

Planning Board Public Hearing
Wednesday, March 21, 2007
Judge Welsh Hearing Room, Town Hall
260 Commercial Street, Provincetown, MA 02657

Members Present: Anne Howard, Ellen Battaglini and Kevin Rich

Members Absent: Howard Burchman and Joe DeMartino

Staff Present: Maxine Notaro, Permit Coordinator and Matt Mulvey, Acting Building Commissioner and Director of Community Development

Meeting called to order at 7:00 p.m.

Case #2007-05 Site Plan Review

Application by **John DeSouza** under Article 4, Section 4100 of the Zoning Bylaws for Dwelling Units and Commercial Accommodations. The applicant seeks approval to create a fourth dwelling unit on the lot at the property located at **22 Conwell Street, Provincetown, MA.** (Res3 Zone).

Abutter notification cards submitted. Applicant wants to build a single family dwelling in back of current structure. Proposal conforms to all Zoning by-laws and while not in historic district, does conform to historic design requirements.

The following abutters submitted letters in support: Robert Small-Jason, Thomas Trykowski, Albert Sherman & Bettrand Belliveau and Kevin Berry.

Site visit scheduled for March 28, 2007 at 6:00 p.m.

Motion: to continue to March 28, 2007

Moved: Kevin Rich

Second: Ellen Battaglini

Vote: 3:0:0

Case #2007-06 Site Plan Review

Application by **Cassandra Benson and Geraldine Anathan on behalf of White Sands Beach Club Inc.** under Article 4, Section 4100 of the Zoning Bylaws for Dwelling Units and Commercial Accommodations. The applicants seek approval to convert an existing 12-unit motel building into 12 residential units and to add a second story to an existing structure at the property located at **6 Sandy Hill Lane, Provincetown, MA.** (Res3 Zone).

Cassandra Benson, Gerry Anathan, Kevin Redmond and Ted Malone representing applicants. Abutter notification cards were submitted.

Proposal calls for 3-2 bedroom and 9-1 bedroom, deed restricted, affordable sale units. Applicants had a favorable meeting with Conservation Commission and are planning to have this be a "green project". They are working with Gordon Peabody on wetland mitigation. Over 55% of property will be green space. Existing structure is 3360 square feet, proposed structure will be 5500 square feet with addition of 2nd story. Applicants would like to hook-up to sewer if possible, if not, they are committed to installing new system. Carol McDonald, President of CASAS which is an abutter spoke in favor of the proposed project. Charles Rogers, an abutter, expressed his support for the project, stating that his initial concerns have been satisfactorily addressed in discussions with applicants. Applicants are going before Zoning Board of Appeals on March 22, 2007 to request the following variances: 3110-Change, Alteration, 4120-lot area and 4170-change of use

Site visit scheduled for March 28, 2007 at 6:30 p.m. Planning Board members informally expressed

support for project.

Motion: to continue to March 28, 2007

Moved: Kevin Rich

Second: Ellen Battaglini

Vote: 3:0:0

The Planning Board will consider the following proposed changes to the Provincetown Zoning By-laws: **Article A. Zoning By-law Amendment: Section 4800 Affordable Housing By-Law.** To see if the Town will vote to amend the Provincetown Zoning By-laws, as follows, with added text shown in underlined, bold, italics and deleted text shown in ~~strikethrough~~:

(1) Modify the following definitions to Article 1 Definitions:

Accessory Dwelling Units A dwelling unit, which is subordinate in use and area to that of the principal structure and is located on the same lot therewith and subject to the requirements of Article 4 Section 4800 of these By-laws.

