



Public Hearing

Proposed Zoning Bylaw changes

The Provincetown Planning Board will hold a public hearing on **Thursday, March 14, 2019, 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 April 1, 2019 Annual 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 __. Zoning Bylaw Amendment: Divided Lots. (*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 Section 2130 Divided Lots, as follows:

2130 Divided Lots When a boundary line between zoning districts divides a lot in single ownership each portion of the lot shall be governed by the use and dimensional requirements of the zoning district in which each portion of the lot is located. Lots located in part in another municipality shall be regulated as if entirely within Provincetown; or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article __: *This amendment clarifies the treatment of lots that are located within two different zoning districts. While this change is consistent with the town's local practice and case law, this clarification may avoid future litigation and provides clear guidance to property owners and developers.*

Article __. Zoning Bylaw Amendment: Formula Business Regulated District. (*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 2360 Formula Business Regulated District as follows:

2360 Formula Business Regulated District.

2362 Purpose

3. Regulated Uses. The proposed use of any building or structure for a Formula Business establishment shall require ~~both~~ a Special Permit from the Zoning Board of Appeals. ~~and a site plan approval of the Planning Board as well as the business license.~~ or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article ___: This amendment is a permit streamlining measure that removes the redundant board review for Formula Regulated Businesses. Currently the bylaw requires applicants to get Zoning Board and Planning Board approval, even when the site plan review criteria does not apply. For instance, if an existing retail store on Commercial Street is converted to a formula business, yet has no impact to the exterior of the building or no site disturbance, then site plan review would not be required. If any improvements did exist that did trigger site plan review pursuant to Article 4, then Planning Board approval would still be required.

Article __. **Zoning Bylaw Amendment: Defintions – Parking Lot.** (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 Section 2440 Permitted Principal Uses as follows:

Parking Lot/Garage an open air, ~~ground level~~ or enclosed area/structure used to park cars that is not appurtenant to a principal use.

And to amend: 2440 Permitted Principal Uses

		Residential			Commercial		Sea-shore	Public Use
		Res1	Res2	Res3 ResB	TCC	GC	S	M
B.	Business							
B7	Parking lots/ <u>garages</u>	NO	BA ¹¹	BA ¹¹	BA ¹¹	BA ¹¹	NO	NO

Footnotes

11. Special Permit to be granted only after a Public hearing and approval of the Building Inspector, the Fire Department and the Police Department.

or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article ___: This amendment distinguishes parking that is a principal use from parking that is appurtenant to another use on the site. Under the current definition, any parking area in excess of the minimum requirement would qualify as a “parking lot” and thus require a Special Permit from the Zoning Board of Appeals.

Article __. **Zoning Bylaw Amendment: Special Permits.** (Deletions shown in strike-through and new text shown as underlined.) To see if the Town will vote to amend the Provincetown Zoning Bylaws, Section 5300 Special Permits as follows:

Section 5300 Special Permits

5340 Expiration Special Permits shall lapse ~~twenty-four months~~ three years following grant thereof (plus such time required to pursue or await the determination of an appeal referred to in Sec. 17, Ch. 40A, G.L.) if a substantial use thereof or construction has not sooner commenced except for good cause as determined by the ~~Board of Appeals~~ Special Permit Granting Authority; or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article ___: This amendment recognizes changes in State Law implemented under Chapter 219 of the Acts of 2016 that extend the time period to act on

a Special Permit from 2 years to 3 years. This could be relevant for Provincetown due to our Growth Management regulations and multiple layers of permitting that are often required.

Article ____. **Zoning Bylaw Amendment: Special Permit Modifications.** *(Deletions shown in strike-through and new text shown as underlined.)* To see if the Town will vote to amend the Provincetown Zoning Bylaws, Section 5300 Special Permits, as follows:

5350 Amendments and Minor Modifications to a Special Permit

An amendment, modification, or clarification to an approved Special Permit that does not represent a substantive change of the findings or conditions of approval of the project may be administered by a notation to the file based on a finding by a super majority vote of the Special Permit Granting Authority at a public meeting. Any amendment, modification, or clarification that represents a substantive change of the findings or conditions of approval of the project shall require a new Special Permit with notice to abutters pursuant to MGL c40A § 11; or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article ____: *The amendment seeks to streamline the permitting process to allow the Planning Board and Zoning Board the ability to approve minor modifications and/or clarifications to an approved Special Permit without submitting a new application and spending a month or more to obtain approval. Currently the bylaw would require a new application with all the requirements of the original application even for insignificant changes to a project. The board would need to vote by super majority that the proposed change is not substantial. Case law has held that a change may be made without adhering to notice requirements in G.L. c. 40A, § 11 if the change is: an inadvertent or clerical error; or not a substantive amendment which changes the result of an original decision, such as granting relief different from the original decision.*

Article ____. **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:

Section 4000. Site Plan Review (SPR)

