

## § 27.4

are traditional to these seashore communities, are customarily incidental to the principal residential use and do not alter the essential character of the dwelling and premises as a private residence. Subject to those conditions such uses may include, but are not limited to: (1) Partial use of dwellings by residents for a professional office (as for the practice of theology, law or medicine), as an artists' studio, for appropriate small scale home occupations as the making and selling of traditional Cape Cod products produced on the premises, and for the rental of rooms and serving of meals by residents of the premises to overnight guests; (2) the existence of structures, such as a garage, barn or boathouse accessory to the dwelling; (3) display of a sign which may be indirectly but not directly illuminated and not to exceed two square feet in area, referring to the occupancy, sale, or rental of the premises; (4) traditional agricultural uses of cleared land, but not including such objectionable uses as a piggery or the raising of livestock, poultry or fur-bearing animals for commercial purposes; and (5) the opening of shellfish, the storage and use of fishing equipment, and other traditional fishing activities. No commercial or industrial ventures (other than of the types described above), may be established within the Seashore District.

### § 27.4 Variances and exceptions.

(a) Zoning bylaws may provide for variances and exceptions.

(b) Bylaws adopted pursuant to these standards shall contain provisions which constitute notice to applicants for variances and exceptions that, under section 5(d) of the Act of August 7, 1961, the Secretary of the Interior is authorized to withdraw the suspension of his authority to acquire, by condemnation, "improved property" that is made the subject of a variance or exception which, in his opinion, fails to conform or is in any manner opposed to or inconsistent with preservation and development of the seashore as contemplated in the said Act. The Secretary may be consulted at any time by zoning authorities or by the owner of "improved property" regarding the effect of a proposed variance or excep-

## 36 CFR Ch. I (7-1-16 Edition)

tion upon the status of the affected property with regard to the suspension of the Secretary's authority to condemn. The Secretary, within 60 days of the receipt of a request for such determination, or as soon thereafter as is reasonably possible, shall advise the owner or zoning authorities whether or not the intended use will subject the property to acquisition by condemnation.

(c) The Secretary shall be promptly notified of the granting of any variance or exception.

## PART 28—FIRE ISLAND NATIONAL SEASHORE: ZONING STANDARDS

### Subpart A—General Provisions

Sec.

- 28.1 Purpose.
- 28.2 Definitions.
- 28.3 Boundaries: The Community Development District; The Dune District; The Seashore District.
- 28.4 Severability.

### Subpart B—Federal Standards and Approval of Local Ordinances

- 28.10 Permitted and prohibited uses.
- 28.11 Nonconforming uses.
- 28.12 Development standards.
- 28.13 Variance, commercial and industrial application procedures.
- 28.14 Emergency action.
- 28.15 Approval of local zoning ordinances.

### Subpart C—Federal Review and Condemnation

- 28.20 Review by the Superintendent.
- 28.21 Suspension of condemnation authority in the communities.
- 28.22 Condemnation authority of the Secretary.
- 28.23 Certificates of suspension of authority for acquisition by condemnation.
- 28.24 Information collection.

AUTHORITY: 16 U.S.C. 1,3,459e-2.

SOURCE: 56 FR 42790, Aug. 29, 1991, unless otherwise noted.

### Subpart A—General Provisions

#### § 28.1 Purpose.

(a) The enabling legislation for Fire Island National Seashore (the Seashore) mandated the Secretary of the Interior (the Secretary) to issue regulations which provide standards for

## National Park Service, Interior

## § 28.2

local zoning in order to protect and conserve Fire Island. The regulations in this part set forth Federal standards to which local ordinances for Fire Island must conform to enable certain private property within the Seashore to be exempt from Federal condemnation. The standards also apply to use and development of public property. From time to time these standards may be reviewed and revised. These standards are intended:

(1) To promote the protection and development of the land within the Seashore, for the purposes of the Fire Island National Seashore Act (the Act), by means of size, location, or use limitations or restrictions on commercial, residential, or other structures with the objective of controlling population density and protecting the island's natural resources;

(2) To limit development and use of land to single-family homes, to prohibit development and use of multiple family homes, and to prohibit the conversion of structures to multiple family homes;

(3) To prohibit commercial or industrial uses initiated after September 11, 1964 or the expansion of existing commercial or industrial uses on any property within the Seashore which is inconsistent with the Federal standards and approved local ordinances or the purposes of the Act, is likely to cause a significant harm to the resources of the Seashore or will not provide a service to Fire Island;

