

Planning Board Public Hearing
Wednesday, March 28, 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

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.

Site Visit 22 Conwell Street 6:00 p.m. all members present

Site visit 6 Sandy Hill Lane 6:30 p.m. all members present

Case 2007-05 Site Plan Review (Continued from March 21, 2007)

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.

Motion: to approve Site Plan conditioned upon receipt of letter from Lewis DeSouza with appropriate stamp saying he is a registered land surveyor or engineer.

Moved: Joe DeMartino **Second:** Kevin Rich **Vote:** 4:0:0

Case 2007-06 Site Plan Review (Continued from March 21, 2007)

Application by Cassandra Benson and Geraldine Anathan of 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.

All variances have been received from all town boards.

Motion: to approve Site Plan as presented with the condition that \$10,000 be put into escrow for road/driveway/access improvements and speed bumps.

Moved: Kevin Rich **Second:** Ellen Battaglini **Vote:** 4:0:0

Motion: to take agenda items out of order

Moved: Kevin Rich **Second:** Ellen Battaglini **Vote:** 4:0:0

Request for Approval Not Required Pre-Application

Chet Lay of Slade Associates on behalf of Robert P. Fiset and Donald N. Fiset for an Approval Not Required for consolidation of several parcels of land for registration in Massachusetts Land Court at the property located at 31 Creek Road, Provincetown, MA.

Site visit scheduled for April 18, 2007 at 6:30 p.m.

Approval Not Required Application

John McElwee of Felco, Inc. on behalf of Bradford Montello Realty Trust to discuss creating two lots

from one lot at the property located at 35 Bradford Street, Provincetown, MA.

Motion: to continue until April 18, 2007 at the mutual request of building commissioner and applicant engineer

Moved: Kevin Rich **Second:** Joe DeMartino **Vote:** 4:0:0

Public Hearing on Zoning Bylaws

No one from the public attended.

Article 6 Special Town Meeting

Route 6 Layout Alteration and Perfecting Title to 90 Shankpainter Road.

Motion: to recommend Article 6 Special Town Meeting

Moved: Kevin Rich **Second:** Joe DeMartino **Vote:** 4:0:0

Article 8 Special Town Meeting. Zoning By-law Amendment - Section 4170 - Proposal I. To see if the Town will vote to amend the Zoning By-laws by amending Section 4170 to read as follows:

4170 Change of Use Any and all change of use on a lot from a non-residential use or a mixed-use that is predominantly non-residential to a residential use or a mixed-use that is predominantly residential, ~~or~~ or from a boarding, lodging or tourist homes use or a mixed-use that is predominantly a boarding, lodging or tourist homes use to a residential use or a mixed-use that is predominantly residential, regardless whether other Special Permits or Variances are required, must **obtain an Affordable Housing Permit** and comply with the following conditions:

- i. Such change of use shall be authorized with a Special Permit from the Zoning Board of Appeals as provided for in Section 5300, which may require a Development Impact Statement as specified in Article 5, Section 5331.
- ii. Obtain a finding of compliance with Title V of the State Sanitary Code, as determined by the Board of Health, such compliance to be certified by a Registered Engineer.
- iii. Such change of use resulting in the creation of five (5) or more dwelling units shall be required to set aside a minimum of 33% of the total number of dwelling units for Affordable Housing **or Community Housing** as defined in Article 1 of these By-laws, **or a combination of Affordable Housing and Community Housing. The mix of Affordable Housing and Community Housing shall be determined by the Provincetown Local Housing Partnership in consultation with the Zoning Board of Appeals.**
- iv. The project must comply with the provisions of Article 4, Section 4100.
- v. Developments may not be phased, subdivided or segmented to avoid compliance with the conditions or provisions of this by-law.
- vi. None of the above shall relieve the applicant of complying with other provisions of these By-Laws.

or to take any other action relative thereto.

[Requested by the Provincetown Local Housing Partnership]

Joe DeMartino strongly opposes this article because it is financially unfeasible. Kevin Rich opposes this article because he thinks it is still flawed even with changes.