4040 Amendments and Minor Modifications to a Site Plan

An amendment, modification, or clarification to an approved Site Plan that does not represent a substantive change of the findings or conditions of approval of the project may be administered by a notation to the file based on a finding by a majority vote of the Planning Board at a public meeting. Any amendment, modification, or clarification that represents a substantive change of the findings or conditions of approval of the project shall require a new Site Plan Review with notice to abutters pursuant to MGL c40A § 11; or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article ____: *The amendment seeks to streamline the permitting process to allow the Planning Board the ability to approve minor modifications and/or clarifications to an approved Site Plan Review without submitting a new application and*

spending a month or more to obtain approval. Currently the bylaw would require a new application with all the requirements of the original application even for insignificant changes to a project. The Planning Board would need to vote by super majority that the proposed change is not substantial. Case law has held that a change may be made without adhering to notice requirements in G.L. c. 40A, § 11 if the change is: an inadvertent or clerical error; or not a substantive amendment which changes the result of an original decision, such as granting relief different from the original decision.

Article __. Zoning Bylaw Amendment: Dimensional Requirements. (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	5,000	5,000	5,000	7,000	120,000	--
Min. Lot Frontage (linear feet)	100	50	50	50	70	--	--
Min. Front Yard (feet)	30	20 ¹	20 ¹	10 ¹	10	50	--
Min. Side Yard (feet)	15	6	6	5 ²	10	25	--
Min. Rear Yard (feet)	20	15 ¹	10 ¹	10	25	25	--

Footnotes

1. Or, if smaller, the average of the setbacks of the buildings on the lots thereto on either side, a vacant lot being counted as though occupied by a building set back the minimum required distance. or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article __: *This amendment allows properties in the Town Center Commercial zone to extend their buildings to the average setback of the properties on either side. This is currently allowed in the other two zones along Commercial Street, the Res 2 and Res 3 zones. Commercial Street is developed by properties that sit on and along the street line, often within the required front yard setback. The intent of the setback average is to allow structures to maintain a consistent street wall which is traditional to the town’s historic development pattern and is widely accepted as good urban design.*

Article __. Zoning Bylaw Amendment: 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 as follows:

Section 6500 Table of Use Categories and Priorities

2d4 Any project that consists of ~~20%~~ 10% - 32.9% affordable and/or community housing units granted under the Inclusionary and Incentive Zoning Bylaw; gallons shall be allocated in phases so that 1/2 of the total gallons are allocated the first year after a Special Permit is granted under the ~~Inclusionary and Incentive Zoning Bylaw~~, and the remainder are allocated the second year

2d2 Any project that consists of ~~10%–19.9%~~ affordable and/or community housing units; gallons shall be allocated in phases so that 1/3 of the total gallons are allocated the first year after a Special Permit is granted under the ~~Inclusionary and Incentive Zoning Bylaw~~, the second 1/3 are allocated the second year and the remainder are allocated the third year; or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article __: *This amendment removes provisions of the Growth Management by-law that requires Inclusionary Zoning projects to be built in phases. While these provisions intend to favor projects that are developed solely as affordable housing, they make the construction of Inclusionary Zoning projects either more difficult or impossible as a multi-unit buildings cannot be constructed in phases. Additionally the town has a significant Growth Management reserve for all projects under Category 2, meaning that this provision is unnecessary.*

Article __. Zoning Bylaw Amendment: Definitions – Density Schedule.

(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 as follows:

4120 Density Schedule The total lot area must equal at least the square feet/unit as derived from the following schedule: (Provided however, that building permits issued prior to April 1, 1986 shall be governed by *(editor’s note: old numbering Article III, Section 3110)* Article 4, Section 4120 prior to amendment of this section at the 1986 Annual Town Meeting)

Dwelling Units	Number of Units Proposed	Number of Square Feet/Unit Required
First	4-4 <u>1 - 8</u>	2,500 <u>1,500</u>
For the next	6 (5-10) <u>9-15</u>	3,000 <u>2,500</u>
For the next	6 (11-16) <u>16-25</u>	3,500 <u>3,000</u>
For the next	9 (17-25)	4,500
Beyond 25	26 or more	5,000 <u>4,500</u>

or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article __: *This amendment returns the town’s allowed residential density to what was in place before the mid-1980s. The current requirements conflict with the traditional development pattern of the town as much of the town was developed prior to the 1980s. This will also allow more properties to take advantage of the town’s Inclusionary Zoning by-law, which would in turn produce affordable and community housing units at no cost to the town. This amendment alters neither the size nor design of buildings as it does not change dimensional requirements, Scale By-law review, High Elevation Protection review, or Historic District Commission review. It also does not*

change requirements for Special Permits or Site Plan Review, which ensure that projects are designed to be compatible with the neighborhood.

