

Board of Health

May 9, 2000

10:30 p.m., Judge Welsh Room

The following minutes are available on-line as a service and are not the official record due to changes in formatting for the Internet. The minutes may have attachments that are not included here in this format. The official, complete paper copy can be viewed during regular office hours, Monday - Friday: 8 a.m. to 5 p.m. in the Office of the Town Clerk, 260 Commercial St. Provincetown, MA 02657.

Present: Michele Couture, Chair; Laura Davis, Stan Klein, Ken Janson
George Heufelder and Marina Brock, Health Agents; Jackie Silver, Health Inspector
Warren G. Alexander, Building Commissioner; Roger Dias, Building Inspector; Judith Oset, Permit Coordinator

Absent: Kay Halle, Gary Delius (unexcused)

Workshop regarding Growth Management

M. Couture:

Describes the purpose of the workshop;

To give clarity to the HAs and Board members regarding Growth Management By-law and its implementation. Especially regarding different projects that claim exemption from the Growth Management By-law.

Meeting began with the reading of a list containing different scenarios as presented by George Heufelder. (see attached)

Proposed response for first two scenarios:

- What the HA sees is what should be considered.
- Though the possibility exists for unscrupulous activity, we can only assume that proposed expansions will only be used as presented.

Scenario 2:

Cheryl Andrews;

- Suggests putting any interpretation in writing. Appeals of BOH decisions would go to Zoning through the courts.
- Hope is that there will be no new shift by the BOH in counting bedrooms.
- Focus is on Title 5 design flow and consistency. What has been done historically? What is proposed?

G. Heufelder;

- The growth management is causing the HA to define what is considered a bedroom like nothing before. Really creating new pressure and much more detail.

M. Brock;

- The possibility of an 8-year wait for a building permit is creating pressure.
- The HAs are seeing a new shift in how bedrooms are being presented.

G. Heufelder;

- We could continue to use the former criteria resulting in Scenario 2 not being considered a bedroom – but, will bet that the room will be later used as a bedroom.
- Can a 1978 code system meet the 1998/99 code? The BOH would have to tell the HA. Would open a flood of illegal bedrooms, going to be bad.
- The only tool to prevent bedrooms would be a required deed restriction prior to sign off.
- The HAs don't want to have to determine case by case scenarios – just want guidelines from the BOH.
- The Growth Management By-law focuses on Title 5 not Chapter 2 of the Sanitary Code. Is this an oversight?

M. Brock;

- Concerned that we will see people circumventing the codes by pitting regulatory boards against each other to get around the Growth Management By-law.
- For Scenario 2 the best control would be to require a deed restriction for no more bedrooms.

B. Rogers;

- Counting bedrooms has historically controlled growth. Cautions the BOH to be careful with what they are doing in interpretation.

Scenario 3:

G. Heufelder;

- In other towns this case would not push to growth management. Would be seen as going from 2 to 2, with probably a deed restriction. This is a clear increase in flow, but not to Title 5.

W. Alexander;

- Building Code requires 200-sq. ft. gross per person.

G. Heufelder;

- Quoting chapter on Title 5 – roughly comes out the same, about 200-sq. ft.

C. Andrews;

- The Growth Management By-law can be modified next year. Now using design flow as criteria. May want to change to not using design flow.

Scenario 4:

G. Heufelder;

- What we see is what we have. Is that the way the BOH wants to interpret the situation? Prior to Barnstable agents being involved we may not have seen the case as a bedroom.
- Prior to growth management was it a bedroom or not?
- If see 2 bedrooms or design for 2 bedrooms? French doors?

M. Brock;

- There is a need for strict guidelines. People will change bedrooms back and forth.

C. Andrews;

- The issue of illegal construction is a separate discussion.

G. Heufelder;

- HAs have been researching illegal construction through DRM, but, it is sometimes hard to find historical verification of the structure.
- Combining scenarios you could find french doors opening to large open rooms.

M. Brock;

- Why is Scenario 2 a bedroom and Scenario 3 not a bedroom? They seem to be exactly the same.

J. Oset;

- Scenario 2 is coming in to expand, which could be an opportunity to use a deed restriction.

G. Heufelder;

- The cases are very close and a hard call. This is not quite a resolved category.

Scenario 5:

- Prior to Barnstable agents being involved, we may not have seen the case as a bedroom.
- “Workshop” and “artist’s studio” were not coming in as potential bedrooms. Now they are coming back for review as bedrooms.