(2) Strike line A7 of Section 2440 Permitted Principal Uses so that it reads as follows:

2440 Permitted Principal Uses

		Residential			Commercial		Seashore	Public Use
		Res1	Res2	Res3 ResB	TCC	GC	S	M
A.	Residential							
A1a	Single Family Dwelling							
	1. one per lot	YES	YES	YES	YES	YES	NO	NO
	2. two per lot (each separate structure)	<u>BA¹¹</u>	BA	YES	YES	YES	NO	NO
	3. three or more (each separate structure)	NO	<u>BA¹¹</u>	YES ⁸	YES ⁸	YES ⁸	NO	NO
A1b	Two Family Dwelling							
	1. one per lot	<u>BA¹¹</u>	YES	YES	YES	YES	NO	NO
	2. two per lot	NO	<u>BA¹¹</u>	YES	YES	YES	NO	NO
	3. three or more per lot	NO	<u>BA¹¹</u>	YES ⁸	YES ⁸	YES ⁸	NO	NO
A2	Multi Family Dwelling	NO	NO	YES ⁸	YES ⁸	YES ⁸	NO	NO
A3	Boarding, lodging or tourist homes	NO	YES	YES	YES	YES	NO	NO
A4	Nursing Home	NO	BA	BA	BA	BA	NO	NO
A5	Manufactured home park or subdivision	NO	NO	NO	BA	BA	NO	NO
A6	Cluster Development	NO	NO	YES	YES	YES	NO	NO
A7	Dwelling, Accessory Apartment	BA	BA	BA	BA	BA		
B.	Business							
B1	Business or professional offices, banks	NO	NO	NO ¹	YES	YES	NO	NO
B2	Funeral Home	NO	NO	NO	YES	YES	NO	NO

B3	Hotel, motel or inn	NO ⁵	NO ⁵	YES ³	YES ²	YES ²	NO	NO
B4	Retail sales or service							
	a. neighborhood	BA	BA	BA	YES	YES	NO	NO
	b. art gallery	NO	NO	YES	YES	YES	NO	NO
	c. motor vehicles sales, rental or services ⁴	NO	NO	NO	BA	YES	NO	NO
	d. marine service, boat sales	NO	NO	NO	YES	YES	NO	NO
	e. package store	NO	NO	NO	BA	BA	NO	NO
	f. all other retail	NO	NO	NO	YES ¹⁷	YES ¹⁷	NO	NO
B5	Restaurant, bar	NO	NO	NO	BA ⁶	BA ⁶	NO	NO
B6	Rental storage	NO	NO	BA ⁹	BA ⁹	BA ⁹	NO	NO
B7	Parking lots	NO	BA ¹¹	BA ¹¹	BA ¹¹	BA ¹¹	NO	NO
B8	Fast Order Food Establishments (excluding those with seating for less than ten and which occupy no more than a total of 500 square feet.)	NO	NO	NO	BA ¹²	YES ¹³	NO	NO
B9	Adult Entertainment ¹⁷							
	a. Establishment which displays live nudity for its patrons	NO	NO	NO	YES	YES	NO	NO
	b. Other adult entertainment	NO	NO	NO	YES	YES	NO	NO
B10	Theater	BA	BA	BA	YES	YES	BA	BA
C.	Industrial							
C1	Seafood processing	NO	NO	NO	BA	BA	NO	NO
C2	Boat building, repair, overhaul							
	a. owner and one worker	BA	BA	YES	YES	YES	NO	NO
	b. more workers	NO	NO	BA	YES	YES	NO	NO
C3	On-shore boat storage							
	a. one or two boats	YES	YES	YES	YES	YES	YES	YES
	b. three or more boats	NO	NO	BA	YES	YES	NO	NO
C4	Oil, gas refining, processing pipelines	NO	NO	NO	NO	NO	NO	NO
C5	Earth removal	NO	NO	NO	NO	NO	NO	NO
C6	Solid waste processing, disposal	NO	NO	BA	BA	BA	BA	YES
C7	Other manufacturing,	NO	NO	NO	NO	YES	NO	NO

