood control by supplying sand to coastal beaches and protecting inland coastal areas from the flooding effects of storm waves and storm elevated sea levels.”



We recommend a leaving the percentage threshold the same – subsequently treating property owners fairly or eliminating the percentage increase approach altogether and come up with a metric that creates more fairness among property owners and does not further exacerbate differences between property owners.

Banning Development on or within 50 feet of the Dune

The blanket prohibition on new buildings on or within 50 feet of the dune is unduly burdensome and, in the case of a previously approved building lot without an existing structure that is located within 50 feet of a dune. In addition, it could conceivably preclude a property owner who has or is building a home outside the jurisdictional area from erecting a small storage shed or other outbuilding typical of residential properties.

We have been presented with no data as to the acres of land within the dune that could be developed under the existing regulations that would be placed off-limits by the proposed regulation. Absent of any data as to the impact of this regulation, we recommend the Commission allow exceptions to the proposed regulation to allow a small shed or outbuilding.

In conclusion, CCIAOR wants to reiterate that we are appreciative to the Conservation Commission for allowing us to comment on the proposed regulations. We are committed to working with you to prioritize coastal resiliency. We know as you do a more resilient Sandwich is in the best interest of the town, property owners, and taxpayers.

However, the Conservation Commission has made it unreasonably difficult for residents to fully understand and comment on the Proposed Regulations by not providing a redline or other document identifying the differences between the Existing Regulations and the Proposed Regulations. We request that a redline version of the Proposed Regulations showing changes from the existing regulations be made available for review by residents and interested parties prior to any further discussion on the proposal in the interest of transparency of those affected by the regulations.

If you would like to discuss this letter or any of our proposed recommendations further, feel free to reach out to Ryan Castle at rcastle@cciaor.com or (508) 957-4300.

Sincerely,

Joe Arnao
President

Ryan Castle
Chief Executive Officer