Motion: to not recommend Article 8 Special Town Meeting

Moved: Joe DeMartino **Second:** Kevin Rich **Vote:** 4:0:0

Article 9 Special Town Meeting. Zoning By-law Amendment - Section 4170 - Proposal II. To see if the Town will vote to amend the Zoning By-Laws by amending Section 4170 to read as follows (deleted text shown in ~~strike through~~; added text shown in underline):

4170 Change of Use/Non-Residential to Residential Use Conversions

1. Purpose and Intent

The purpose of this by-law is to establish special permit requirements for changes of use from commercial to residential use and to minimize adverse impacts on the community from such development. In addition, this by-law is intended to create additional affordable housing opportunities for Provincetown residents and to assist the Town in creating units eligible for inclusion in its Subsidized Housing Inventory.

2. Applicability

Any ~~The following types of change of use on a lot~~ shall require Special Permit authorization from the Zoning Board of Appeals as provided for in Article 5, Section 5300:

- (a) Any change of use from a non-residential use to a residential use, ~~or~~
- (b) Any change of use from a boarding, lodging or tourist homes use, to a residential use;
and
- (c) Any change of use involving mixed use development that alters the existing mix of uses such that a predominantly non-residential development becomes predominantly residential.

3. Requirements

The Zoning Board of Appeals, as a condition of any development referred to in Section 2(a)-(c) shall require that the applicant for special permit approval comply with the following requirements regardless whether other Special Permits or Variances are required, ~~must comply with the following conditions:~~

- ~~i.~~ (a) Such change of use shall be authorized with a Special Permit from the Zoning Board of Appeals as provided for in Section 5300, which may require a Development Impact Statement as specified in Article 5, Section 5331.
- ~~ii.~~ (b) The applicant shall ~~obtain~~ a finding of compliance with Title V of the State Sanitary Code, as determined by the Board of Health, with such compliance to be certified by a Registered Engineer.
- ~~iii.~~ (c) Any ~~Such~~ change of use resulting in the creation of five (5) or more dwelling units shall be required to ~~set aside a minimum of 33% of the total number of dwelling units for provide~~ Affordable Housing as defined in Article 1 of these By-laws and more fully described below in Section 4 Provision of Affordable Units.
- ~~iv.~~ (d) The project must comply with the provisions of Article 4, Section 4100.
- ~~v.~~ (e) None of the above shall relieve the applicant of complying with other provisions of these By- Laws.

4. Provision of Affordable Units

Any special permit application for a change of use requiring an affordable housing provision pursuant to Section 3(c) above shall comply with the following requirements for affordable units. For the purpose of calculating the 20% affordable housing contribution, all numbers shall be rounded to the nearest whole number.

(a) At least 20% of the units created shall be established as affordable housing units in any one or combination of methods provided for below:

- (1) The affordable housing units shall be constructed or rehabilitated on the locus subject to the

special permit (see Section 5); or

(2) constructed or rehabilitated on a locus other than the one subject to the special permit (see Section 7); or

(3) an equivalent fees-in-lieu-of-payment may be made (see Section 8); or an applicant may offer, and the ZBA may accept, donations of land in fee simple, on or off site, that the ZBA in its sole discretion determines are suitable as of right for the construction of affordable housing units. Land donated shall be comparable to the locus subject to special permit in terms of access and proximity to public amenities.

The applicant may offer, and the ZBA may accept, any combination of the Section 4(a) requirements provided that where an applicant meets the requirements through an off-site provision or cash contribution, the total number of affordable units provided exceeds the number or value required by this by-law.

5. Provisions Applicable to Affordable Housing Units On-and Off-Site

(a) (a) Siting of affordable units. All affordable units constructed under this by-law shall be situated within the development so as not to be in less desirable locations than market rate units in the development and shall, on average, be no less accessible to public amenities as the market-rate units.

(b) (b) Minimum design and construction for affordable units. Affordable housing units within market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units. Where feasible, interior features of affordable units shall comply in all respects to the minimum design and construction standards set forth in the Local Initiative Guidelines by the Department of Housing and Community Development (DHCD) November 2006, or as amended. There shall be a similar proportion of affordable and market rate units in developments with a mix of unit/bedroom sizes.

