
Planning Board Report

To the April 3, 2017 Annual Town Meeting *pursuant to MGL C. 40A*

Message to the Voters

MGL C. 40A, §5 requires that the Planning Board hold public hearings on all proposed amendments to the Zoning Bylaw, and provides that no vote of town meeting on the zoning bylaw *"shall be taken until a report with recommendations by a planning board has been submitted to the town meeting."* For the 2017 Annual Town Meeting, there are six proposed zoning amendments and one petitioned article that is land use related. This report has been prepared to help facilitate consideration by town meeting voters.

As always, the Planning Board is grateful to Planning staff for their countless hours of assistance and support.

Respectfully submitted,

John Golden, Chair

Grace Ryder-O'Malley, Vice-chair

Brandon Quesnell

Ryan Campbell

Steven Baker

Dave Abramson

Proposed Zoning Bylaw Amendments

Article 29. Zoning Bylaw Amendment – Inclusionary and Incentive Zoning Bylaw

Description of Proposed Change:

This amendment would add a new section, Inclusionary and Incentive Zoning, to the Zoning Bylaw. The new Inclusionary and Incentive Zoning Bylaw requires an affordability component to all residential development/redevelopment resulting in the creation of 2 or more new dwelling units. There are also corollary amendments to other sections of the Zoning Bylaw to make them consistent with and supportive of the Inclusionary and Incentive Zoning Bylaw.

Background and Discussion:

Since 1997, the Town of Provincetown has been actively tackling the need for stable housing for the people that live and work here. Because the increase in home prices over the last twenty years has outstripped the increases in incomes, housing is priced outside the reach of the majority of residents, and the local need for housing crosses the spectrum of incomes, also including those who have what

would traditionally be considered “middle class” incomes. As we struggle to maintain and grow our local economy, it is imperative that we concurrently grow our housing options, as economic and housing development support each other.

The need for an Inclusionary Bylaw was recognized in the Local Comprehensive Plan, which was adopted in 2000, and was one of the Board of Selectmen’s Town-wide Policy Goals for FY 2016 and FY 2017. The Planning Board and Planning staff worked with the BOS, the Community Housing Council, Town staff, Town Counsel, local developers and other interested parties who attended the November Town Meeting Forum and subsequent Planning Board meetings to develop an Inclusionary and Incentive Zoning Bylaw that is tailored to the particular needs and development patterns of Provincetown.

This bylaw is intended to help the Town achieve both the state’s goal under 40B of creating deed-restricted, below-market rate housing and our Town’s goal of creating middle income housing. In addition to the typical inclusionary bylaw requirement of the construction of affordable or community housing as part of larger residential development projects, this bylaw also includes a payment-in-lieu component for smaller projects. This is particularly important for the unique circumstances of Provincetown, as it addresses the limited developable land base and the corresponding predominance of small-scale residential development of fewer than 6 dwelling units. There is an exemption for the development of a single new dwelling unit and for the creation of accessory apartments.

Payment-in-lieu of creating a partial unit is a way of addressing our unique circumstances and ensuring that everyone who develops 2 or more market rate residential dwellings also contributes to the production of affordable and community housing, while not putting an undue burden on those developing small projects of 2-5 units and allowing them to contribute on a proportionally smaller scale. Payments-in-lieu will be put into dedicated accounts that are specifically established for the purpose of creating affordable or community housing, either by actually constructing units, or by buying affordability deed restrictions on existing dwelling units.

