



Public Meeting

February 28, 2011
Town Hall Auditorium
6:30 p.m.

Members Present: Eric Gelinas, John Golden, Peter Page, Dorothy Palanza, and Mark Weinress.

Member Absent: Marianne Clements

Staff: David Gardner and Maxine Notaro

Proposed Zoning By-law changes

The Provincetown Planning Board will hold a public hearing on **Monday, February 28, 2011, at 6:30 P.M. in the Auditorium, Town Hall, 260 Commercial Street, Provincetown, MA 02657** to hear comments from the public on the proposed bylaw amendments for the April 4, 2011 Annual Town Meeting Warrant including the following proposed changes to the Zoning By-laws of the Town of Provincetown (proposed deletions are stricken through and proposed additions are underlined): **A copy of this proposed zoning by-law is available for public inspection at the Office of the Town Clerk, Provincetown Town Hall, 260 Commercial Street, Provincetown, MA 02657.**

The meeting was called to order by Dorothy Palanza at 6:34 p.m.

Public Comments:

There were none.

Outer Cape Health

David Gardner said that Outer Cape Health (OCH) is pursuing an expansion of their facilities. A portion of their parking area lies within the public right-of-way for Harry Kemp Way. To fully access their funding source, OCH must get a licensing agreement from the town of the layout plan to utilize their full parking lot – some of which sits on

the public right-of-way. A copy of the letter from Shirin Everett (our Kopelman & Paige's attorney) was handed out to all members present that stated what needs to be done and the time frame for this. The Board of Selectmen (BoS) need to have all the supporting documentation no later than March 24th. This revision must go before the Annual Town Meeting (ATM). David wants this issue on the Planning Board's March 7th agenda.

Provincetown Zoning Bylaws Article 1 Definitions:

Boarding, Lodging or Tourist Home A dwelling with a managing family resident manager on the premises or associated with the business when the business occupies more than one parcel, plus accommodations, with or without meals, rented to renting more than three but fewer than twenty persons separate guest units.

It was decided that the present language in the bylaw is inconsistent with the other definitions and refers frequently to the number of rooms.

Kevin Redmond, a local attorney, said that he frequently has occasion to advise clients on zoning bylaws and he spoke of this change as merely a housekeeping change which would make explaining the bylaw simpler.

Motion: Move to insert the language suggested for Article 1 be approved.

Motion: Peter Page Seconded: John Golden Vote: 5-0-0.

Provincetown Zoning Bylaws Article 2 Districts and District Regulations:

2330 Floodplain District Boundaries and Base Flood Elevation Data

The Floodplain District ("District") is herein established as an overlay district. The District shall include all special flood hazard areas designed on the Town of Provincetown Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP) dated July 15, 1992 as Zone A, AE, AH, AO, A1-30, A99, V, V1-30, VE. The FIRM designates the parameters of the 100-year base floodplain. The boundaries of the District shall be coincident with the 100-year base flood elevations as shown on the FIRM, Floodway Maps and Flood Insurance Study booklet, all of which are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission. The Floodplain District is herein established as an overlay district to all other districts. All special flood hazard areas within the Town of Provincetown designated as Zone A, AE, AO, AH, V and VE on the Barnstable County Flood Insurance Rate Maps (FIRMs) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Barnstable County FIRMs that are wholly or partially within the Town of Provincetown are panel numbers

25001C0103, 25001C0104, 25001C0108, 25001C0109, 25001C0111, 25001C0112, 25001C0114, 25001C0116, 25001C0117 and 25001C0118 dated June 16, 2011. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated June 16, 2010. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.

2331 Elevation - New construction or substantial improvement (which shall be defined for the purposes of this section as any repair, construction or alteration costing 50% or more of the market value of the structure before improvements; or if damaged, before damage occurred) of residential structures shall have the lowest floor (including basement) elevated to not less than Base Flood Elevations. (Substantial improvement is deemed to have occurred when the first alteration of any structural part of the building commences). New construction or any substantial improvement of non-residential structures shall either be similarly elevated or, together with attendant utility and sanitary facilities shall be flood proof (i.e. watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy to or above that level) to not less than the Base Flood Elevations. However, structures such as boathouses that would be functionally impaired by such measures, because it requires a water level locations, and is not continuously used for human occupancy, may be exempted from this requirement, upon the issuance of a Special Permits from the Zoning Board of Appeals.