	processing							
C8	Public utility	NO	NO	BA	BA	BA	NO	NO
C9	Transportation terminal	NO	NO	NO	YES	YES	NO	NO
C10	Warehouse	NO	NO	NO	NO	YES	NO	NO
C11	Contractor's yard	NO	NO	NO	NO	YES	NO	NO
C12	Aircraft landing area	NO	NO	NO	NO	NO	BA	NO
D.	Institutional							
D1	Religious or educational use							
	a. exempt from zoning prohibitions ⁷	YES	YES	YES	YES	YES	YES	YES
	b. all others	NO	NO	YES	YES	YES	NO	NO
D2	Cemetery	BA	BA	BA	BA	BA	BA	BA
D3	Municipal use	BA	BA	BA	BA	BA	BA	YES
D4	Non-profit club without entertainment	NO	NO	YES	YES	YES	NO	NO
D5	Museum	NO	NO	YES	YES	YES	NO	NO
D6	Hospital, other institutional or philanthropic use	NO	NO	YES	YES	YES	NO	YES
E.	Recreational							
E1	Boys' or girls' camp	NO	NO	YES	YES	YES	NO	NO
E2	Indoor recreation							
	a. commercial	NO	NO	NO	YES	YES	NO	NO
	b. municipal	NO	YES	YES	YES	YES	NO	YES
E3	Commercial outdoor recreation							
	a. tennis, golf, miniature golf, stables	NO	NO	NO	BA	YES	NO	NO
	b. picnic area, commercial beach, bathhouse	NO	NO	NO	YES	YES	NO	NO
	c. campground	NO	NO	NO	NO	BA	NO	NO
	d. amusement park, drive-in theater, cart track	NO	NO	NO	NO	NO	NO	NO
	e. Temporary Carnivals, Festivals & Fairs ¹⁴	NO	NO	BA	BA	BA	NO	NO
	f. All other	NO	NO	NO	BA	BA	NO	NO
F.	Other Principal Uses							
F1	Farms under 5 acres with livestock, aquaculture	BA	BA	BA	BA	BA	BA	BA

F2	Other farms, nurseries, green houses	YES	YES	YES	YES	YES	YES	YES
F3	Animal kennel	NO	NO	NO	NO	YES	NO	NO
F3a	Animal hospital	NO	NO	BA	NO	YES	NO	NO
F4	Use having externally observable attributes similar to uses permitted above.	BA	BA	BA	BA	BA	BA	BA
F5	Artist's Studio	BA	BA	YES	YES	YES	YES	NO
F6	Temporary Single-family Dwelling ¹⁵	YES	YES	YES	YES	YES	NO	NO
F7	Temporary Commercial Structure ¹⁶	NO	NO	BA	BA	BA	NO	NO
F8	All other principal uses	NO	NO	NO	NO	NO	NO	NO

1. Except "YES" in W-B for banks and for professional offices including real estate, insurance, and accounting, without stock in trade, with no more than one firm or 2,000 square feet per building and no more than one building per lot.
2. Except "NO" if serving alcoholic beverages and containing fewer than twenty guest units.
3. Except "BA" if serving alcoholic beverages and containing fewer than twenty guest units.
4. No moped rental in all zones. 1980 ATM Art. 87 amended.
5. Except "YES" if existing as of January 1, 1981. 1981 ATM amended.
6. No sale of food, drink, or other products to persons standing in the street, sidewalk, or parking areas at or about such establishment. Other outdoor service allowed only on Special Permit from the Board of Appeals. 1982 ATM amended.
7. See sec. 3, Ch. 40A, M.G.L.
8. Except "BA" if the total number of dwelling units on the lot exceeds six (6). Obtaining a Special Permit does not relieve the applicant from the obligation of complying with the Plan Review under Section 4160 nor any other applicable By-law provision.
9. Special Permit to be granted on a yearly basis only, and only after, a Public Hearing and approval of the Building Inspector and Fire Department each year; storage of toxic or hazardous materials (as determined by the Building Inspector, Fire Department and Massachusetts Division of Hazardous Waste under the provision of Chapter 21 M.G.L.) shall be cause for permanent revocation of Special Permit.
10. *Left blank.*
11. Special Permit to be granted only after a Public hearing and approval of the Building Inspector, the Fire Department and the Police Department.
12. After March 1, 1983, for any new construction, any substantial increase in intensity or use or any renovation of an existing structure to include the defined use, a Special Permit as specified in Sec. 5300 may be granted by the Board of Appeals: (a) only upon its written determination that the proposed fast food establishment does not create any adverse effect due to hazard or congestion especially including traffic impacts as determined by a traffic impact assessment prepared by the applicant according to Institute of Transportation Engineers guidelines regarding carrying