Article __. Zoning Bylaw Amendment: Density Schedule, Commercial Accommodations. *(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 as follows:

4120 Density Schedule The total lot area must equal at least the square feet/unit as derived from the following schedule: (Provided however, that building permits issued prior to April 1, 1986 shall be governed by *(editor's note: old numbering Article III, Section 3110)* Article 4, Section 4120 prior to amendment of this section at the 1986 Annual Town Meeting)

Commercial Accommodations ¹	Number of Units Proposed	Number of Square Feet/Unit Required
First	1-10	500
For the next	11-20	750
For the next	21-30	1,000
For the next	31-40	1,500
For the next	41 units and beyond	2,000

¹ May be waived by Special Permit from the Planning Board.

or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article __: *This amendment recognizes that one size does not fit all for commercial accommodations, which encompasses everything from B&Bs to large hotels to dormitory housing. This schedule also does not line up with existing commercial accommodations properties in town. The town continues to lose commercial accommodations rooms, and this change may allow some properties to expand and remain economically viable. This by-law requires a public hearing process to allow the Planning Board to determine how many inn, hotel, or dormitory rooms would be allowed at a given site. This amendment alters neither the size nor design of buildings as it does not change dimensional requirements, Scale By-law review, High Elevation Protection review, or Historic District Commission review. It also does not change requirements for Special Permits or Site Plan Review, which ensure that projects are designed to be compatible with the neighborhood.*

Article __. Zoning Bylaw Amendment: Dimensional Requirements. *(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:

Requirements	Residential			Commercial		Seashore Public Use	
	Res1	Res2	Res3 ResB	TCC	GC ³	S	M
Max. Lot Coverage (%)	40	40	40	40 <u>60</u>	40	--	--

And delete in its entirety:

~~4140 Lot Coverage Buildings shall not cover more than 40% of the total lot area.~~
or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article __: *This amendment recognizes that the current lot coverage requirements for the Town Center Commercial zone are inconsistent with the town's historical pattern of development. An analysis of TCC parcels from Masonic Place in the west to Freeman Street in the east shows an average lot coverage of 58% and a median lot coverage of 59%. This change recognizes that reality, would make make a significant number of these properties conforming, and would allow new development to be consistent with the character of the TCC zone.*

Article __. Zoning Bylaw Amendment: Green Area. *(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 as follows:

4150 Green Area. A minimum of 30% of every lot, regardless of size, shall be reserved for green areas. This requirement may be altered or waived by Special Permit from the Planning Board; or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article __: *This amendment allows greater flexibility during regulatory reviews of properties that do not meet the green area requirements of the by-laws. Many properties do not meet this requirement as alterations to planted areas generally do not require building permits. This also means that it is very difficult to track when and how non-conformities were created. As this often becomes an issue during Site Plan Review, the Planning Board is designated as the permit granting authority.*

Article __. Zoning Bylaw Amendment: Definitions – Campground/Tiny Houses. *(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 4, Special Regulations as follows:

Building A structure having a roof and supported by columns or walls for shelter or enclosure of persons, animals, property or an activity; such structure does not include ~~camper~~ Recreational Vehicles as defined in this By-laws.

~~Camper~~ Recreational Vehicle shall mean a vehicle, eligible to be registered and insured for highway use, designed to be used as a ~~temporary dwelling for travel, recreational and vacation purposes, but not for permanent residence.~~ includes equipment commonly called 5th wheels, independent travel trailers, dependent travel trailers, tent trailers, pickup campers, motor homes, converted buses, tiny houses on wheels, and other equipment, but not manufactured homes.

And to amend:

Section 4300 Manufactured Homes and ~~Campers~~ Recreational Vehicles

4310 Permitted Occupancy Manufactured homes may be occupied only in a campground or manufactured home park and subdivision. ~~Campers~~ Recreational Vehicles may be occupied only within a licensed campground.

4330 Campgrounds Campgrounds shall conform to the following minimum requirements:

- a. Lot area minimum of 10 acres, but not less than 7,500 square feet per campsite.
- b. Each rental plot shall have an area of not less than 2,500 square feet and a width of not less than 40 feet in its smallest dimension.
- c. If each plot is not serviced with water and sanitary drainage, common sanitary facilities shall be provided.
- d. No unit for overnight occupancy shall be placed within 100 feet of a street line or 40 feet of any other lot line.
- e. ~~No unit shall be occupied for more than six months in any twelve-month period.~~
or to take any other action relative thereto.

[Requested by the Planning Board]

Explanation of Article __: *This amendment updates the terminology used to define RVs, recognizes that “Tiny Houses on Wheels” are legally classified as RVs, and removes provisions related to the use of RVs. While these use requirements would be removed, other federal, state, and local regulations remain in place including potential review by the town’s Board of Health. These other regulatory bodies may be better situated to determine the suitability of RVs for longer-term habitation.*

The public is encouraged to submit any written comments by Thursday, March 7, 2019, 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*

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