



Town of Provincetown  
Planning Board  
Town Hall, Provincetown, MA 02657

June 11, 2020

## Findings and Decision of the Planning Board

Case Number: PLN 20-35  
Applicant: Dave Krohn  
Owner: DTOOD, LLC  
Property Address: 66 & 72 West Vine Street  
Assessor's ID: 6-1-11-0 & 6-1-12-0  
Deed: Book 28807, Page 213  
Zoning District: Residential District 1 & 3 (Res1 & Res3)  
Planning Board Members: Paul Graves, Vice Chair  
Jeffrey Mulliken  
Brandon Quesnell, Chair  
Monica Stubner, Alternate  
Ross Zachs

### I. Introduction

The Applicant is proposing five residential dwelling units: one 3-bedroom single-family dwelling at 66 West Vine Street (Building 4); and two 1-bedroom units (Building 3), one 2-bedroom unit (Building 2), and one 1-bedroom unit (Building 1) at 72 West Vine Street resulting in an increase of residential units that will result in three or more residential units on the property and earth moving of more than 750 cu. yds. located at 66 & 72 West Vine Street (Res1 & Res3 Zoning District).

The Applicant is petitioning the Planning Board for the following approvals and relief pursuant to the Town of Provincetown Zoning By-Laws (the Zoning By-Laws):

1. Application seeking Site Plan Review by Special Permit under Article 4, Section 4015, a. (1) Developments consisting of an increase of residential units that will result in three or more residential units on any parcel and Article 4, Section 4015, a (5) New Construction or additions of any excavation, land removal or earth moving of more than 750 cu. yds. that will alter topography from natural grade, whether or not subject to a building permit; and
2. Application seeking a Special Permit under Article 4, Section 4180, Inclusionary and Incentive Zoning Bylaw of the Zoning By-Laws.

## II. Decision

The Planning Board hereby grants Site Plan Review by Special Permit relief pursuant to the Zoning By-Law, Article 4, Section 4015 a. (1) and Article 4, Section 4015 a. (5), and Special Permit under Article 4, Section 4180, Inclusionary and Incentive Zoning Bylaw.

## III. General Findings

1. Dave Krohn attended a pre-application conference with the staff of the Community Development Department on January 6, 2020.
2. The Application for Site Plan Review was received by the Community Development Department on February 14, 2020.
3. The Property is located at 66 & 72 West Vine Street in Provincetown, Massachusetts, is known by the Assessor's Office as Parcel ID: 6-1-11-0 & 6-1-12-0, is recorded land in Book 28807, Page 213 at the Barnstable County Registry of Deeds and located in the Residential Districts 1 & 3 Zoning Districts.
4. 66 West Vine is 178,448± sq. ft. in size, of which 32,801± sq. ft. are uplands, and is improved with an approximately 1,200± sq. ft. barn; and 72 West Vine is 12,066± sq. ft. in size.
5. The proposed Project includes constructing five residential dwelling units: one 3-bedroom single-family dwelling at 66 West Vine Street (Building 4); and two 1-bedroom units (Building 3), one 2-bedroom unit (Building 2), and one 1-bedroom unit (Building 1) at 72 West Vine Street, installing onsite septic systems, water and electric utility connections, gravel driveways and parking area, retaining walls, fencing, lighting, and appurtenant landscaping within the Property.
6. The Project results in a net increase of two or more dwelling units and may provide a Payment in Lieu of providing a fractional unit, to be made to the Housing Fund to fulfill the Affordable/Community Housing requirement calculated by (total # of new dwelling units)x(16.67%)x(affordability gap)x(33%).
7. The Applicant submitted project narratives dated February 12, 2020 and March 26, 2020 describing the Property, the Project, anticipated construction methods, as well as photos showing views of the Property from different perspectives.
8. Throughout the public hearing process, the Applicant submitted revised plans that reflected addressing the access, aesthetics, safety, and wellbeing concerns, including a revised site plan showing proposed utility locations, planting plan, lighting specification details, architectural plans, trash containment, bike racks, and information regarding vehicular access for the single-family dwelling at 66 West Vine Street via a separate dedicated driveway that will not be shared with the barn access or the dwellings located at 72 West Vine Street.
9. The Board held three public hearings on this matter: March 26, 2020, April 9, 2020, and April 23, 2020. Note that the hearings were held remotely in accordance with Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law and March 23, 2020 Order imposing strict limitation on the number of people that may gather in one place. The Applicant joined by Chris King, an engineer, and Brad Walker, an architect presented the Project. A presentation was made at each hearing and the Board provided an opportunity for all those attending the public hearing to be heard.