In Zone A-O, all new construction and substantial improvements are subject to the following requirements:

- residential structures shall have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on the Flood Insurance Rate Maps (FIRM);
- non-residential structures shall have the lowest floor (including basement) elevated above the crown of the nearest street **to** or above the depth number on the FIRM or be flood proof (i.e., watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy to or above that level.)

2332 Code References Any new construction or substantial improvements to be undertaken within said district shall be in accordance with the Massachusetts Uniform Building Code.

The Floodplain District is established as an overlay district to all other districts. All

development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 120.G, "Flood Resistant Construction and Construction in Coastal Dunes");
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
- Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00)
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

2333 Use of Available Flood Data - no change

2334 "V" Zones No land within areas designated as V (velocity) Zones on the F.I.A. Flood Hazard Rate Maps Barnstable County Flood Insurance Rate Maps shall be developed unless such development:

- a. is demonstrated by the applicant to be located landward of the reach of the mean high tide through issuance of a special permit by the Zoning Board of Appeals, and;
- b. Any man-made alteration of sand dunes within said designated V Zones which might increase the potential for flood damage shall be prohibited.

No further changes in this Section.

David Gardner – referring to 2330, 2331, 2332, 2333, and 2334 – said that FEMA and the MA DEP mandates that we adopt new maps by June 15, 2011. There are minor changes throughout and this code language was suggested to make us in line with FEMA's requirements. There were no Board comments to these sections.

Motion: Move to insert the language suggested for Article 2 be approved.

Motion: John Golden Seconded: Peter Page Vote: 5-0-0.

Provincetown Zoning Bylaws Article 4 Special Regulations:

Section 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

The following types of change of use 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 of more than four dwelling units;
- (b) Any change of use from a boarding, lodging or tourist homes use, to a residential use of more than four dwelling units; 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.

Section 4170 refers to change of use and any change requires a special permit from the Zoning Board. The magic number is that any development that has more than 4 units would trigger an affordable housing component. Russell Braun raised a question about Article 4, Section 4170, and that was altered by changing Applicability 4172C to read, “Any change of use involving a mixed use development that alters the existing mix of uses such as a residential use of more than 4 dwelling units in a predominantly non-residential development becomes a predominantly residential use.”

Gary Reinhardt asked about 4172C and suggested that we may be causing the same problems that we are trying to solve. Gary then asked David if he had spoken to town counsel about this? David said that – no, they haven’t reviewed the old language.

Ann Howard, Chair of Zoning, was asked and said that a change of use would require a special permit any way.

Motion: Move to alter the language of Article 4 as amended in 4172C.

Motion: Peter Page Seconded: Mark Weinress Vote: 5-0-0.

Section 6600 Growth Limitation Goal Allocations

1. Annually, during the Growth Management Review, the Board of Selectmen may allocate up to 1650 gpd to General Use Category 1, provided that the Board of Selectmen 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. The Selectmen shall have the flexibility with the General Use Category 1 to distribute the 1650 gallons amongst the Use Categories 1a, 1b, and 1c, based on the recommendation of the PCHC within the Annual Growth Management Report.

All unassigned gallonage remaining at the end of each calendar year for General Use

Category 1a, 1b and 1c shall remain available for assignment in the next calendar year for those same categories, respectively Use Category 1a, 1b, and 1c.

2. The Growth Limitation Goal shall be allocated for categories 2, 3 and 4 each year as follows:

(a) Annually, during the Growth Management Review, the Board of Selectmen may allocate up to 1,100 gpd to General Use Category 2, provided that the Board of Selectmen 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.

All unassigned gallonage remaining at the end of each calendar year for General Use Category 2 shall remain available for assignment in the next calendar year for General Use Category 2.