W. Alexander;

- “Artist’s studio” and bathroom are allowed under the Zoning By-laws. There are lots in town being used legitimately as such. Sometimes you are right – sometimes not. Puts a flag in your mind during review to keep an eye on the lot and if it comes back as an illegal use deal with it then. Can’t stop what is a legal use, such as an artist’s studio.

C. Andrews;

- What is the legal perspective? Is it habitable? Show me where it is not a habitable dwelling and now is habitable.

G. Heufelder;

- Good point. Previously permitted as an artist’s studio – how has it changed by adding a toilet?
- If that is the only case the HA will have to rethink.

W. Alexander;

- It isn’t that people won’t change the use, but adding a toilet to an artist’s studio has been allowed for years.

S. Klein;

- What about a deed restriction? What are the fines if someone then adds a bed?

W. Alexander;

- If a bed is added it becomes a Zoning violation and a DRM issue. Sleeping in an artist's studio becomes a "principle use". An increase in flow from an "accessory use" to a "principle use" becomes a change in use.

M. Brock;

- Rarely just a toilet involved. People usually want to add a shower. She and R. Dias have frequently confirmed on inspection an artist's studio being used as habitable space.

W. Alexander;

- When brought to his attention he is able to enforce by sending a letter and having the violation removed. Not impossible to enforce. He has enforced such cases, but the public and staff are not aware of these situations, as they don't go before Zoning (no grounds).

M. Couture;

- Toilet in artist's studio seen as an increase in use? Conflict with zoning?

W. Alexander;

- Referring to Zoning By-law of "accessory use" vs. "principle use".

G. Heufelder;

- What we did in the past – we may not want to do again.
- Considering the comments of C. Andrews and W. Alexander, the town as an artists' community, the question of if this is considered a change in flow and that there is no flow assignment in Title 5, may want to consider using deed restrictions to enforce Zoning By-laws.
- People have rights, don't want to discourage the character of the community.
- Situations can be enforced when discovered.
- Only thing tripping it is the putting in of a bathroom.

M. Brock;

- New construction of an artist's studio with a bathroom; we aren't going to consider a bedroom anymore.
- Allowed "accessory use". Not Title 5 increase. No growth management.

W. Alexander;

- Can be in main structure.

C. Andrews;

- Suggest you consider this issue further.
- If assigning flow as artist's studio or bedroom?

G. Heufelder;

- Who can use it? Property owner? Not an increase in flow.
- Have found in other towns where clubhouses used only by condo owners are not considered an increase in flow.
- **Scenario 5 needs to be rediscussed.**

Scenario 6:

J. Oset;

- Suggests all parties document any problems/changes regarding the Growth Management By-law. There will be a meeting in October to revisit the issues.

G. Heufelder;

- For awhile the HAs will report to the BOH any determinations that the Board would not be aware of in order for the BOH to be able to track and/or get a feel for what is happening.

K. Janson;

- When discrepancies are seen between the assessor's records and what is on site, who interprets?

G. Heufelder;

- Such cases go back to DRM to research with the HA.

K. Janson;

- His understanding is that growth management was to be predicated on Title 5 design flow.
- He voted for the Growth Management By-law with the understanding that the Title 5 regulations' definitions were to be used.

- If we are going to change those interpretations, further discussion will be necessary.

D. Nicolau;

- Distance to ground water has been considered historically.
- If there is no increase in use, and many properties have the land, changes in interpretation may not be necessary.
- If you change the By-law deed restrictions will need to be in place and you will be having a lot more of those.

G. Heufelder;

- Deed restrictions can be removed, though more difficult.

J. Reis;

- Scenario 2 with a large living room can happen now without a building permit. Interior work can cut up a room.
- Any lot in town could violate some regulation.
- You have to look at what is there now and what is being presented.
- If a building has an attached garage with 2 garage doors and which includes a toilet are you calling it a bedroom?

M. Couture;

- Would call that an increase in use.
- Must be discussed further.

D. Mahan;

- An occupied primary resident is more easily looked at than a non-occupied primary resident.
- How can an owner be responsible for what someone else is going to do?

D. Nicolau;

- Look at case law.
- Can only look at what is – not what might happen in the future.

W. Alexander;

- Zoning By-law defines Home Occupation.
- He is concerned how that by-law might affect the BOH.

G. Heufelder;

- If a bedroom is converted to use as a Home Occupation not considered an increase in use.

W. Alexander;

- Laws aren't made to be broken. Laws are made to be used as guidelines.
- If a person violates the law it is not the inspector's fault.

J. Oset;

- We might want Town Counsel to review for any conflicts with Zoning law before the BOH makes changes in interpretation.

Adjourned at 1:25 p.m.