10. There were four letters in support of the Project and fifteen letters with concerns or opposition to the Project. Those in attendance providing public comment and written letters include the following summarized concerns: development is proposed within or near protected wetlands, areas that flood, restricted open space, or wildlife habitat (private easements and wetland resource area delineation are not within the Board's purview. The Project received Orders of Conditions issued by the Provincetown Conservation Commission as DEP File 58-026 and DEP File 58-028); development would aggravate roadway danger at the "S" intersection or "blind corner" of Blueberry Lane and West Vine Street (Letter from Attorney David S. Reid dated April 22, 2020 explains that this portion of Blueberry Lane is an easement and the land is privately owned by 78 West Vine Street and not under the control of the Applicant or the Town of Provincetown); development is out of scale or will increase traffic (the Properties were created via ANR [Approval Not Required] having the minimum lot size and frontage required by zoning; the density of the residential development complies with zoning; the Applicant presented photos and evidence that the existing condominium buildings located at 19 Creek Road, 58 West Vine Street, and 57 West Vine Street are taller in height at 2.75 or 3 stories and larger than the individual buildings being proposed as part of the Project; 72 West Vine Street will utilize the existing driveway currently serving the barn and property); proposed septic tanks are too close to water or wetlands (The proposed septic systems were reviewed by the Provincetown Health Department and determined to comply with Title 5, and were issued Disposal System Construction Permits BOHDC-20-1203 and BOHDC-20-1204); and the development uses fill to alter the natural grade and increase the building height (Project Engineer Chris King provided evidence showing that the methods used to calculate the proposed volume of fill, the existing natural grade, and the height of the proposed buildings above grade used standard engineering calculations and were done in accordance with the definitions of the Zoning Bylaw; the Applicant submitted cut and fill volume calculations showing 1,562± cu. yds. of fill needed; the Applicant submitted revised architectural plans dated April 15, 2020 showing the height of the single-family dwelling was reduced from 28± ft. to 25± ft.). Those providing verbal testimony and written comments included abutters and other members of the public.
11. At the April 9, 2020 public hearing, a member of the public notified the Board that other members of the public were attempting to participate in the remote meeting and were unable to do so. The Board continued the meeting of April 9, 2020 to allow additional time for members of the Public to submit written comments and to participate at the next meeting scheduled for April 23, 2020.
12. The Applicant submitted plans, exhibits, and renderings of the Project and the Planning Board members had sufficient time to review the plans prior to the hearing. Plans included:
  - a. Plan set entitled "Site Plans for Bayberry Hollow Farm" prepared by Atlantic Design Engineers, Inc. for Owner DTODD, LLC and Applicant David Krohn dated April 2, 2020 and certified by Richard Tabaczynski, PE No. 33746 in 9 sheets (24x36).
  - b. Plan set entitled "Bayberry Hollow Farm" prepared by Over Under Architect in 19 sheets (11x17), uncertified, showing the Main House dated April 15, 2020 (A100, A200, A201, A300, and A900), Farm House Ag Barn dated August 6, 2019 (A100.1, A200.1, A201.1, A202.1, A300.1, A301.1, and A900.1), and Barndominium dated August 6, 2019 (A100, A200, A201, A300, and A900).

