

4.9 PROVISIONS TO ENCOURAGE THE DEVELOPMENT OF AFFORDABLE HOUSING IN DENNIS

4.9.1 Purpose And Authority.

The purpose of Section 4.9 is to further the goal of encouraging various lot sizes and housing types for persons of various age and income levels in accordance with Massachusetts General Laws, Chapter 40A, Section 9 which allows municipalities to adopt "incentive" ordinances for the creation of affordable year round housing, and for the purpose of:

- a.) helping people who, because of rising land prices, have been unable to obtain suitable housing at an affordable price and,
- b.) maintaining a stable economy by preventing out-migration of residents who provide essential services.

The Planning Board is hereby designated the special permit granting authority for all Affordable Housing Development and Affordable Housing Apartment applications under this by-law, and shall have the power to hear and decide applications for special permits as provided by this section. The Planning Board may adopt regulations for carrying out its duties under this By-law. At least 25% of all housing units created under Section 4.9 shall be restricted as provided for under 4.9.4. At least 25% of the total number of bedrooms within any Affordable Housing Development shall be within said restricted housing units.

4.9.1.1 Project Approval Requirements. The Planning Board shall consider the following factors in determining whether to approve or deny a special permit under this By-law:

- (a) whether the applicant has conformed to the design standards of this By-law and will deliver the needed affordable units;
- (b) whether the proposed development site plan is designed in its site allocation, proportions, orientation, materials, landscaping and other features as to provide a stable and desirable character complementary and integral with the site's natural features; and
- (c) whether the development, density increase or relaxation of zoning standards has a material, detrimental effect on the character of the neighborhood or Town and is consistent with the performance standards of the Dennis Zoning By-law.

4.9.1.2 Definitions

Affordable Housing Development - A tract of land of more than 2 1/2 acres containing Units of residential housing, of which at least 25% are encumbered by affordable housing deed restrictions.

Affordable Housing Apartment - A housing unit created under the provisions of Sections 4.9.3, 4.9.4 or 4.9.5, which is subject to an affordable housing restriction pursuant to Section 4.9.4.

Principal Residential Structure - The structure on any given lot in which the primary activity is residential use, which use is the principal use of the lot.

Dwelling Unit - A housing unit that contains kitchen facilities including a stove or oven refrigerator, and sink, and a bathroom including a bath or shower.

4.9.2 Affordable Housing Developments

4.9.2.1 Density increases shall be allowed for Affordable Housing Developments as governed by Section 4.9.2, and any density increases shall be addressed in compliance with Sections 4.9.2.2.1 - 4.9.2.2.2 of the by-law.

4.9.2.2 Intensity of Use

4.9.2.2.1 The Planning Board shall have discretion to reduce or suspend the minimum area requirements otherwise applicable under Section 2.3.2 for an Affordable Housing Development, provided however that there must be at least 10,000 square feet for each bedroom created in an Affordable Housing Development.

4.9.2.2.2 The Planning Board shall have the discretion to permit a density of less than 10,000 square feet for each bedroom if the applicant can demonstrate to the satisfaction of the Planning Board and the Board of Health that the sewage disposal system servicing the development will result in nitrogen loading of less than five (5) parts per million.

4.9.2.3 Special Permit Requirements

4.9.2.3.1 A minimum tract of two and one-half (2 1/2) acres shall be required.

4.9.2.3.2 A maximum of sixteen (16) dwelling units shall be allowed in any one building.

4.9.2.3.3 The Planning Board shall have the discretion to reduce the off-street parking requirements otherwise applicable under Section 3.1.3.2 where (1) the number of units to be restricted under Section 4.9.4 exceeds 25%, and (2) the applicant demonstrates that the proposed parking is sufficient to address the parking needs of the Affordable Housing Development.

4.9.2.3.4 The tract of land to be developed shall provide for front, rear and side vegetated buffers of 25 feet;

4.9.2.3.5 Where an applicant proposed to divide the tract of land that is the locus of a

proposed Affordable Housing Development, the minimum lot size shall be ten-thousand (10,000) square feet. The Planning Board may, in its sole discretion, reduce the internal front and rear yard setback requirements of Section 2.3.2, provided however, that said setbacks shall be no less than ten (10) feet. The Affordable Housing Development must still comply with the setback requirements of Section 4.9.2.3.4 as if the tract of land was not subdivided.

4.9.2.3.6 The Affordable Housing Development must conform to all other requirements of the Zoning By-law. In the event that a provision of Section 4.9.2 conflicts with another provision of the By-law, the provisions of Section 4.9.2 shall control.

4.9.2.3.7 For multi-family buildings a properly screened area must be provided for storage of trash and recyclable materials. Outside storage areas or enclosures shall be kept clean and shall be large enough to accommodate the storage of all garbage and refuse containers. Garbage and refuse containers, dumpsters, and compactor systems shall be stored on or above a smooth surface of nonabsorbent material such as concrete or asphalt.

4.9.2.3.8 The second unit created, and every fourth unit created there-after shall be deed restricted as permanently affordable units, per the applicable standards in Section 4.9.4 below. In no case shall less than twenty-five percent of the units be affordable. All units created shall be for year-round housing.

