
Planning Board Report

to the September 13, 2017 Special 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 September 2017 Special Town Meeting, there are two 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 1. *Petitioned Article – Medical Marijuana Treatment Center*

Description of Proposed change:

The petitioned article seeks to make Medical Marijuana Treatment Centers (for the sale of medical marijuana) a use that is NOT allowed in the Residential 3 and Residential B zoning districts, where they are currently allowed by Special Permit from the Planning Board.

Background and Discussion:

Medical Marijuana Treatment Centers are currently allowed by Special Permit from the Planning Board in three zoning districts, Residential 3, Residential B and General Commercial (GC). The Res3 and ResB zoning districts are distinct districts on the zoning map, but are the same on the zoning use table.

Outer Cape Health Services is located in the ResB zoning district. At the time that MMTCs were allowed in that zoning district through a vote of Town Meeting, it was anticipated that OCHS would prescribe

and dispense medical marijuana. The federal funding received by OCHS precludes the sale of medical marijuana at this time.

Recommendation:

On August 31, 2017, the Planning Board voted 3-0-0 to recommend approval of Warrant Article 1.

Article 2. Zoning Bylaw Amendment – Definitions

Description of Proposed Change:

This warrant article seeks to amend the definition of “natural grade” in order to clarify expectations of applicants in determining natural grade.

Background and Discussion:

The current definition of “natural grade” gives permit applicants a choice of two ways to determine natural grade: “existing grade,” which is what most applicants choose when they submit an existing conditions survey plan; or “elevation of the ground surface prior to human made alteration.”

The new definition keeps “existing grade,” but replaces the second means of determining natural grade with “the grade or elevation of the ground at any time within 20 years prior to the date of such application,” as shown on a “reliable” plan. There is certainly valid and reliable survey data within the Town of Provincetown over the past 20 years. This change would preclude applicants from reaching far back in history, before there was reliable data, and trying to cobble together a plan that doesn’t meet current best practices of land surveying to determine critical elevations.

Recommendation:

On August 31, 2017, the Planning Board voted 3-0-0 to recommend approval of Warrant Article 2 with the amendment that the second means of determining natural grade is eliminated. The proposed Warrant Article, as amended by the Planning Board, would read as follows:

Natural Grade ~~The existing grade or elevation of the ground surface prior to human made alteration~~ at the time of application for a building permit, special permit, variance or site plan approval, as shown on any plan or by any other evidence deemed to be reliable by the Zoning Enforcement Officer in his/her discretion. To determine the applicable natural grade, which may not be artificially heightened to raise the elevation of a structure, the critical topographical data shall be provided as required by the Zoning Enforcement Officer. On any lot exhibiting evidence of fill not authorized, the Zoning Enforcement Officer may require the applicant to provide a professional soil analysis to determine the natural grade.

Article 3. Zoning Bylaw Amendment – Requirement for Surveys

Description of Proposed Change:

This amendment will add a new requirement for height calculations, height surveys and foundation surveys to the Zoning Bylaws.

Background and Discussion:

This proposed addition to the Zoning Bylaws establishes requirements and a procedure whereby construction mistakes are caught sooner, and codifies the expectation that violations must be corrected.

Height calculations would be required to be submitted for review by the Building Commissioner. If the building height is determined to be within 2 feet of the maximum height allowed, a height survey will then be required.

Height calculations involve an average base elevation (“natural grade”) as determined by the average of the elevation of the four corners of a proposed structure, so it’s important that the exact location of the structure be verified through survey. An as-built survey is already a Building Department requirement; the new foundation survey requirement just puts that sooner in the process, before any construction other than the foundation is begun. This is also important to make sure that new structures are not constructed closer to the property line than allowed.

Recommendation:

On August 31, 2017, the Planning Board voted 3-0-0 to recommend approval of Warrant Article 3.