- c. Plan entitled “Volume Cut/Fill Calculations for Bayberry Hollow Farm” prepared by Atlantic Design Engineers, Inc. dated December 4, 2020 at a scale of 1” = 20’, uncertified, in 1 sheet (24x36).
- d. Plan set entitled “Bayberry Hollow Farm” prepared by Walker Architects dated April 9, 2020, uncertified, in 5 sheets (11x17) including Site Plan, Planting Plan, Fence Plan, Lighting Plan, and Misc. Product Documentation.

IV. Applicable Law, Decision Criteria, and Specific Findings:

A. Site Plan Review by Special Permit

Article 4, Section 4035, Review Criteria:

*In its review of the site plan, the Planning Board shall consider the following:*

- a. *That the plan is in accordance with the Provincetown Zoning By-Laws and is consistent with the goals of the Local Comprehensive Plan.*
- b. *That the plan meets the design requirements outlined in Section 4163.*
- c. *That the plan shall address the requirements of Section 5331.*
- d. *Protection of public amenities and abutting properties through the mitigation of any detrimental impacts of any proposed use;*
- e. *Protection of unique, natural, scenic, or historic features of the site,*
- f. *The safety and convenience of pedestrian and vehicular movement within the site, and in relation to rights-of-way and properties in proximity to the site;*
- g. *Protection of the public health and safety within and adjacent to flood hazard areas;*
- h. *That the plan shall conform to the Illumination Standards of Section 3430 Illumination.*

The Planning Board hereby finds the following:

- a) That the Project is in accordance with the Provincetown Zoning By-Laws and is consistent with the Land Use and Growth Management Goal of the Local Comprehensive Plan (LCP) where the project is consistent with the predominant scale, massing, density, and architectural style of existing buildings and Economic Development Goals of the LCP where the Project locates development so as to preserve Provincetown's environmental and cultural heritage, minimize adverse impacts, and enhance the quality of life.
- b) That the Project meets the design requirements outlined in Section 4163 as described herein.
- c) That the Project does not require a Development Impact Statement where the scope of the project and the characteristics of the location do not indicate a need, and therefore the requirements of Section 5331 have been adequately addressed.
- d) That the Project's proposed use of retaining walls, fencing, landscaping, and lighting protects adjacent public land and abutting properties by avoiding detrimental impacts and maintains existing residential uses consistent with the uses in the neighborhood.
- e) That the Project proposes to maintain the existing barn and agricultural uses associated with the barn, construct buildings that are approximately 35% below the neighborhood average building scale, maintain 52% green area within 72 West

Vine Street and 87% green area within 66 West Vine Street in an effort to minimize impacts on the unique, natural, scenic, and historic features by avoiding significant detrimental impacts.

- f) That the single-family dwelling at 66 West Vine Street will have two parking spaces and room for turning vehicles around to use its own deed-restricted driveway easement to access the right-of-way and this vehicular movement will remain separate from that of 72 West Vine Street, which will use the existing access located at the corner of West Vine and Creek Road, where a proposed gravel driveway and parking spaces for nine vehicles will be provided for the barn and other dwelling units, as well as pedestrian paths with down lighting to access the street and parking areas in order to create safe and convenient pedestrian and vehicular movement within the site, and in relation to rights-of-way in proximity to the site;
- g) That public health and safety is maintained where work is not proposed within a flood hazard area identified by the current FEMA flood map and the Project has received Orders of Conditions issued by the Provincetown Conservation Commission as DEP File 58-026 and DEP File 58-028 with erosion and sediment control conditions designed to preclude work from impacting adjacent wetland resource areas;
- h) That the Project conforms to the Illumination Standards of Section 3430 Illumination where the Project’s lighting plan shows the locations of proposed dark-sky compliant building-mounted, deck, and path lighting.