G2	Vegetable or flower garden	YES	YES	YES	YES	YES	YES	YES
G3	Home Occupation (see Sec. 3500)	YES	YES	YES	YES	YES	YES	BA
G4	Sale of seafood caught by a resident of the premises	NO	NO	YES	YES	YES	NO	NO
G5	Stable	BA	BA	BA	BA	BA	BA	BA
G6	Temporary construction office or shelter	YES	YES	YES	YES	YES	YES	YES
G7	Scientific research or development	BA	BA	BA	BA	BA	BA	BA
G8	Outdoor food dispensing machine	NO	NO	NO	NO	NO	NO	NO
G9	Aircraft landing area	NO	NO	NO	NO	NO	NO	NO
G10	Artist's studio	YES	YES	YES	YES	YES	NO	NO
G11	Other customary accessory uses	BA	BA	BA	BA	BA	BA	BA
G12	Swimming pool	BA	BA	BA	BA	BA	BA	BA
G13	Utility/Garden Shed (120 sq. ft. max.) ¹	YES	YES	YES	YES	YES	NO	YES
G14	Utility/Garden Shed (96 sq. ft. max.) ²	BA	BA	BA	BA	BA	NO	NO
G15	Adult Entertainment ³							
	a. Establishment which displays live nudity for its patrons	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	b. Other adult entertainment	No	No	No	Yes	Yes	No	No
G16	Theater	BA	BA	BA	YES	YES	BA	BA
G17	<i>Accessory Dwelling Unit</i> ⁴	<i>BA</i>	<i>BA</i>	<i>BA</i>	<i>BA</i>	<i>BA</i>		

¹A utility/garden shed shall not exceed 120 square feet, nor exceed 9 feet in height from the finished floor to the roof ridge of a gable or gambrel roof or 7 feet to the highest point of any other roof configuration. The lowest point of the shed shall not be elevated more than 6 inches above the highest point of the natural grade within its footprint.

²Special Permits may be granted by the Zoning Board of Appeals for the installation of utility/garden sheds that meet at least 50% of the side and/or rear yard setback requirements of the district in which the property is located (Article 2, Section 2560) and at least 50% of building separation requirements (Article 2, Section 2550). Such Special Permits shall only be issued following a Public Hearing wherein the Zoning Board of Appeals determines that the installation of

said shed cannot meet the current front, side and/or rear yard setback and building separation requirements. The benefits derived from the issuance of a permit shall outweigh any adverse effects such as hazard, congestion and environmental degradation. The shed shall not exceed 96 square feet, nor exceed 9 feet in height from the finished floor to the roof ridge for a gable or gambrel roof or 7 feet to the highest point of any other roof configuration. The lowest point of the shed shall not be elevated more than 6 inches above the highest point of the natural grade within its footprint. Doors and windows shall not face or open into an area of the standard side and rear yard setbacks of the district in which the shed is located.

³ Accessory adult entertainment uses are permitted, as indicated in the above table, where the adult entertainment use is accessory to a non-residential use that is either a permitted use or a legally preexisting nonconforming use. All such adult entertainment uses must be located at least 300 feet from any library, school or playground. Said setbacks are to be measured from the nearest points on the property lines of the lots hosting the proposed adult entertainment use and the use triggering the setback requirement. Furthermore, all adult entertainment uses with establishments which display live nudity for its patrons must take place entirely indoors and in such a manner as not to be observable from any abutting property, sidewalk or public way.