(4) To recognize that the zoning authorities have the primary responsibility for zoning enforcement within the Seashore;

(5) To provide that private property within the Community Development District may be retained by its owner as long as it is maintained in accordance with approved local ordinances and the Federal standards;

(6) To provide that, within the Seashore District, private "improved property" may be retained by its owner as long as it is maintained in accordance with approved local ordinances, and the Federal standards;

(7) To provide that, in the Dune District, private undeveloped property, if otherwise subject to condemnation, may be retained by its owner as long as

it is maintained in its natural state; and

(8) To provide a mechanism for the Superintendent to inform landowners and the zoning authority if a use or development will be inconsistent with the Federal standards or the purposes of the Act and may subject the property to condemnation, subject to available funds.

(b) The Secretary may utilize any other statutory authority available to the Secretary for the conservation and development of natural resources to the extent the Secretary finds that such authority will further the purpose of the Act.

### § 28.2 Definitions.

(a) *Accessory structure* means any development which is located on the same lot as the principal building or use and is customarily incidental and subordinate to the principal building or use. Accessory structure may include a storage shed, dock, deck, patio, swimming pool, or tennis court but does not include a garbage or bicycle rack and the single primary access walk. Accessory structure includes a guest house without cooking facilities used for overnight habitation.

(b) *Act* means the Fire Island National Seashore Act of September 11, 1964, (16 U.S.C. 459e), as amended.

(c) *Building* means an enclosed structure having a roof supported by columns, walls, or cantilevers. (If a structure is separated by a party wall without openings, it is considered two separate "buildings.")

(d) *Developed property* means any property which has been altered from its natural state by the construction or erection of materials located in, upon, or attached to something located in or upon the ground. Such alterations may include a building, deck, swimming pool, storage shed, patio, dock, tennis court, septic system or leaching field, walkway, groin, fence or sign (except dune protection fences and signs), road, retaining wall, grading, artificial fill, or other structure or material excluding live vegetation.

(e) *Development* means any activity, action, alteration, structure or use which changes undeveloped property into developed property.

### § 28.3

### 36 CFR Ch. I (7-1-16 Edition)

(f) *Exception to a zoning ordinance* means any development or change in use of developed property which is not authorized by the zoning ordinance or the variance procedures of the zoning authority or, if authorized by the zoning authority, fails to conform to the ordinance approved by the Secretary or to the Federal standards.

(g) *Guest house* means an accessory structure on the same lot as the principal building that does not contain cooking facilities and is used for the temporary accommodation of guests of a resident living in the principal building.

(h) *Improved property* is developed property defined by the Act to mean any building, the construction of which was begun prior to July 1, 1963, together with such amount of land on which said building is situated as the Secretary considers reasonably necessary to the use of said building not, however, to exceed 2 acres in the case of a residence and 10 acres in the case of a commercial use. The Secretary may exclude from such "improved property" any beach or waters, as well as land adjoining such beach or waters, which the Secretary deems necessary for public access thereto.

(i) *Local ordinance* means a State, town, or village law applicable to the development or use of real property.

(j) *Lot* means a parcel of land which meets the minimum acreage and frontage requirements of the zoning authority and is occupied or capable of being legally occupied by one (1) principal building or main building, and the accessory structures or uses including such open spaces as are required by these standards, but in no case does a lot include lands below the toe of the natural foredune line.

(k) *Non-conforming use* means any use or development that, if commenced after the effective date of these standards, fails to conform to these standards; or, if commenced prior to October 17, 1984, failed to conform to Federal standards in effect at the time of construction or fails to conform to these standards, whether or not the use or development was first commenced in compliance with the local ordinance.

(l) *Single-family home* means a building which contains no more than one

kitchen or cooking facility. An exterior barbecue does not constitute a cooking facility for the purposes of this regulation.

(m) *Undeveloped property* means property which has not been altered from its natural state with the exception of dune protection measures such as snow fencing, beach nourishment, dune grass planting, or other approved biological or ecological sand-enhancing or stabilization methods.

(n) *Zoning authority* means the Town of Brookhaven, the Town of Islip, the Village of Saltaire, the Village of Ocean Beach and/or any other legally incorporated village or political subdivision hereafter created and the officials authorized by local ordinance to make rulings and determinations on zoning in said towns and villages.