(c) (c) Timing of construction or provision of affordable units or lots. The development of on-site and off-site affordable housing units shall take place at the same rate and timeframe as the development of market rate units.

1. 1. Building permits for any phase shall be issued at a ratio of 4 (four) market rate units to 1 (one) affordable unit. Building permits for subsequent phases will not be issued unless all the required affordable units in the preceding phase are constructed. The last unit permitted and constructed shall be a market rate unit.

2. 2. The project may also be constructed in its entirety with all permits issued at once provided that the occupancy permits are issued at a ratio of 4 (four) market rate units to 1 (one) affordable unit. The last occupancy permit to be issued shall be for a market rate unit.

6. Distribution

Distribution of affordability for rental or ownership units as Low Income Community Housing or Moderate Income Community Housing shall be set as determined by the ZBA in consultation with the Provincetown Local Housing Partnership.

7. Provision of Affordable Housing Units Off-Site:

In lieu of providing such units on site, an applicant subject to the bylaw may develop, construct or otherwise provide affordable units equivalent to those required by Section 4 off-site, provided

that it results in a greater number of affordable units than had they been created on site. All requirements of this bylaw that apply to on-site provision of affordable units shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the ZBA as an integral element of the special permit review and approval process. The off-site units shall be comparable to the on-site units in terms of proximity and access to amenities. Providing affordable units off-site does not allow an applicant to increase the number of market rate units on site.

8. Fees-in-Lieu-of Affordable Housing Unit Provision:

(a) In lieu of providing such units or lots on site, an applicant may provide a cash contribution of equivalent value that a) has a plan acceptable to the ZBA to expend those funds within the same time frame as the applicant's development, and b) will result in a greater number of units than had they been created on site. The method and timing of the payment(s) shall be secured as a condition of special permit approval. Providing a cash contribution in lieu of providing affordable units on site does not allow an applicant to increase the number of market rate units on site.

Equivalent value will be determined through one of the following methods: a) for ownership projects, the difference between the affordable sales price(s) and the appraised market sales price(s) of similar bedroom units within the project; and b) for rental projects, the difference in appraised value between the value of the project with and without the affordable units. The appraiser will be selected by the ZBA and paid for by the applicant.

9. Maximum Incomes and Selling Price; Affordable Housing Inventory

Maximum incomes and sales prices are set forth in Article 1 Definitions. It is intended that the affordable housing units created under this by-law be considered as Local Initiative Units or Local Action Units in compliance with DHCD requirements.

10. Preservation of Affordability; Use Restrictions:

(a) Affordable housing units created in accordance with this by-law shall use affordable housing restrictions that are recorded at the Barnstable County Registry of Deeds and that require the units to remain affordable in perpetuity. Such affordable housing restriction shall grant, among other things, the Town's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

(b) The ZBA shall require, as a condition for special permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the affordable housing restriction noted in Section 10(a) above. The Building Commissioner shall not issue an occupancy permit for any affordable unit until the affordable housing restriction is recorded.

11. Segmentation - Developments may not be phased or segmented to avoid compliance with conditions or provisions of this by-law.

12. Conflict with Other Bylaws

The provisions of this bylaw shall be considered supplemental of existing zoning bylaws/ordinances. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

13. Severability

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of

Provincetown's zoning bylaw.

or to take any other action relative thereto.

[Requested by the Planning Board]

Kevin Rich feels that this is a far more comprehensive article and closes loopholes. Joe DeMartino strongly supports this article as more comprehensive and flexible. Ellen Battaglini voiced support.

Motion: to recommend Article 9 Special Town Meeting

Moved: Joe DeMartino

Second: Kevin Rich

Vote: 4:0:0

Article 16 Annual Town Meeting. Zoning By-law Amendment: Section 2440 Permitted Principal Uses. To see if the Town will vote to amend the Provincetown Zoning By-laws, as follows, with changed text shown in underlined, **bold**, *italics* and deleted text shown as ~~striketrough~~.