⁴Subject to the requirements of Article 4 Section 4800 of these By-laws.

(4) Modify Section 4800 Affordable Housing By-Law as follows:

Section 4800 Affordable Housing By-Law

1. **Accessory ~~Apartment~~ Dwelling Units.** ~~One (1) accessory dwelling units per lot~~ may be allowed in any residential or commercial zoning district by special permit from the Zoning Board of Appeals, notwithstanding any provisions in the Zoning By-law that may restrict the total number of dwelling units per lot, subject to the requirements, standards and conditions listed below.

2. Requirements and Standards

A. ~~The An~~ accessory dwelling unit shall be subject to ~~an affordable housing~~ a housing restriction, for a term of ~~perpetuity or the longest period allowed by law~~ at least twenty years, that limits rental rates and resale prices, limits eligibility for occupancy and purchase, and provides a right of first refusal to the Town of Provincetown.

~~Affordable Housing Accessory~~ dwelling units shall be available for rental at a cost (including utility allowances) not exceeding 30% of annual income for a household at or below 65% of the Barnstable County median income; or available for ownership at a cost (including mortgage interest, principal, taxes, insurance and common charges if any, but excluding utilities) not exceeding 30% of annual income for a household at or below 65% of the Barnstable County median income. Eligibility for occupancy shall be limited to households whose income is at or below 80% of Barnstable County median income.

Median Income Community Housing dwelling units shall be available for rental at a cost (including utility allowances) not exceeding 30% of annual income for a household at or below 80% of the Barnstable County median income; or, available for ownership at a cost (including mortgage interest, principal, taxes, insurance and common charges if any, but excluding utilities) not exceeding 30% of annual income for a household at or below 80% of the Barnstable County median income. Eligibility for occupancy shall be limited to households whose income is at or below 100% of Barnstable County median income."

Middle income community housing dwelling units shall be available for rental at a cost (including utility allowances) not exceeding 30% of annual income for a household at or below 120% of the

Barnstable County median income; or, available for ownership at a cost (including mortgage interest, principal, taxes, insurance and common charges if any, but excluding utilities) not exceeding 30% of annual income for a household at or below 120% of the Barnstable County median income. Eligibility for occupancy shall be limited to households whose income is at or below 150% of Barnstable County median income.

B. The accessory dwelling unit shall be located within the principal structure or ~~a garage~~ an existing or ~~other existing~~ new freestanding structure.

C. The Inspector of Buildings and Health Agent shall have inspected an existing structure ~~the premises~~ for compliance with public safety and public health codes.

D. A special permit application shall include a certification of the amount of rent to be charged or the sale price, as applicable, for each accessory dwelling unit and the income of each occupant household. For rental accessory dwelling units, each year thereafter on the first of July, holders of special permits granted pursuant to this section shall submit to the Zoning Board of Appeals or its agent as designated in the special permit a certification of annual rents charged and the income of occupant household(s) for the most recently completed fiscal year of the holder and as of July first. Forms for this purpose shall be provided by the Town or its agent. Rents may be adjusted annually in accordance with Department of Housing and Community Development Local Initiative Program Regulations and Guidelines, or regulations and guidelines or a similar state program having the same purpose.

3. Amnesty. Owners of lots containing an accessory dwelling unit (i) for which there does not exist a validly-issued variance, special permit, building permit or occupancy permit, (ii) that is/are not legally pre-existing, non-conforming use(s) or structure(s), or (iii) is/are not otherwise in compliance with the Zoning By-law may apply for a special permit under this section.

4. Procedure.

A. The property owner shall complete and submit an application for a special permit to the Zoning Board of Appeals in accordance with the Provincetown Zoning Board of Appeals Rules and Procedures.