[56 FR 42790, Aug. 29, 1991, as amended at 62 FR 30235, June 3, 1997]

#### § 28.3 Boundaries: The Community Development District; The Dune District; The Seashore District.

(a) *Generally.* The boundaries of the Seashore are described in the Act, as amended, and are delineated on the official boundary maps OGP-0002, dated June 1964, and amended by OGP-0004, dated May 1978. The maps are available for inspection at the Seashore headquarters. There are three districts: The Community Development District, the Seashore District, and the Dune District.

(b) *The Community Development District.* (1) The seventeen communities which comprise the Community Development District are set out below with their respective west/east boundaries.

(i) Lighthouse Shores—Kismet Park  
West Boundary: 100 feet west of the west line of West Lighthouse Walk.  
East Boundary: 80 feet east of the east line of Pine Street.

(ii) Seabay Beach  
West Boundary: Approximately 94 feet west of the west line of Seabay Walk.  
East Boundary: Approximately 94 feet east of the east line of Seabay Walk.

(iii) Saltaire  
West Boundary: 185 feet west of the west line of West Walk.  
East Boundary: 85 feet east of the east line of East Walk.

(iv) Fair Harbor

**National Park Service, Interior**

**§ 28.4**

West Boundary: 333 feet west of the west line of Cedar Walk.

East Boundary: The east line of Spruce Walk.

(v) Dunewood

West Boundary: The east line of Spruce Walk.

East Boundary: 85 feet east of the east line of East Walk.

(vi) Lonelyville

West Boundary: 85 feet east of the east line of East Walk.

East Boundary: 100 feet east of the east line of Raven Walk.

(vii) Atlantique

West Boundary: 80 feet west of the west line of Sea Breeze Walk.

East Boundary: 80 feet east of the east line of East End Walk.

(viii) Robbins Rest

West Boundary: The west line of Compass Walk.

East Boundary: 113 feet east of the east line of Sextant Walk.

(ix) Fire Island Summer Club—Corneille Estates

West Boundary: 100 feet west of west line of Schooner Walk.

East Boundary: 100 feet east of east line of Frigate Roadway.

(x) Ocean Beach

West Boundary: 7 feet west of the west line of Surf Road.

East Boundary: 2 feet east of the east line of Surf View Walk.

(xi) Seaview

West Boundary: East line of Surf View Walk.

East Boundary: 200 feet east of Laurel Avenue.

(xii) Ocean Bay Park

West Boundary: 90 feet west of the west line of Superior Street.

East Boundary: 100 feet East of the east line of Cayuga Street.

(xiii) Point O'Woods

West Boundary: 100 feet east of the east line of Cayuga Street.

East Boundary: Western boundary of Sunken Forest Preserve.

(xiv) Cherry Grove

West Boundary: The west line of West Walk.

East Boundary: Approximately 100 feet east of the east line of Ivy Walk.

(xv) Fire Island Pines

West Boundary: Approximately 150 feet west of the west line of Sandy Walk.

East Boundary: Approximately 120 feet east of Sail Walk.

(xvi) Water Island

West Boundary: The west line of Charach Walk.

East Boundary: Approximately 100 feet east of the east line of East Walk.

(xvii) Davis Park

West Boundary: 90 feet west of the west line of Eider Duck Walk.

East Boundary: 90 feet east of east line of Whalebone Walk.

(2) The northern boundary of the communities listed in paragraph (b)(1) of this section is the mean high water line on the south shore of the Great South Bay.

(3) The southern boundary of the communities listed in paragraph (b)(1) of this section is the mean high water line on the south shore of Fire Island.

(c) *The Seashore District.* The Seashore District is comprised of all portions of the lands and waters within the boundary of the Seashore which are not included in the Community Development District with the exception of the headquarters facilities at Patchogue and the William Floyd Estate at Mastic.

(d) *The Dune District.* The Dune District extends from the mean high water line to 40 feet landward of the primary natural high dune crest, as defined on Fire Island National Seashore Map #OGP-0004 and on Suffolk County Property Maps, section numbers 491-498 (Islip), 002 (Ocean Beach), 002-004 (Saltaire), and 985.70-987 (Brookhaven), as mapped in November 1976 or as subsequently remapped. Map overlays of the Dune District are available for inspection in the Office of the Superintendent of the Seashore. The Dune District overlaps portions of the Community Development District and the Seashore District.

**§ 28.4 Severability.**

The invalidation of any provision of this part 28 by any court of competent jurisdiction shall not invalidate any other provision thereof.