The purpose of the proposed Inclusionary and Incentive Zoning Bylaw is to:

- ❖ Encourage the creation of housing for a variety of income levels not being met by the market, for those people who live and/or work in Provincetown and are having a difficult time finding housing they can afford or continuing to afford to live in our community
- ❖ Encourage Community Housing opportunities for middle income residents, even though they are not state and federally defined “affordable” housing units eligible for inclusion in the state Chapter 40B Subsidized Housing Inventory (SHI)
- ❖ Provide a funding source through “payments-in-lieu” to increase the town’s ability to engage in public/private partnerships to create affordable and community housing
- ❖ Mitigate the impact of residential development on the availability and cost of housing
- ❖ Protect long-term affordability through deed restrictions
- ❖ Provide density and other bonuses to help offset the added costs of the creation of deed-restricted housing
- ❖ Provide Growth Management relief for developments that create some deed-restricted housing

The Inclusionary and Incentive Zoning Bylaw applies to new residential development of 2 or more units, but consists of tiers, depending on the scale of the project.

- ❖ For the creation of between 2 and 5 dwelling units, there is an affordable/community housing requirement in the form of a payment-in-lieu of creating an actual unit, since the requirement to construct a unit of affordable or community housing within a development of 2-5 units would be too onerous for small scale developers or property owners. The payment-in-lieu is based on a percentage the affordability gap (the difference between the market rate cost of a unit and the cost affordable to someone at 80% AMI) rather than the cost of an entire unit. For example, the affordability gap this year is \$215,304 and the payment-in-lieu for a 2 unit development would be \$23,688 (\$11,844 per market rate unit developed).

- ❖ For developments of 6 dwelling units or more, it is required that one-sixth, or 16.67% of the new units created be affordable/community housing units. With an emphasis of constructing affordable or community housing units on-site as part of new residential developments of 6 or more units, the Inclusionary and Incentive Zoning Bylaw looks to address affordability for lower and middle income residents in our high-cost Town and to ensure that the socio-economic diversity of the community is reflected in new housing. Options other than constructing on-site units include the construction of off-site units, payment-in-lieu of constructing affordable/community housing units, and land-donation-in-lieu of constructing affordable/community housing units.

The Inclusionary and Incentive Zoning Bylaw is not applicable to:

- ❖ The development of one dwelling unit
- ❖ Accessory dwelling units (for year-round rental)
- ❖ Health care-related developments with fewer than 6 independent living units
- ❖ Year round rental units (payment-in-lieu is deferred until/if the project is no longer rental)

In order to facilitate the goal of having affordable/community housing units constructed either on- or off-site, the Inclusionary Bylaw provides for the following bonuses and benefits (bonuses are not available if the units are not actually constructed):

- ❖ Density Bonus #1
 - 1 extra market rate unit allowed for each community housing unit created, even if it is beyond what is allowed by zoning
 - 2 extra market rate units allowed for each affordable unit created, even if it is beyond what is allowed by zoning
- ❖ Density Bonus #2
 - The number of dwelling units allowed can be up to the number of bedrooms supported by a non-varianced Title V septic system
 - For this generous bonus, 20% of the units must be affordable or community housing units
- ❖ Waiver of dimensional requirements, as appropriate, to accommodate density bonus; for example: reduced lot area, reduced frontage, reduced setbacks.
- ❖ Building Height/Third Story Bonus
 - Up to 5 feet taller than allowed under zoning, with kneewalls allowed an extra 2 ft in height, which maintains the look of a 2 ½ story building while providing more usable floor area and a full third story
 - This is another generous bonus where 20% of the units must be affordable or community housing units
- ❖ Building Permit Fee Reduction Bonus
 - 50% reduction when up to one-sixth of the units are affordable/community housing units
 - 75% reduction when between one-sixth and one-half of the units are affordable/community
 - 100% waiver when at least one-half of the units are affordable/community (already a BOS policy)
- ❖ Growth Management relief (this is done in the Growth Management section of the Zoning Bylaws)
 - Gallons allocated over 2 years for projects with 20-33% affordable/community housing units
 - Gallons allocated over 3 years for projects with up to 20% affordable/community housing units

Recommendation:

On March 23, 2016, the Planning Board voted 4-0-0 to recommend approval of Warrant Article 29.

