

Planning Board Public Meeting

Wednesday, January 12, 2005

Judge Welsh Hearing Room, Town Hall, Provincetown, MA 02657

Called to order:

Howard Burchman, Chairperson, called the meeting to order at 7pm.

Members present:

Ellen Battaglini, Kevin Rich, Anne Howard, Howard Burchman – Chairperson.

Staff representative:

Doug Taylor

Public Hearing on Case #2005-13 Site Plan Review (Continued from October 19, 2005)

Application by Regina Binder on behalf of Victor DePoalo for Site Plan Review under Article 4, Section 4100 of the Zoning Bylaw, Dwelling Units and Commercial Accommodations. The applicant seeks Site Plan Review approval to convert thirteen motel rooms into two dwelling units at the property located at 125 Bradford Street Extension (Res1 Zone).

Discussion:

Regina Binder presenting.

Regina explained that she has not been a member of the Planning Board for over one year and can now represent applicants without a conflict of interest.

Mr. Burchman, stated he wanted a brief introduction to the project and will want a site visit.

He also asked for clarification of who the owner of record is for the property. The applicant had appeared before the board on a previous date and was not the property owner at that time. Mr. DePoalo is now the owner of property.

The property presently consists of four buildings and is configured with 6 apartments (with kitchens), 13 motel rooms and 1 two-bedroom owners dwelling. There are 18 parking spaces and 21 bedroom septic capacity. The proposed configuration is for 9 apartments with a total of 17 bedrooms and 16 parking spaces.

Regina provided the board with an overview of the project, and a written summary of project and how it meets all the applicable guidelines and criteria. A copy of that summary is attached to the minutes.

Motion by: Anne **Second by:** Ellen

To continue the hearing until 11/16/05 with site visit at 4pm on 11/16/05.

Yea: 4 **Nay: 0**

James Costa on behalf of Cape Tip Storage, 89 Shank Painter Road - Progress update on final construction plans

Discussion:

Jay Murphy introduced himself as the attorney for the applicant.

He advised the board that the applicant has tried to comply with all of the issues raised at the August meeting and to the status of the plan as approved during the site plan review.

Anne stated that her recollection was a site plan review process was not completed with sign off by the board. James Costa confirmed with Anne Howard that members of the board did have a chance to do a drive by of the property.

Doug Taylor commented that during his latest drive by fence posts were out of plumb, there is some poor craftsmanship, and the property still does not have the aesthetic "you are looking for".

Howard stated wanted to continue the hearing for additional and formal input from the building commissioner. Anne commented that some positive changes have been made at the site. She added, there needs to be ongoing maintenance at the site. Many of the items previously requested have been addressed in good faith in a timely manner.

Doug suggested the board has the option to approve the site plan contingent upon building commissioner approval/review.

Murphy agreed if the building commissioner would inform applicant and attorney of any issues, allowing the applicant the option to return on 11/16/05 if needed. Anne requested, that if there are questions in the file which are unclear to the building commissioner, please discuss with board members.

Motion by: Anne **Second by:** Kevin

To approve the site plan contingent upon a site inspection by the Building Commissioner.

Yea: 4 **Nay:** 0

Proposed Zoning Amendments

The Provincetown Planning Board will hold a public hearing pursuant to MGL Chapter 40A, § 5, on the following proposed amendments to the Provincetown Zoning By-law.

Article A. Zoning By-law Amendment - Create a Growth Management Surplus Gallonage Pool available for reallocation for year-round economic development. To see if the Town will vote to amend the zoning bylaw of the Town as follows:

1. Amend Section 6100 by inserting in the last clause after the words “encouraging affordable housing development” the words “and year-round economic development”, so that Section 6100 shall read as follows:

The purpose of this Article is to maintain the rate of development in the Town at a level which will allow the Town to provide in a planned and rational manner adequate public services and facilities to meet the needs of its current and future population without overburdening the Town's natural resources or the capacities of existing and planned public facilities, particularly with respect to provision of potable water, wastewater disposal, and solid waste disposal. The regulations provided in this Article are designed to effectuate the purposes of zoning in:

- facilitating adequate provision of water, drainage, sewerage, and other public health safety and welfare requirements;
- protecting and enhancing the character of the community and its historical and natural resources; and
- ensuring that the rate of development does not overly burden the capacity of the Town to absorb the costs of meeting water, sewerage and waste disposal service demands in light of both fiscal constraints and limited availability of natural resources;

while at the same time, encouraging affordable housing development and year-round economic development, and minimizing hardship to persons of limited incomes who live, or may choose to live, in the town.

