



Town of Chatham

Town Clerk
549 Main Street
Chatham, MA 02633



Julie S. Smith, MMC/CMMC
Town Clerk
jsmith@chatham-ma.gov

Tel: (508) 945-5101
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TOWN BULLETIN TOWN BULLETIN TOWN BULLETIN TOWN BULLETIN

September 21, 2015

The Commonwealth of Massachusetts Office of the Attorney General has approved amendments to the Zoning Bylaws under Articles 27, 28, and 29 from the May 11, 2015 Annual Town Meeting.

The Attorney General has disapproved amendments to the Zoning Bylaws under Article 47 due to defects in the planning board hearing process, and receipt of two letters of complaint.

The Attorney General's decision was granted on September 18, 2015, as described in MA General Laws Chapter 40, Section 32.

Therefore, pursuant to MA General Laws Chapter 40, Section 32, the public is advised of the following:

Claims of invalidity by reason of any defect in the procedure of adoption or amendment may only be made within ninety (90) days of this posting.

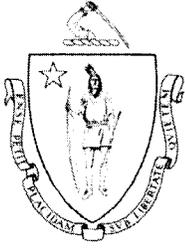
Copies of these bylaws may be examined and/or obtained at the Town Clerk's Office, Chatham Town Offices Building, 549 Main Street, Chatham, MA 02633.

Julie S. Smith
Town Clerk

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Posted September 22 2015

By Bryan J. Rich, Constable



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

SEP 21 2015
10:47 AM

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

September 18, 2015

Julie Smith, Town Clerk
Town of Chatham
549 Main Street
Chatham, MA 02633

RE: Chatham Annual Town Meeting of May 11, 2015 - Case # 7564
Warrant Articles # 27, 28, 29 and 47 (Zoning)
Warrant Articles # 32, 33, 34, 35, 36 and 37 (General)

Dear Ms. Smith:

Articles 27, 28 and 29 - We approve Articles 27, 28 and 29 from the May 11, 2015 Chatham Annual Town Meeting.^{1, 2}

Article 47 - We must disapprove and delete Article 47 because of defects in the planning board hearing process which the Attorney General is not authorized to waive pursuant to Chapter 299 of the Acts of 2000.

Article 47 seeks to amend the Town's zoning by-laws, Section IV, Paragraph D, "Flexible Development Districts," Sub-paragraph 3, "Location" by deleting sub-sections (a), (b) and (e).

The planning board hearing notice for Article 47 was not posted in accordance with G.L. c. 40A, § 5. General Laws Chapter 40A, Section 5, provides in part as follows (with emphasis added):

¹ In a decision issued August 12, 2015, we approved Articles 32, 33, 34, 35 36 and 37.

² On August 12, 2015, we elected to proceed under the provisions of Chapter 299 of the Acts of 2000 (which amends G.L. c. 40, § 32) by giving notice of defects in the procedure of adopting the by-law amendments voted under Articles 27, 28, 29 and 47. In a certification dated September 11, 2015, you affirmed that the notice was posted and published in accordance with the provisions of Chapter 299, and that no claims were filed with regards to Articles 27, 28 and 29, with the Office of the Town Clerk within 21 days of publication. For this reason, the Attorney General is authorized by Chapter 299 to waive (and does so waive) the defects under Articles 27, 28 and 29. However, a claim was filed with regards to Article 47. Therefore, the Attorney General is not authorized by Chapter 299 to waive (and does not so waive) the defects under Article 47.

No zoning...by-law or amendment thereto shall be adopted until after the planning board in a...town has...held a public hearing thereon...at which interested persons shall be given an opportunity to be heard....Notice of the time and place of such hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the...town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the...town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town.

On August 12, 2015, the Attorney General elected to proceed under the provisions of Chapter 299 of the Acts of 2000 (which amended G.L. c. 40, § 32). This provision allows the Attorney General to direct the Town Clerk to post and publish a notice of the defect and allows for objections or claims to be filed regarding the procedural defect. On September 11, 2015 the Town Clerk certified that the notice of defect was posted and published in accordance with the provisions of Chapter 299.

The Town Clerk received letters from two people in response to the Chapter 299 posting and publishing process. These letters have been provided to us. The letters received by the Town Clerk include statements explaining why the notice defect regarding Article 47 was misleading or otherwise prejudicial. For example, one letter asserts “[w]e found the defects in procedure to be misleading and did not allow us adequate time to thoroughly consider the impacts to our property” and the other letter asserts “[i]t was unfair because I was not properly notified before the Planning Board Meeting to review where the text and maps may be inspected[.]”

In light of the statements in these letters regarding the prejudicial impact of the notice defect, we have determined that each of the documents qualifies as a valid Chapter 299 objection or claim regarding Article 47. Chapter 299 dictates that the Attorney General may not waive the notice defect if any valid claims are received. As amended, G.L. c. 40, § 32, provides in pertinent part as follows (with emphasis added):

If no claim was made, the attorney general may waive any such defect; but, if any claim is made then the attorney general may not waive any such defect.