Article 30. Zoning Bylaw Amendment – Definitions

Description of Proposed Change:

This amendment seeks to combine and clarify the currently individual definitions of “Seats” and “Fixed Standing.” That Provincetown even needs to define “seats” is due to the Growth Management Bylaw and the fact that the Town allocates the rare commodity of gallons for restaurant seats. The proposed definition will better define what counts as a “seat” from a Growth Management perspective, and what does not.

Background and Discussion:

It is currently difficult to enforce the Zoning Bylaw regarding seats because of lack of specificity. For instance, the current definition of “fixed standing,” which requires gallons, could be applied to the standing space at the deck railing at the Boatslip where people rest their drinks. We also wanted to clarify what types of “seats” constitute a public amenity, such as the benches in front of the Wired Puppy.

The added clarity in the Zoning Bylaw helps not only our Zoning Enforcement Officer, but also restaurant and bar owners, so they understand what they can and can’t do without gallons and when they need gallons.

Recommendation:

On March 23, 2016, the Planning Board voted 3-0-1 to recommend approval of Warrant Article 30.

Article 31. Zoning Bylaw Amendment – Definitions

Description of Proposed Change:

This amendment will add a new definition, “Restaurant,” to the Zoning Bylaws.

Background and Discussion:

The Planning Department has recently received inquiries from potential businesses that walk the fine line between a retail use and a restaurant use. In coordination with the Health Department and Building Department, we developed a definition of restaurant that mirrored Health thresholds for the preparation of food and drink. This coordination of Zoning regulations and Health Department regulations will help the consistent interpretation and application of our regulations.

Recommendation:

On March 23, 2016, the Planning Board voted 3-0-1 to recommend approval of Warrant Article 31.

Article 32. Zoning Bylaw Amendment – Accessory Dwellings in the Residential 3, Residential B, TCC and GC Zoning Districts

Description of Proposed Change:

This Article seeks to allow a maximum of one accessory dwelling unit per lot on properties of a limited size and density in the remaining zoning districts that currently do not allow Accessory Dwelling Units, provided that the accessory dwelling unit is limited in size and used for year-round rentals only.

Background and Discussion:

One of the recommendations that came out of the Housing Summit in January 2014, the DART report of November 2014 and the ULI Tap report of June 2016, was to tweak the current Zoning regulations to encourage the production of accessory dwelling units as one strategy to ease the housing pressure in town.

Annual Town Meeting 2015 approved a Zoning Bylaw amendment that would allow accessory dwelling units for year-round rental in the Residential 1 Zoning District by Special Permit from the Planning Board, which was followed by approval for the same in the Residential 2 Zoning District at Fall Town Meeting 2015.

This Article proposes to extend the ability to have an accessory apartment to all zoning districts, but only under similar lot conditions and without creating a greater intensity than what would be allowed currently in the Res1 and Res2 Zoning Districts.

There are inherent difficulties in extending the accessory apartment use to Zoning Districts other than Res1 and Res2 since these districts already allow multiple dwelling units. We anticipated an issue if a property contains multiple condominium units: would all units be allowed to have an accessory unit? If only one accessory unit were allowed (as in Res1 and Res2), which condo unit would be able to have it?

In order to equalize the playing field but not allow a different development pattern than what has already been approved by Town Meeting, the currently proposed accessory apartment amendment would only apply to lots in these zoning districts where the lot size already limits the number of dwelling units to two, and where the number of dwelling units existing are legal. Under those circumstances, a single accessory dwelling unit could be allowed by Special Permit from the Planning Board. The accessory dwelling unit would have the same size restrictions and year round rental requirement as previously approved.

The size of the accessory unit can be a maximum of 600 square feet if it is a separate structure, detached from the main dwelling, or it can be a maximum of 40% of the floor area of the main dwelling if it is located within the main dwelling (this could include a walk-out basement apartment, for example). It is hoped that these smaller sized dwelling units would have a more reasonable rent.