2. Amend Section 6200-1 by inserting after the words in the first paragraph “which will result in an increase” the words “, no change, or a decrease” and by inserting after the words in the first paragraph “Title 5 Design Flow” the words “(pursuant to 310 C.M.R. 15.203 (2) through (6))”, and by numbering the second paragraph of Section 6200-1 as Section 6200-2, thereby removing it from Section 6200-1, so that Section 6200-1 in its entirety shall read as follows: Except as provided below this Growth Management By-law shall apply to all new construction, including new structures and enlargement, alteration or renovation of existing structures, to all new uses, and to all expansions, changes, or alterations of existing uses, which will result in an increase, no change, or a decrease in Title 5 Design Flow (pursuant to 310 C.M.R. 15.203 (2) through (6)) as determined by the Health Agent.

3. Amend new Section 6200-2, formerly the second paragraph of Section 6200-1, by inserting after the words “or for the enlargement” and after the words “for any new use or any” the word “reduction,” and by deleting the last word “either”, so that new Section 6200-2 shall read as follows:

No building permit shall be issued for a new structure or for the enlargement, reduction, renovation or alteration of an existing structure and no occupancy permit shall be issued for any new use or any reduction, expansion, change or alteration of an existing use for which no building permit is required; until and unless:

4. Amend new Section 6200-2(a) by deleting new Section 6200-2(a) in its entirety and substituting therefore the following text:

The Health Agent determines the amount, if any, by which Title 5 Design Flow will increase or decrease as a result of the proposed structure or use. In making determinations of Title V Design Flow, the Health Agent shall apply the

definitions of Fixed Standing and Seats as defined in Article 1, where applicable; and

5. Amend new Section 6200-2(b) by deleting new Section 6200-2(b) in its entirety and substituting therefore the following text:

In the event the Health Agent determines the amount of Title 5 Design Flow will increase, the property owner obtains a Growth Management Allocation Permit sufficient to allow the increase.

6. Amend former Section 6200-2 by renumbering it Section 6200-4.

7. Amend Section 6200-3 by renumbering it Section 6200-5 and by inserting as a new Section 6200-3 the following text:

If the Health Agent determines under Section 6200-2a that a decreased Title 5 Design Flow will result, then during a two-year period following the issuance of the building permit or occupancy permit for such structure or use, no Growth Management Allocation Permit will be required for any subsequent change in such structure or use that increases its Title 5 Design Flow up to and including the Title 5 Design Flow amount so determined by the Health Agent prior to the decrease in Title 5 Design Flow, unless the owner has abandoned the prior use or intensity of use. Such abandonment shall occur by wholly changing such use to a different principal use, or by issuing a written statement or covenant to the Town expressly abandoning the prior use or intensity of use.

8. Amend Section 6200-4 by renumbering it Section 6200-6 and by deleting the words “subparagraph d” and replacing them with the words “subparagraph b”.

9. Amend Section 6200-5 by renumbering it Section 6200-7.

10. Amend Section 6300-1 by capitalizing the first letter in each of the words “affordable housing” and each of the words “community housing permits” and by inserting at the end of the only sentence the words “or Economic Development Permits awarded by the Board of Selectmen”, so that Section 6300-1 shall read as follows:

Application for a Growth Management Allocation Permit may be made in writing to the Permit Coordinator only after having first applied for all other permits, (except building and occupancy permits), licenses, special permits, variances, determinations and/or orders of conditions for the proposed construction and/or use as deemed necessary by the Permit Coordinator including, if applicable, Affordable Housing and/or Community Housing Permits awarded by the PLHP or Economic Development Permits awarded by the Board of Selectmen.

11. Amend Section 6300-3 by capitalizing the first letter of the word “permits”.

12. Amend Section 6300-5 by inserting as a new Section 6300-5 the following text:

The Health Agent shall, two years after a determination of decreased Title 5 Design Flow and provided that such Title 5 Design Flow has not increased during the two-year period, assign the difference in gallonage between the prior, higher Title 5 Design Flow and the current Title 5 Design Flow to a “Surplus Gallonage Pool.” In the event a property owner abandons the prior use or intensity of use pursuant to Section 6200-3, the Health Agent shall immediately assign the difference in gallonage between the prior, higher Title 5 Design Flow and the new Title 5 Design Flow to a “Surplus Gallonage Pool.”

