



Public Hearing

Proposed Zoning Bylaw changes

The Provincetown Planning Board will hold a public hearing on **Thursday, October 11, 2018, at 6 P.M. in the Judge Welsh Room, Town Hall, 260 Commercial Street, Provincetown, MA 02657** to hear comments from the public and vote on the following proposed amendments to the Provincetown Zoning Bylaws for the October 29, 2018 Special Town Meeting Warrant, as well as any proposed petitioned articles concerning land use or development. (proposed deletions are ~~stricken through~~ and proposed additions are underlined): **A copy of this proposed zoning bylaw is available for public inspection at the Office of the Town Clerk, Provincetown Town Hall, 260 Commercial Street, Provincetown, MA 02657.**

Article 4. Zoning Bylaw Amendment: Article 6 Growth Management. (*Deletions shown in strike through and new text shown as underlined*) To see if the Town will vote to amend the Provincetown Zoning Bylaws, Article 6, Growth Management Bylaw, Section 6600, Growth Limitation Goal Allocations, in order to allow a one-time increase in the number of gallons allocated to General Use Category 4 (Economic Development) that will allow for expansion of economic development in the downtown corridor due to wastewater expansion as follows:

(c) Annually, during the Growth Management Review, the Select Board may allocate up to 3,750 gpd to General Use Category 4, except that in 2019, the Select Board may allocate an additional amount of up to 10,000 gpd to General Use Category 4, provided that the Select Board shall have made a finding that the Town is in compliance with the water withdrawal permit issued by the Department of Environmental Protection (“DEP”) pursuant to 310 CMR 36.00 and all applicable rules and regulations promulgated by DEP with respect thereto; or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article 4: *The Wastewater Expansion will open downtown capacity for business and economic development growth. Of the increased capacity, the Select Board allocated up to 63,000 gallons over the course of the next 10 years for economic development. This article will boost the available growth management gallons to support that level of growth for downtown businesses.*

Article 8. Zoning Bylaw Amendment: Public Utilities. (*Deletions shown in strike-through and new text shown as underlined.*) To see if the Town will vote to amend the Provincetown Zoning Bylaws, Article 1, Definitions and Article 2, Districts and District Regulations, Section 2440 Table of Permitted Uses as follows:

Add the following definition to Article 1:

Public Utility shall mean an organization, subject to public control and regulation, that maintains the infrastructure for a public service, including but not limited to: electricity, natural gas, water, sewage, and telecommunications.

And amend the use table for C8 Public Utility as follows:

2440 Permitted Principal Uses

C.	Industrial	Res1	Res2	Res3 ResB	TCC	GC	S	M
C8	Public Utility	NO <u>BA</u>	NO <u>BA</u>	BA	BA	BA	NO <u>BA</u>	NO <u>BA</u>

or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article 8: This amendment provides a definition of public utilities and amends the use table to recognize that the town's existing infrastructure for water, sewer, electric and telephone are all located on existing town parcels in residential zones and therefore will remove the non-conforming status for those properties allowing us to maintain and expand those facilities within zoning.

Article 9. Zoning Bylaw Amendment: Design Standards. (Deletions shown in strike-through and new text shown as underlined.) To see if the Town will vote to amend the Provincetown Zoning Bylaws, Article 2, Districts and District Regulation Section 2560 Dimensional Schedule as follows:

Amend Footnote 5 (Building Heights) as follows:

- Height limitations shall not apply to chimneys, TV antennae with poles of ten (10) feet or less, or spires, cupolas and widow walks that do not enclose more than thirty-five (35) square feet of floor space or exceed ten (10) feet in height or occupy more than five (5) percent of the roof area. If the roof is composed of multiple forms, the maximum height for each type of roof shall apply to each respectively. For Building Height allowed in High Elevation District, see Section 2320 High Elevation District. Municipal and Public Safety facilities may exceed height limitations when authorized by a Special Permit issued by the Zoning Board of Appeals as provided in Section 5300 with additional findings that the proposed height: 1) is influenced by unique design characteristics or constraints necessitated by the particular use, purpose, or program of the structure, and 2) where it would be beneficial to the general public by decreasing costs, providing greater functionality, or enhanced public safety.

or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article 9: *This amendment recognizes that municipal buildings have unique purposes or constraints that necessitate that they might not comply with the height requirements for structures. This amendment will allow the Town to receive a Special Permit from Zoning to exceed height whenever it can demonstrate findings that are specific to municipal and public safety facilities.*

Article 10. Zoning Bylaw Amendment: Harborfront Overlay. *(Deletions shown in strike-through and new text shown as underlined.)* To see if the Town will vote to amend the Provincetown Zoning Bylaws, Article 2, Districts and District Regulations, Section 2300 Overlay Districts as follows:

Section 2300 Overlay Districts

2310 Harborfront Regulation

2311 Purpose The purpose of this section is to regulate the uses permitted in the harborfront area in order to promote appropriate waterfront activities and efficient use of the harbor frontage while minimizing adverse impacts to pedestrian and visual access and protecting harbor water quality.