(b) Annually, during the Growth Management Review, the Board of Selectmen may allocate up to 1,870 gpd to General Use Category 3, provided that the Board of Selectmen 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. Within this allocation, 330 gpd shall be reserved for General Use Category 3a (expansions to existing residential structures).

All unassigned gallonage remaining at the end of each calendar year for General Use Category 3 shall remain available for assignment in the next calendar year for General Use Category 3.

No further changes.

Or to take any other action relative thereto.

[Requested by Provincetown Planning Board]

Provincetown Zoning Bylaws Article 6 – Growth Management By-Law Section 6500 Table of Use Categories and Priorities

GENERAL USE CATEGORY 1

1a. Affordable Housing Units

1b. Median Income Community Housing Units

1c. Middle Income Community Housing Units

GENERAL USE CATEGORY 2

The non-affordable housing components of project consisting of:

2a1 Multi-family dwellings projects that consist of 50%-99% affordable housing and/or community housing

2a2 Two-family dwellings projects that consist of 50%-99% affordable housing and/or community housing

2a3 Single-family dwelling projects that consist of 50%-99% affordable housing and/or

community housing

2b1 Multi-family dwelling projects that consist of 33%-49.9% affordable housing and/or community housing

2b2 Two-family dwelling projects that consist of 33%-49.9% affordable housing and/or community housing

2b3 Single-family dwelling projects that consist of 33%-49.9% affordable housing and/or community housing

GENERAL USE CATEGORY 3

3a. Expansions or alterations to existing residential structures or uses that result in increased Title 5 flow, not to exceed the Title 5 Design Flow pursuant to 310 CMR 15.203(2). A total of 330 gallons per year will be reserved for one bedroom per year per applicant. not to exceed a total of 330 gallons per year.

3b. Single-family dwelling on one per lot; two-family dwelling on one per lot; and for the addition of more than one bedroom to existing residential structures

3c. All other market rate residential projects without affordable housing components that result in increased Title 5 flow, except that no one applicant may gain access to 65% of allowable growth within this category within any given year.

GENERAL USE CATEGORY 4

4a Projects that receive an Economic Development Permit

4b Non-Profit or Community Service Uses which meet a critical community need as determined by the Board of Selectmen

4c Boarding, Lodging or Tourist Homes, Hotel, Motel, Inn, Camp, Cabin, Dormitory Housing

4d All other non-residential uses, expansions or alterations to existing structures or uses and any change in use or increase in posted occupant load that results in increased Title 5 Design Flow.

David said that 3c is a priority section and means that we don't have the right to hold these gallons and if the gallons are not used they will go right back into the general use category. The argument is that there's not much land left and there were lots of suppositions which came down to maybes. David said that this is probably just a token gesture.

Peter Page felt that it's forward thinking. As far as putting in a bump in the road for a large developer, it's not too much of a hinderance. Peter Page then wondered about when the queue would be begun – Answer: January to December 31st.

Motion: Move to approve the insertion section of Article 6 as proposed.

Motion: John Golden

Seconded: Mark Weinress

Vote: 5-0-0.

The public hearing portion of the meeting closed at 7:30 p.m.

Minutes of the January 24, 2011 Planning Board meeting.

Motion: Move to approve the minutes of January 24th as written.

Motion: John Golden Eric Gelinas Vote: 4-0-0.

Dorothy requested an item for the next meeting's agenda. She would like us to become a green community by integrating the STRECH Energy Code into the Local Comprehensive Plan. The LCP should be certified every 5 years anyway. It was first accepted in 2000 and then the LCP Board was disbanded. Dorothy would like this subject discussed at the next meeting. Ann Howard agreed and said that we have to be proactive.

NEXT MEETINGS
MARCH 7TH
&
MARCH 21ST
6:30 P.M.

The meeting adjourned at 7:55 p.m.

Respectfully submitted,

Evelyn Gaudiano

Evelyn Rogers Gaudiano

Approved by _____ **on** _____, 2011.
Dorothy Palanza, Vice Chair