Under the provisions of Chapter 299, the filing of a valid claim removes the Attorney General’s discretion to waive the defect. For this reason we must disapprove and delete Article 47. We recommend that the Town consult with Town Counsel regarding the steps the Town should take to resolve this issue at a future Town Meeting.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Margaret J. Hurley

By: Margaret J. Hurley
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
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cc: Town Counsel Patrick Costello



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TO WHOM IT MAY CONCERN:

I, Julie Smith, duly appointed Town Clerk of the Town of Chatham, hereby certify the following Article was adopted at the May 11, 2015 Annual Town Meeting:

Article 27 – Protective (Zoning) Bylaw Amendment:
Section III.D.3.a.1 - Buildable Uplands/Lot Area

~~Strikethrough~~ indicates language proposed for deletion.
Underline indicates language proposed for addition.
Bold Italicized Words are defined in the existing Bylaw.

To see if the Town will vote to amend its existing Protective (Zoning) Bylaw by adding the following sentence to the end of **Section III.D.3.a.1, District Regulations, District Area Regulations, Specific Requirements, Minimum Lot Conditions, Upland Requirements**, as follows:

These Upland Requirements shall not apply to the GB-1, GB-2, GB-3 and I Zoning Districts.

Or take any action in relation thereto.

(Planning Board)

Motion: Peter Cocolis, Chairman, Planning Board, moved that the Town vote to amend its Zoning Bylaw as printed in the Warrant for Article 27.

Board of Selectmen Recommendation: Approve 5-0-0
Finance Committee Recommendation: Approve 6-0-0
Planning Board Recommendation: Approve 5-0-0

VOTE: Voice. So voted by well over the required 2/3rds majority, declared the Moderator.



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TO WHOM IT MAY CONCERN:

I, Julie Smith, duly appointed Town Clerk of the Town of Chatham, hereby certify the following Article was adopted at the May 11, 2015 Annual Town Meeting:

Article 28 – Protective (Zoning) Bylaw Amendment: **Addition of Neighborhood Associations to the Definition of Private Residential Piers**

~~Strikethrough~~ indicates language proposed for deletion.

Underline indicates language proposed for addition.

Bold Italicized Words are defined in the existing Bylaw.

To see if the Town will vote to amend its existing Protective (Zoning) Bylaw, **Section II, Definitions, Subsection B.**, as follows:

77. ***“Pier, Private Residential”*** means a pier incidental and accessory to ~~a one family~~ all dwelling types, vacant residential lots and neighborhood associations informally or formally organized, used by property owner(s) to access fresh or salt water and is not available for use by the general public.
78. ***“Pier, Public”*** means a pier that is owned, constructed or operated by a governmental entity and regulated in a manner that provides access to fresh or salt water by the general public.

Or take any action in relation thereto.

(Board of Selectmen)

Motion: Peter Cocolis, Chairman, Planning Board, moved that the Town vote to amend its Zoning Bylaw as printed in the Warrant for Article 28.

Board of Selectmen Recommendation: Approve 3-2-0
Finance Committee Recommendation: Approve 6-0-0
Planning Board Recommendation: Approve 5-0-0

VOTE: Voice. So voted by more than the requisite 2/3rds majority, declared the Moderator.



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TO WHOM IT MAY CONCERN:

I, Julie Smith, duly appointed Town Clerk of the Town of Chatham, hereby certify the following Article was adopted at the May 11, 2015 Annual Town Meeting:

Article 29 – Protective (Zoning) Bylaw Amendment: Appendix 1 - Kennels

~~Strikethrough~~ indicates language proposed for deletion.
Underline indicates language proposed for addition.
Bold Italicized Words are defined in the existing Bylaw.

To see if the Town will vote to amend its existing Protective (Zoning) Bylaw by adding animal hospitals and kennels to **Appendix I Schedule of Use Regulations** as allowed uses by special permit in the industrial district, as follows:

	R60	*R40 R40A	R30	R20	R20A	SB	GB	I	M/C***	M
Animal Hospital	SP	SP	SP	SP	X	X	SP	<u>SP/SPA</u>	X	X
Kennel	SP	SP	SP	SP	X	X	SP	<u>SP/SPA</u>	X	X

Or take any action in relation thereto.

(Planning Board)

Motion: Peter Cocolis, Chairman, Planning Board, moved that the Town vote to amend its Zoning Bylaw as printed in the Warrant for Article 29.

Board of Selectmen Recommendation: Approve 5-0-0
Finance Committee Recommendation: Approve 6-0-0
Planning Board Recommendation: Approve 5-0-0

VOTE: Voice. So voted by more than the requisite 2/3rds majority, declared the Moderator.