4.9.2.4 MUNICIPALLY SPONSORED HOUSING PROJECTS

4.9.2.4.1 GENERAL OBJECTIVES

This section is intended to allow the Dennis Board of Selectmen to act as a sponsor for public or public/private joint venture affordable housing projects which:

- a. encourages practical residential development in the reuse of existing structures;
- b. promotes in-fill (development of vacant lots in an otherwise built-up area) residential development opportunities;
- c. is compatible with the adjacent neighborhood;
- d. encourages development of economically priced housing and a variety of types of housing; and
- e. fosters flexibility and creativity in the creation of affordable housing.

4.9.2.4.2 MODIFIED PROCEDURES

A municipally sponsored housing project may be allowed upon issuance of a special permit and may be afforded the following exceptions:

- a. the minimum area per unit in Table 2.3.2 Intensity of Use shall not apply;

- b. Minimum Area of the Tract to be Developed under Section 4.9.2.3.1 may be less than 2 acres;
- c. the maximum density of the Tract to be Developed may be greater than one bedroom per 10,000 sf of land area;
- d. the front, rear and side vegetated buffers may be less than 25 feet; and
- e. the minimum parking requirement may be less than 2 parking spaces per residential unit.

4.9.2.4.3 SPGA

The Planning Board shall be the Special Permit Granting Authority.

4.9.2.4.4 All units created shall be deed restricted as permanently affordable units per the applicable standards in Section 4.9.4 of this by-law. In no case shall less than fifty percent of the units be affordable to households earning between 65% and 80% of the median income and the remainder of the units shall be affordable for people earning no more than 120% of the area's median income. All units created shall be for year-round housing.

4.9.3 Affordable Housing Apartment

4.9.3.1 For the purpose of promoting the development of affordable rental housing in Dennis, the Planning Board may by special permit allow the creation of Affordable Housing Apartments in residential and commercial zoning districts. Affordable Housing Apartments created under this bylaw shall be accessory to either an existing residential use or an existing commercial use. Affordable Housing Apartments shall be considered an "accessory use" to the principal use on the lot and shall be restricted so that Affordable Housing Apartments are never divided from the principal structure. Any lot containing an Affordable Housing Apartment shall be subject to a recorded restriction that shall restrict the lot owner's ability to convey interest in the Affordable Housing Apartment except leasehold estates for the term of the restriction.

4.9.3.2 An Affordable Housing Apartment must have the following minimum areas:

studio	250 square feet
one bedroom units	700 square feet
two bedroom units	900 square feet
three bedroom units	1,200 square feet
four bedroom units	1,400 square feet

4.9.3.3 Special Permit Requirements

4.9.3.3.1 The Planning Board shall have the discretion to reduce the off-street parking requirements otherwise applicable under Section 3.1.3.2 where (1) the number of units to be restricted under Section 4.9.4 exceeds 25%, and (2) the applicant demonstrates that the proposed parking is sufficient to address the parking needs of the Affordable Housing Development.

4.9.3.3.2 A properly screened area must be provided for storage of trash and recyclable materials. Outside storage areas or enclosures shall be kept clean and shall be large enough to accommodate the storage of all garbage and refuse containers. Garbage and refuse containers, dumpsters, and compactor systems shall be stored on or above a smooth surface of nonabsorbent material such as concrete or asphalt.

4.9.3.3.3 Only those basements with walk-out capabilities may be converted into living space and garage parking stalls may be converted into living space only if the applicant can demonstrate an efficient and cost effective method for providing heat and other utilities to the unit to be created.

4.9.3.3.4 The second unit created, and every fourth unit created there-after shall be deed restricted as permanently affordable units per the applicable standards in Section 4.9.4 below. In no case shall less than twenty-five percent of the units be affordable. All units created shall be for year-round housing.

4.9.3.3.5 The second unit created, and every fourth unit created there-after shall be deed restricted as permanently affordable units, per the applicable standards in Section 4.9.4 below. In no case shall less than twenty-five percent of the units be affordable. All units created shall be for year-round housing.

4.9.3.4 Affordable Housing Apartment Accessory to Residential Use

4.9.3.4.1 An Affordable Housing Apartment may be created by converting an existing accessory structure, or space within a Principal Residential Structure, to a dwelling unit. The following additional standards and conditions shall govern special permits issued under this subsection:

4.9.3.4.2 An Affordable Housing Apartment accessory to an existing residential use may only be created on lots on which there already exists a Principal Residential Structure, and may only be created within such Principal Residential Structure, or within an existing accessory structure, as that term is defined under Section 5 of the Zoning By-law. The structure in which an Affordable Housing Apartment is proposed must have been in existence, whether by permit or in fact, for at least five years prior to the filing of the special permit application.

4.9.3.4.3 An Affordable Housing Apartment accessory to a residential use shall not be allowed on lots of less than 20,000 sf.

4.9.3.4.4 The footprint of a Principal Residential Structure may not be expanded in order to accommodate an Affordable Housing Apartment.