B. Site Plan Review by Special Permit

Article 4, Section 4163, Residential Design Standards:

*In its review of the site plan, the Planning Board shall require that the following minimum standards be met if applicable. The Planning Board may waive any design standard which would be unreasonable to enforce due to the peculiarities of the site or size of the development.*

- 1. *Ways within the site shall not intersect another way without the site or street outside the site at less than sixty degrees.*
- 2. *Curb radii at street intersections shall not be less than twenty-five feet.*
- 3. *The minimum width of traveled surface within the site shall not be less than eighteen feet.*
- 4. *Where unusual topographical conditions exist, the Board may permit center line grades to be up but not greater than twelve percent.*
- 5. *All storm water drainage is to be contained within the site in a manner acceptable to the Planning Board.*
- 6. *In new construction utility service shall be underground.*
- 7. *Surfaces of parking area should be suitable for the purpose planned.*

The Planning Board hereby finds the following:

- 1) That this standard is not applicable where no new ways are proposed.
- 2) That this standard is not applicable where no new public intersections are proposed; however, it was represented by the Applicant that his property had the benefit of an easement to create and use the “Proposed Driveway” from West Vine Street to his property at #66 West Vine Street. The abutters who own this adjoining property

acknowledged the existence of this easement, but requested that the limitation of the easement be noted in the decision and are conditioned herein.

- 3) That the width of the existing entrance driveway located at the corner of West Vine Street and Creek Road will be maintained for access to 72 West Vine Street in order to minimize impacts to the neighborhood and that the internal drive aisle accessing the proposed nine parking spaces is proposed to be approximately 18 ft. wide.
- 4) That this standard is not applicable where the proposed drive aisle is less than 110 ft. long and proposed grades are relatively flat.
- 5) That the Project is designed to preclude stormwater runoff during construction through compost-filled silt socks located at the downgradient limit of work and permanent stormwater management is designed to direct and infiltrate runoff and the Project is conditioned that all stormwater runoff from proposed impervious surfaces will be fully contained and infiltrated within the Property.
- 6) That proposed utility service connections are located underground as depicted on the plans.
- 7) That the proposed pervious gravel driveways and parking areas as depicted and detailed in the plans are designed to be suitable for residential uses.

C. Special Permit, Article 4, Section 4180, Inclusionary and Incentive Zoning By-Law:

*This inclusionary bylaw shall apply in all zoning districts to the following uses: a. Any development that results in a net increase of two or more dwelling units, whether by new construction or alteration, expansion, reconstruction, or change of existing residential or non-residential space or use...A. Development of 2 to 5 new dwelling units shall require the granting of a Special Permit by the Planning Board and a Payment in Lieu of providing a fractional unit to be made to the Housing Fund to fulfill the Affordable/Community Housing requirement.*

*(1) Payment shall be made in accordance with the following formula, so that the Affordable/Community Housing requirement is equal to the total number of new dwelling units multiplied by 16.67%, and based on 1/3 or 1/2 of the affordability gap, as follows:*

- *For 2-3 new dwelling units, the Payment in Lieu= (total # of new dwelling units)x(16.67%)x(affordability gap)x(33%)*

*(2) The Payment in Lieu shall be made at and upon the sale or certificate of occupancy of each unit, whichever occurs sooner.*

*a. Year-round rental unit development: When the development consists of year-round rental units, a lien shall be filed against the property which states that the Payment in Lieu shall be deferred until such time as the year-round rental use ceases, with the full balance due upon change of use.*

*b. The developer shall enter into a binding written agreement with the Town of Provincetown, before the issuance of the first Building Permit and with appropriate payment surety arrangements, to provide the required payment(s) to the Housing Fund, and with a notice of the required payments to be recorded against the property before any Certificate of Occupancy is issued if full payment has not been made at the time an application is filed for a Certificate of Occupancy.*

The Project proposes five new dwelling units and the Applicant is opting to provide a Payment in Lieu of providing Affordable or Community Housing units or fractional units to the Housing Fund in the amount of \$109,232 [(5 total new dwelling units)x(16.67%)x(\$397,129 affordability gap for FY 2020)x(33%)] that will be paid at and upon the sale or prior to the issuance of a certificate of occupancy, whichever occurs sooner as required by the Inclusionary and Incentive Zoning Bylaw of the Zoning By-Laws.