2312 Applicability The following requirements apply to the "Harborfront Area", defined as all that area which is ~~either more than 495~~ 160 feet seaward (i.e., southward) from the northern edge of the traveled ways of Commercial Street in the Class TCC, Town Center Commercial zone ~~or seaward of mean high water, or both.~~

2313 Allowed Uses Any of the following uses is allowed in the Harborfront Area without necessity of a Special Permit unless it is prohibited or requires a Special Permit in the underlying district:

Use Item	Name
B4d	Marine service, boat sales
C1	Seafood processing
C2	Boatbuilding, repair, overhaul
C3	On-shore boat storage
D1a	Religious or educational use exempt from zoning prohibition
E3b	Picnic area, commercial beach, bathhouse
F1 (part)	Aquaculture
F2	Other farms, nurseries, greenhouses
G3	Home occupation (see Section 4400)
G4	Sale of seafood caught by a resident of the premises
G6	Temporary construction office or shelter

2314 Special Permit Uses ~~The following~~ All other uses are allowed in the Harborfront Area on Special Permit from the ~~Zoning Board of Appeals~~ Planning Board unless prohibited in an the underlying district, except that Residential Uses as listed in Section 2440 shall not occupy more than 20% of the gross floor area of any structure or portion thereof within the Harborfront Area.

Use Item	Name
B4a	Neighborhood
B4b	Art Gallery
B4e	Package Store
B4f	All other retail
B5	Restaurant, Bar
B7	Parking Lots

Such use shall be authorized with a Special Permit from the ~~Zoning Board of Appeals Planning Board~~ as provided for in Section 5300 and after considering the degree to which the proposal would:

- a. Interrelate productively with, and help promote, other waterfront activities;
- b. Make efficient use of harbor frontage in relation to jobs supported or taxes contributed or other public benefits conferred;
- c. Improve opportunities for visual and pedestrian access to the waterfront; and
- d. ~~Does not adversely~~ Impact harbor water quality.

~~2315 Waterfront Special Permit Uses~~ — The following uses are allowed in the Harborfront Area on Special Permit from the Zoning Board of Appeals unless prohibited in an underlying district:

Use Item	Name
C9	Transportation terminal
C10	Warehouse
D3	Municipal Use
D4	Non-profit club without entertainment
D5	Museum
E2	Indoor Recreation
E3f	All other commercial outdoor recreation
F7	Scientific research or development
G11	Other customary accessory uses

~~Such Special Permit shall be granted only if the Board of Appeals determines that operating costs of the proposed use would be substantially greater for any but a waterfront location, and after considering the degree to which the proposal would:~~

- ~~a. Interrelate productively with other waterfront activities;~~
- ~~b. Make efficient use of harbor frontage in relation to jobs supported or taxes contributed;~~
- ~~c. Improve opportunities for visual and pedestrian access to the waterfront;~~
- ~~d. Affect the ability of the town's utilities, roads and public services to service others;~~
- ~~e. Improve or maintain harbor water quality.~~

~~2316 Prohibited Uses Any use not listed in subsections 2313 or 2315 is prohibited in the Harborfront Area.~~

And to delete Section 2540 in its entirety.

~~2540 Harbor Setback No structure other than a pier, wharf or other facility requiring waterfront contact shall be constructed within 35 horizontal feet of mean high water of any salt water body.~~

And delete reference to the Harborfront setback in the Dimensional Schedule under Section 2560.

or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article 10: The amendment combines two conflicting provisions of the By-laws – the Harbor Setback and the Harborfront Overlay – to create a clear jurisdictional boundary and clear standards of review, and allow for the responsible re-development of the harborfront. The current provisions also conflict with Chapter 91 uses and the Town’s Harbor Plan update. The Harbor Setback dates at least to the first iteration of the By-laws as adopted under the Zoning Act in 1978. The provision bans the construction of any structure within the area 35’ landward of the “Mean High Water” (MHW). Staff estimates that roughly 80% of parcels along the harborfront have pre-existing, non-conforming structures within this setback, meaning they are allowed to expand by Special Permit. The remaining 20% are not able to utilize any of this area. The Harborfront Overlay allows certain uses seaward of the Harbor Setback, a conflict as the latter does not allow structures. Additionally, the Harborfront Overlay does not allow for economically viable uses, effectively stopping re-development and limiting public access via public-facing private uses such as hotels, restaurants, and piers. The proposal would allow all commercial uses within the Harborfront Overlay so long as they improve public access and are not environmentally detrimental. It would also allow for limited residential development to further encourage re-development that would meet the aforementioned goals.