In addition to Planning Board review, any accessory dwelling unit created would also have to go through the HDC (if the property is located within the Historic District), Growth Management (a new category was created at Annual Town Meeting 2016 for accessory dwelling units), and would have to conform with other requirements of the Zoning Bylaw.

There would be three steps in place to help ensure the accessory dwelling units are used for year-round rentals: (1) Conditions in the Special Permit from the Planning Board requiring that the unit be for year-round rental only, which is recorded at the Barnstable County Registry of Deeds; (2) a yearly rental certificate through Licensing for properties with an accessory unit (rather than every three years as for all other rentals) requiring a lease as proof that it's a year-round rental; and (3) an enforcement process that would be through the Building Commissioner. Like other zoning enforcement in town, it would be complaint driven, based on neighbor observations and complaints.

Recommendation:

On March 23, 2017, the Planning Board voted 4-0-0 to make no recommendation of Warrant Article 32.

Article 33. Zoning Bylaw Amendment – Density Schedule

Description of Proposed Change:

This Article proposes to change the density schedule for Commercial Accommodations by decreasing the lot area requirement per guest unit to the 1986 and prior lot area requirements.

Background and Discussion:

The Town continues to see the loss of Commercial Accommodations every year. While it is true that much of that is made up by the weekly renting of condominiums, we would like to encourage the creation of new commercial accommodations (or the conversion of those that have converted to residential uses) that actually pay rooms tax.

This proposed amendment would also reflect the reality of the current density of Provincetown's guest houses, hotels, motels and inns, most of which were established when the Zoning Bylaw allowed more units per lot square footage than what is currently allowed. There have been several conversions from guest houses to residential uses in the past few years that, if they were to convert back, would not be able to have the same number of units again.

An analysis of the density of commercial accommodation properties shows that out of a total of 90 properties, only 24 meet the current density requirements. The other 66 properties have more guest units than are allowed under the current zoning bylaw.

Recommendation:

On March 23, 2017, the Planning Board voted 3-0-1 to recommend approval of Warrant Article 33.

Article 34. Zoning Bylaw Amendment – Nonconformancy

Description of Proposed Change:

This Article proposed to delete Section 3110 of the Zoning Bylaw, which has to do with pre-existing, non-conforming uses and structures, and replace it with more clear and internally consistent language, that continues to be in keeping with MGL 40A Section 6. This change was requested by the Zoning Board of Appeals and the specific language was developed in coordination with Town Counsel and the Chair of the ZBA.

Background and Discussion:

There are internal inconsistencies within Section 3110, and inconsistencies with Section 5300 (Special Permits) of the Zoning Bylaw. While Section 3110 clearly states that Special Permit criteria under Section 5300 be applied to changes to pre-existing, non-conforming uses, there is no parallel language for pre-existing, non-conforming structures, even though Section 5300 (Special Permits) itself applies to all Special Permits (except for Outside Display). Additionally, although the ZBA has been applying this section in a consistent manner, requiring a Special Permit for changes, extensions or alterations to pre-existing, non-conforming structures, there is no language within the section that clearly states that a Special Permit is required.

The proposed change clarifies that a Special Permit is needed for change, extension and alteration to both pre-existing, non-conforming structures and uses, and further clarifies that the special permit criteria in Section 5300 applies to both. The exception for changes in elevation due to FEMA requirements remains the same.

Recommendation:

On March 23, 2017, the Planning Board voted 3-0-1 to recommend approval of Warrant Article 34.

Article 13. Non-binding Resolution Regarding Detached Structures

Description of Article:

To see if the Town shall instruct the Planning Board to work with all other relevant boards and committees to develop zoning and other related bylaw changes, additions or deletions and return to the next town meeting with articles that allow for detached structures to be used as detached bedrooms for workforce housing, and/or find other ways that bylaws can be modified to allow for workforce housing use both seasonal and year-round; or to take any other action relative thereto.

Recommendation:

On March 23, 2017, the Planning Board voted 4-0-0 to make no recommendation of Warrant Article 13.