- D. As a result of the of the General and Specific Findings above (Sections III and IV), the Board finds that the social, economic or other benefits of the Project for the neighborhood or Town outweigh any adverse effects such as hazard, congestion or environmental degradation.
- E. Waivers. No waivers were requested as part of the Application.

V. Vote

Vote PLN 20-35:

Motion by Ross Zachs to approve Site Plan Review by Special Permit pursuant to the Zoning By-Law, Article 4, Section 4015 a. (1) and Article 4, Section 4015 a. (5), and Special Permit under Article 4, Section 4180, Inclusionary and Incentive Zoning Bylaw for the Project located at 66 & 72 West Vine Street within the Residential District 1 and 3, subject to the conditions herein. The Motion was seconded by Paul Graves.

VOTE: By 5 in favor, 0 opposed, and 0 abstaining the Planning Board Approved this application.

VI. Conditions:

1. Exterior lighting on the property shall be dark sky compliant;
2. Bicycle racks shall be either the “inverted u” or “hitching post” type and located as shown on the approved plans;
3. Screened trash enclosures will be installed as shown on the approved plans;
4. All plantings on the property shall be native species and drought-tolerant;
5. All stormwater runoff from proposed impervious surfaces will be fully contained and infiltrated within the Property;
6. The proposed driveway from the single-family dwelling at 66 West Vine Street is limited to providing access to and from the single-family residence in accordance the easement granted solely for purposes of the installation and use of a driveway to be constructed by and maintained at the sole cost and expense of the Grantee over the above-described premises to serve as access to one (1) single-family residence to be constructed on the land shown as that of Martha A. Roderick and described in Land Court Document 1,106,387 recorded at the Barnstable Registry of Deeds. The easement includes using the driveway for the installation of utilities to serve the house at 66 West Vine Street and the proposed driveway shall not provide access to any other portion of the site either during construction or in the future.

- 7. The Payment in Lieu of \$109,232 [(5 total new dwelling units)x(16.67%)x(\$397,129 affordability gap for FY 2020)x(33%)] shall be paid at and upon the sale or prior to the issuance of a certificate of occupancy, whichever occurs sooner.
- 8. The developer shall enter into a binding written agreement with the Town of Provincetown, before the issuance of the first Building Permit and with appropriate payment surety arrangements, to provide the required payment(s) to the Housing Fund, and with a notice of the required payments to be recorded against the property before any Certificate of Occupancy is issued if full payment has not been made at the time an application is filed for a Certificate of Occupancy.

Signed By:

\_\_\_\_\_  
Planning Board

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date

Date of Filing with the Town Clerk: \_\_\_\_/\_\_\_\_/\_\_\_\_

A copy of the application in this matter, bearing the stamp of this Board, the signatures of the sitting members, and the date of this decision, will be on file in the Provincetown Department of Community Development. The applicant is hereby put on notice that any deviation from the above referenced application shall invalidate this Decision and shall require further review by this Board. Furthermore, the Decision issued hereunder shall not be valid until recorded at the Registry of Deeds in Barnstable as provided in the Provincetown Zoning By-Law and G.L. ch. 40A.

Important: Any appeal from the decision of the Planning Board can be made only to the Court and must be made pursuant to MGL ch. 40A, § 17, as amended, and must be filed within twenty (20) days after the date of filing of the decision with the Town Clerk.

Note: or as such timeframes are suspended and extended pursuant to Section 17 of Chapter 53 of the Acts of 2020.