(1) Modify line B4f, B5 and B8 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)	NO	BA	YES	YES	YES	NO	NO
	3. three or more (each separate structure)	NO	NO	YES ⁸	YES ⁸	YES ⁸	NO	NO
A1b	Two Family Dwelling							
	1. one per lot	NO	YES	YES	YES	YES	NO	NO
	2. two per lot	NO	NO	YES	YES	YES	NO	NO
	3. three or more per lot	NO	NO	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	<u>BA¹⁸</u>	YES ¹⁷	YES ¹⁷	NO	NO
B5	Restaurant, bar	NO	NO	<u>BA¹⁸</u>	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	<u>BA¹⁸</u>	BA ¹²	YES ¹³	NO	NO
B9	Adult Entertainment ¹⁷							
	a.	NO	NO	NO	YES	YES	NO	NO

	zoning prohibitions ⁷							
	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	BA	BA	BA	BA	BA	BA	BA

	acres with livestock, aquaculture							
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 capacity/level of service of the affected streets and any proposed mitigation sufficient to offset those impacts; (b) only if the applicant can demonstrate that the proposed use will not overburden public water, septage or solid waste facilities; (c) only if the applicant provides an enforceable plan for the mitigation and control of trash and litter generated by the proposed establishment; (d) any if the architecture and signage conforms to traditional Cape Cod style; and (e) only if, in order to assure that the concerns of the abutters and residents will be considered as a significant factor in the determination of the benefits or adverse effects of the proposed fast food establishment on the neighborhood and the Town, the Board of Appeals shall make a specific Finding of Significance regarding the response to the proposed use.

13. Architecture and signage must conform to traditional Cape Cod style and must be submitted to the Planning Board for review.

14. Temporary Carnivals, Festivals and Fairs shall not exceed one week in duration.

15. If a dwelling is destroyed by fire or other natural cause, a temporary dwelling such as a manufactured home built on a permanent chassis, designed for use with or without temporary foundation when connected to required utilities may be moved upon the lot for habitation by the resident(s) affected by the loss, provided that:

(a) the applicant has obtained all permits necessary for the temporary use from the building, electrical and health officials prior to occupancy;

(b) the occupancy of the temporary dwelling shall not exceed one year; and

(c) the applicant obtains a building permit to reconstruct the destroyed dwelling structure within three (3) months of the destruction of the original dwelling structure.

16. If a commercial use structure is destroyed by fire or other natural cause, a temporary structure may be erected upon the lot on which the original commercial structure was located, or within 300 feet of said lot for the operation of the business(s) for which that lot was used at the time the structure was destroyed. The temporary structure(s) shall meet the requirements of 780 CMR, the Massachusetts State Building Code, Sixth Edition, and Chapter 31 controlling temporary structure(s) shall require a special permit from the Zoning Board of Appeals as provided in Section 5300 of this By-law. The time that the temporary structures may remain shall not exceed 180 days.

17. All 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.

(2) Add footnote 18 to Section 2440 Permitted Principal Uses so that it reads as follows:

18. If existing as of October 1, 2006.

or to take any other action relative thereto.

[Requested by the Planning Board]

Concern that addressing footnote 5 at the same time as footnote 18 will be confusing and jeopardize approval of this article.

Motion: to recommend Article 16 Annual Town Meeting

Moved: Kevin Rich **Second:** Joe DeMartino **Vote:** 4:0:0

Reminder to take up footnote 5 of 2440 at next meeting

Report for Article 16 to read as follows: Article 16 supports existing businesses and allows the town the flexibility to encourage the viability of existing neighborhood business and thereby contribute to the economic health of the town including year-round employment.

Report for Article 8 to read as follows: Article 8 does not adequately deal with either perceived or actual weaknesses in bylaw. Only substantial change is that it adds the word [any and all changes of use]. It does not address standards for affordable housing, segmentation of development, developer flexibility or preservation of affordability and use restriction.

Meeting adjourned at 8:45 p.m.

Respectfully submitted,

Phyllis Lutsky

Phyllis Lutsky

Recording Secretary

Approved by _____ on _____