13. Amend Section 6500 by inserting as a new “General Use Category 5” the following text:

GENERAL USE CATEGORY 5

5a Economic development pursuant to an Economic Development Permit.

14. Amend Section 6600 by renumbering Section 6600-3 as Section 6600-4 and by inserting as a new Section 6600-3 the following text:

Gallonage in the Surplus Gallonage Pool at the end of each calendar year shall be available for allotment in subsequent calendar years to General Use Category 5.

15. Amend Article 1 by inserting the following definition:

Economic Development Permit shall mean an economic development permit awarded by the Board of Selectmen pursuant to Section 15-15 of the General By-laws.

The original copy of this zoning by-law change is on file for public inspection in the Town Clerk’s Office; or to take any other action relative thereto.

[Requested by the Board of Selectmen]

Town Manger Keith Bergman and Selectmen David Nicolau, presented the context of the article for the board Jean McKnight, Kopelman and Page, Town Attorney was present to address legal questions.

The Town Manager explained that this is a multi-phase implementation regarding wastewater allocations. The articles will allow the town to “capture” permitted gallons from properties reducing their need, and reallocate those gallons to properties where economic development can be stimulated. Article 3 creates permits and Article 4 creates the gallonage pool.

The language leaves room in the regulation for flexibility in determining and promoting various economic possibilities.

The Town Manager stated that the property owner will benefit from lowering the title V usage; it will lower their betterment rate with the water and sewer board.

Members of the public speaking:

Ted Malone stated he is generally supportive of the article but raised questions about wording of the language regarding when the “clock starts ticking” in relation to the issuance of a building permit or occupancy permit. He suggests one date or the other.

Jean McKnight explained that not every use requires a building permit. Not all building permits require an occupancy permit. She clarified that the regulation would take affect based on the earlier of the two dates. She also clarified that legal difference in “abandonment” of use –vs.- “discontinuance” of use.

Ted Malone pointed out a couple of typographical errors in the language.

Sara Peak, Selectman, spoke to encourage the support of the Planning Board for the article as an economic development tool.

Board Discussion:

Anne Howard questioned using the language “year-round” in the stated purpose of the article. Does it constrain the Town? Can it be legally challenged? Will properties requesting permits have to be “year-round”?

David Nicolau explained the purpose of this article is to “capture gallons”.

There was some discussion about capturing gallons from building permits previously issued. Jean McKnight clarified that the effective date is the date of Town Meeting vote. That starts the clock ticking for any and all building permits issued.

Motion by: Anne Second by: Ellen

Recommend support of article 4 with adjustments to language 12& 15 to clarify the earlier of the issued building permit or occupancy permit.

Yea: 4 Nay: 0

Article B. Zoning By-law Amendment: Outside Display. To see if the Town will vote to amend the Provincetown Zoning By-laws, Section 3420 Outside Display as follows, with added text shown in underline and deleted text shown in strikethrough:

3420 Outside Display In all districts of town there shall be no mechanical display or exhibit, or display of any type of merchandise or wares, for the purpose of advertisement, sale, barter, or exchange, or as an inducement thereof, outside of, upon, or against any building or screened or open porch, or booth, or cart, or contiguous land, or premises unless a Special Permit for said display is first granted by the Board of Zoning Appeals, or specifically excepted as hereinafter provided. Effective April 1, 1990, all exterior displays or exhibits must have a Special Permit from the Zoning Board of Appeals.

A Special Permit for Outside Display may be issued for a period of three calendar years after filing an application with the Board of Zoning Appeals and a copy thereof with the Town Clerk. The Special Permit shall specify the number and generic type (e.g. clothing, children's toys, newspapers and magazines, lawn care machinery, etc.) of items to be displayed and the location thereof indicated on a drawing or plan; any change in content (i.e. different generic items) shall require a new Special Permit.