Article 11. Zoning Bylaw Amendment: Site Plan Review. (Deletions shown in strike-through and new text shown as underlined.) To see if the Town will vote to amend the Provincetown Zoning Bylaws, Article 4 Special Regulations, Section 4000 Site Plan Review as follows:

4010. Administrative Site Plan Review

4011. Projects requiring Administrative Site Plan Review by the Planning Board. Except as exempted by Section 4012 or requiring review under Section 4015, all ~~alteration of land, construction,~~ exterior structural alteration, structural relocation, addition of parking, or ~~and~~ change in use of any building or land ~~residential,~~ commercial, industrial, cultural or institutional uses shall require Administrative Site Plan Review.

4012. Projects exempted from Administrative Site Plan Review

a. The construction or enlargement of any residential ~~single-family, two-family dwelling,~~ building(s) on a parcel so long as said parcel contains no more than one or two principal dwelling units on one lot, or building accessory to such dwelling unit(s) including Accessory Dwelling Units,

1) except where such dwellings are located in the High Elevation District; or

2) except where the development of such dwellings requires the excavating or grading of an area greater than the minimum lot size in the zone in which the parcel is located.

b. Any construction or alteration which has no effect on the footprint of an existing residential building or accessory structures, and does not add parking.

c. Any construction or alteration which has no effect on the footprint of an existing commercial or mixed use building (s) or accessory structures, and does not add parking, except if the alteration of premises containing such uses is greater than 50% of the floor area for developments of more than 2000 square feet of total commercial space, interior and exterior.

d. Any use specifically exempted from regulation pursuant to the Massachusetts General Laws c.40A §3.

4015. Site plan Review by Special Permit

a. The following developments shall require Site Plan Review by Special Permit by the Planning Board:

(1) ~~d~~Developments consisting of ~~the aggregate~~ an increase of residential units that will result in ~~two~~ three or more residential units on any parcel;_

(2) ~~d~~Developments consisting of more than 2,000 square feet of new commercial area;_

(3) ~~d~~Development of properties consisting of an existing or proposed drive-through facility or raised loading dock;_

(4) ~~d~~Development of commercial properties that have curb cuts greater than 25% of their existing or proposed street frontage;_

(5) All new construction or additions or any excavation, land removal or earth moving of more than 750 cubic yards that will alter the topography from natural grade, whether or not subject to a building permit;_

b. The Planning Board may, at its discretion, require a surety to guarantee completion of the elements and conditions of plan approved by Site Plan Special Permit. or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article 11: *The amendment modifies the Site Plan Review thresholds to create clear and enforceable review thresholds, clarify conflicting language (including the provision of by-right ADUs), and standardizes the terminology. Under Section 4010, the changes create reasonable and enforceable thresholds consistent with the land use modifications reviewed under zoning. As currently written the section likely extends beyond that legally allowed to be reviewed under zoning. Under Section 4012, the changes standardize the use of the term “residential building(s)” among the exemption criteria and clarify that ADUs are a by-right use. They also address mixed-use development which is not currently addressed. Under Section 4015, the changes create a clear threshold for the increase in residential units. The existing language does not reference an action, but is in potential conflict with various other sections of the By-laws.*

Article 12. Zoning Bylaw Amendment: Design Standards. (Deletions shown in strike-through and new text shown as underlined.) To see if the Town will vote to amend the Provincetown Zoning Bylaws, Article 2, Districts and District Regulation Section 2560 Dimensional Schedule as follows:

2560 Dimensional Schedule

Requirements	Residential			Commercial		Seashore	Public Use
	Res1	Res2	Res3 ResB	TCC	GC ³	S	M
Min. Lot Area (square feet)	16,000 ⁷	5,000	5,000	5,000	7,000	120,000	--
Min. Lot Frontage (linear feet)	100 ⁷	50	50	50	70	- -	--

And add footnote 7 as follows:

Except parcels legally created prior to April 2, 2018 shall conform with a minimum lot area of 8,000 sf and minimum lot frontage of 50 ft.

Explanation of Article 12: In April we amended the minimum lot size and minimum lot frontage for properties in the RES 1 zone. The intended purpose was to discourage future subdivision of land on the outskirts of town to prevent further tree loss and to discourage our large older hotels in the RES 1 zone from converting to residential estate lots. The article was not intended to impact existing property owners as the law allows an exemption for existing lots in the single family zone to be considered legal non-conforming, but only if they are not contiguous and under common ownership. It was never our intention to make existing parcels unbuildable. By adding the grandfathering date, the bylaw makes it clear that the new standard only applies to future subdivisions, not those parcels already legally created at the time. Clarifying this point could prevent future litigation against the Town.

The public is encouraged to submit any written comments by Monday, Friday, October 5, 2018, to the Planning Board/Office of the Town Clerk, Town Hall, 260 Commercial Street, Provincetown, MA 02657, email to jribeiro@provincetown-ma.gov or in person at the hearing.

*David Abramson,
Chairman, Planning Board*