B. The property owner shall obtain a compliance certification as provided by Section 5120 to allow the change in use.

C. The property owner shall obtain a certificate of occupancy prior to occupancy of the accessory dwelling unit.

D. The property owner shall deliver to the Provincetown Local Housing Partnership an executed and acknowledged ~~affordable~~ housing restriction or, for ownership accessory dwelling unit an executed and acknowledged covenant whereby the property owner agrees to convey the accessory dwelling unit subject to a certain ~~affordable~~ housing restriction attached as an exhibit to the covenant, in either case approved as to form by town counsel, before a compliance certification pursuant to Section 5120 may issue for the accessory dwelling unit. If the compliance certification is denied, the instrument shall be returned to the property owner; if the compliance certification is granted, the instrument shall be recorded by the Board of Selectmen. No permanent occupancy permit shall be issued for any accessory dwelling unit without evidence of recordation of the ~~affordable~~ housing restriction ~~and the subordination of all mortgages~~.

E. Failure to comply with any provision of this Section 4800 may result in fines established in Section 5140 of the Provincetown Zoning By-laws.

5. Scope and Validity of the Bylaw.

Nothing in this Section 4800 shall nullify or exempt any property or use from any other provisions of these By-laws or other Town regulations. The invalidity of any provision of this Section 4800 shall not

invalidate any other section or provision hereof, nor shall it invalidate any building permit, occupancy permit or special permit issued in reliance on said section or provision prior to the determination of its invalidity."

Ted Malone offered some suggested changes to the above. Seven amendments to the article in warrant were put forth

Motion: to approve seven amendments as presented.

Moved: Kevin Rich **Second:** Ellen Battaglini **Vote:** 3:0:0

Motion: to recommend Article 10 as amended.

Moved: Kevin Rich **Second:** Ellen Battaglini **Vote:** 3:0:0

Article B. Zoning Amendment - Provincetown Community Housing Council. To see if the Town will vote to amend the Provincetown Zoning By-laws by deleting all references therein to the "Provincetown Local Housing Partnership [PLHP]" and inserting in place thereof "Provincetown Community Housing Council [PCHC]," or to take any other action relative thereto.

[Requested by the Board of Selectmen]

Motion: to recommend Article 4 as presented in Special Town Meeting warrant with the request that it be tabled and considered between Article 10 and 11 of the Special Town Meeting.

Moved: Kevin Rich **Second:** Ellen Battaglini **Vote:** 3:0:0

The reason for this request is so that all references to the PLHP in previous articles will automatically changed to PCHC if the amendments are approved.

Article C. Zoning By-Law Amendment: Growth Management Affordable Housing and Community Housing. To see if the Town will vote to amend the Zoning By-laws, Section 6300(4), to deem properties that have been granted an Affordable Housing Permit or a Community Housing Permit and containing 100% Affordable Housing and/or Community Housing dwelling units to be a public service use pursuant to Section 3 of Chapter 157 of the Acts of 2000, by adding the italicized language so that said section 6300(4) reads as follows:

"4. *Affordable Housing Permits and/or Community Housing Permits will be authorized on a priority basis as established by the ~~PLHP~~ PCHC, using criteria including but not limited to housing quality standards, quality of design, degree of affordability in terms of cost, and financial feasibility of the proposal. No Affordable Housing Permit and/or Community Housing Permit shall be issued without prior authorization of the ~~PLHP~~ PCHC. Each property in which 100% of the dwelling units are Affordable Housing and/or Community Housing, and for which an Affordable Housing Permit or a Community Housing Permit is granted, shall be deemed a public service use under Section 3 of Chapter 157 of the Acts of 2000.*"

or to take any other action relative thereto.

[Requested by the Board of Selectmen]

Motion: to recommend Article 7 as presented in Special Town Meeting warrant with the request that it be tabled and considered between Article 10 and 11 of the Special Town Meeting.

Moved: Kevin Rich **Second:** Ellen Battaglini **Vote:** 3:0:0

The reason for this request is so that all references to the PLHP in previous articles will automatically change to PCHC if the amendments are approved.

Meeting adjourned at 9:05 p.m.

Respectfully submitted,

Phyllis Lutsky

Phyllis Lutsky