The Board of Zoning Appeals may grant the Special Permit only if it finds all of the following:

- (a) ~~only upon its written determination that~~ The proposed display does not create any adverse effect due to hazard or congestion;
- (b) The proposed display is consistent with and does not cause any adverse impacts to the character of the surrounding neighborhood;
- (c) The proposed display is an adjunct display to, and for representative merchandise or wares of, a retail sales, service or restaurant establishment located on the same premises;
- (b) ~~only if the display is set back a distance of ten (10) feet from the front property line and/or any street line;~~

~~(c)~~ (d) ~~only if a~~ majority of abutters within a 300 foot radius have not submitted a petition objecting to the proposed display; and

~~(d)~~ (e) ~~only if~~ The proposed display has not been opposed by a petition signed by 150 voters.

The Special Permit may be renewed for succeeding three year periods, however violations may be considered as a basis for non-renewal.

Exceptions:

A. Bazaars or functions for charitable purposes by organizations existing in Town for a minimum of one year may be excepted for periods not exceeding one week in any one year by any one applicant provided that application is made to the Board of Selectmen and a license for said activity is granted.

~~B. The sale of food and/or beverages served at table with seating provided for patrons, provided that application is made to the Board of Selectmen and a license for said activity is granted.~~

~~C.~~ B. The sale of art produced by working artists at the time and point of sale, including caricatures and portraits, provided that application is made to the ~~Board of Selectmen~~ Police Department and a license for said activity is granted.

~~D.~~ C. This By Law shall not apply to artists working in public ~~while not engaged in commercial activity.~~ ~~Further, this and shall not be construed as to prohibit an artist from selling work in progress, subject to Licensing Board approval.~~

~~And be it resolved that the Licensing Board will develop and institute a licensing policy for sidewalk artists consistent with the licensing of other vendors in Provincetown.~~

~~E.~~ D. The displaying and selling of commodities (excluding food and beverage) by businesses and residents during the weekend (Saturday and Sunday) in May, ~~except Memorial Day Weekend,~~ of the "Monumental Yard Sale", which shall be under the sponsorship of a local businesspersons' organization; and an inventory sale during Columbus Day Weekend (Saturday, Sunday, and Monday) in October. No displays or sales shall take place within or upon public land, sidewalks or roadways. Displays and sales shall only appear upon property of the participants, whether jointly or independently. Displays and sales shall not impede pedestrian traffic or cause concerns for the public's safety.

The original copy of this zoning by-law change is on file for public inspection in the Town Clerk's Office; or to take any other action relative thereto.

[Requested by the Planning Board]

Discussion:

Doug Taylor explained that this article allows more retailers to apply for outdoor display. Eliminates the 10' setback, cleans-up the regulation, and limits the display to wares for sale within the business. This came from suggestions from retailers.

Anne stated the feedback from retailers is positive. It is a vast improvement.

Members of the public speaking:

Sara Peake spoke in support of the article, and the clean up the language. She expressed some concerns regarding "push carts". She suggested the Planning Board consider drafting an article for regular Town Meeting so the voters can decide up or down on the issue of pushcarts.

She questioned how the Town will regulate the absence of 10' setback.

Howard explained that the ZBA and building commissioner will make a determination about the location of the display and that it is not a problem for congestion.

Doug added that increased enforcement and working with the merchants has improved compliance throughout town.

Howard explained that the Planning Board is currently working on the pushcart issue, which is more complex, an issue. The Board will continue this process.

Motion by: Anne **Second by:** Kevin

To recommend support for article 5

Yea: 4 **Nay:** 0

PLANNING BOARD: Land Use and Development Articles

In accordance with §2-2-3 of the Provincetown Charter, the Provincetown Planning Board will hold a Public Hearing to determine the number of Board members in favor or opposed to the petitioned articles concerning land use or development for the November 7, 2005 Special Town Meeting.

Discussion:

There were no petitioned articles concerning land use or development for the 11/7 Town Meeting.

Other business:

Ted Malone is seeking a preliminary review process with questions for project on Race Point Road. He would like to bring forward the site plan review before the board on 11/16, if a site visit can be made before then.

Doug explained the board could do a preliminary review tonight, at the pleasure of the board. The board agreed.

Ted asked for lot line review. The property is going from 2 lots to 5 lots. Applicant has zoning approval for shuffling of uses. He will install flags demonstrating the roadways and members will do individual site visits. Ted will return on 11/16 with site plans.

Minutes:

No minutes available

Motion to adjourn by: Anne **Second by:** Howard

Yea: 4 **Nay:** 0
The meeting adjourned at 8:30 pm.

Respectfully submitted by
Carla Anderson
Recording Secretary

Approved by: _____
Howard Burchman, Chairman

On: _____