4.9.3.4.5 For the purposes of 4.9.3.4, one unit shall be owner occupied on a year-round basis, except for bona fide temporary absences during which the unit is not rented.

4.9.3.5 Affordable Housing Apartments Accessory to Commercial Uses An Affordable Housing Apartment may be created by converting an existing accessory structure, or space within an existing Principal Commercial Structure, to a dwelling unit. The following additional standards and conditions shall govern special permits issued under this sub-section:

4.9.3.5.1 No accessory residential uses shall be allowed within the Industrial District.

4.9.3.6 Conversion of Hotels and Motel to Affordable Housing Apartments

4.9.3.6.1 Affordable Housing Apartments may be created by converting an existing accessory structure, or space within and existing hotel or motel, into dwelling units. The following additional standards and conditions shall govern special permits issued under this section:

4.9.3.6.1.1 Units created through conversions shall not be less than 250 square feet not including areas not intended for human habitation such as areas of the basement, attic or garage. In order to promote the mixture of housing units, the following standards shall apply:

* No less than 25% of the units created must meet the requirement found in Section 4.9.3.2 for a one bedroom unit with a minimum floor area of 700 sf.

* No more than 25% of the units created may have a minimum floor area of less than 400 sf.

Planning Board may require up to 10% of the units in a Hotel/Motel conversion be two bedroom units, i.e. units with a minimum floor area of 900 sf.

4.9.3.6.1.2 No existing building shall be expanded in order to accommodate Affordable Housing Apartments.

4.9.4 Affordable Housing Restrictions

4.9.4.1 As a condition to any special permit issued under Section 4.9, the applicant shall be required to execute an affordable housing restriction (“Restriction”) in a form acceptable to the Planning Board. The special permit shall not be exercised until the Planning Board records the Restriction in the Registry of Deeds.

4.9.4.2 At least 25% of the housing units created under Section 4.9.2, Affordable Housing Development, shall be subject to a Restriction and a Regulatory Agreement between the developer and the Town. The Restriction shall provide that units made available for ownership shall be made available at a cost including mortgage interest, principal, taxes, insurance and common charges not exceeding 30% of annual income for a household at or below 80% of Barnstable County median income, and shall be sold to households earning at or below 80% of the Barnstable County median income. The Restriction shall limit the re-sale price of any ownership units, and shall bind all subsequent purchasers in perpetuity, consistent with Massachusetts Department of

Housing and Community Development's ("DHCD") regulations and guidelines under Chapter 40B of the Massachusetts General Laws. For qualification of housing units towards a Town's subsidized housing inventory. The restriction shall provide that units made available for rental shall be rented at a cost (including heat, but not other utilities) not to exceed 30% of the annual income of a household earning 80% of the Barnstable County median income, and shall be rented to households earning at or below 80% of the Barnstable County median income.

4.9.4.3 An Affordable Housing Apartment created under subsection 4.9.3 shall be subject to a Restriction, which shall provide that units made available for rental shall be rented at a cost (including heat, but not other utilities) not to exceed 30% of the annual income of a household earning 80% of the Barnstable County median income, and shall be rented to households earning at or below 80% of the Barnstable County median income.

4.9.4.4 Notwithstanding subsection 4.9.4.2 and 4.9.4.3, maximum rents and sale price shall be governed by DHCD's regulations under Chapter 40B of the Massachusetts General Laws, and shall be set at levels that will enable the Town to qualify the housing units created under this By-law towards the Town's subsidized housing inventory.

4.9.4.5 In addition to requirements of Section 4.9.4, it shall be a condition upon every special permit issued under this By-law that the applicant shall comply with any Massachusetts Department of Housing and Community Development ("DHCD") regulations and guidelines for qualification of the housing units created under this By-law towards the Town's subsidized housing inventory, including but not limited to the form of the affordable housing restriction and regulations concerning tenant selection and marketing, unit design standards, and income eligibility standards. The Restriction shall further provide that the applicant shall cooperate with the Town in good faith to qualify any restricted housing unit towards the Town's subsidized housing inventory.

4.9.4.6 In the event that a housing unit subject to a restriction created under this By-law becomes vacant, the owner shall give written notice to the Dennis Housing Authority.

4.9.4.7 Current employees of the town of Dennis and residents of the town of Dennis shall have preference over non-residents in the selection of tenants and buyers of housing units subject to a restriction to the extent permitted by DHCD regulations and state or federal laws.

4.9.5 AFFORDABLE LOTS

4.9.5.1 Lots of record as of the June 17, 2003 which do not satisfy minimum lot size requirements and which are not protected as nonconforming lots by law because they are in common ownership with adjoining lots may nevertheless be built upon by Special Permit from the Planning Board under the following conditions:

4.9.5.1.1 Each lot contains at least 10,000 square feet of land area and satisfies other applicable Board of Health requirements. Except that no lot located within a Zone II Water Recharge Area shall be built upon.

4.9.5.1.2 Each lot has safe and adequate access to a public or private way.

4.9.5.1.3 Each lot is similar in nature, i.e. size and shape to the lots immediately adjacent to and across the street from the lot to be separated.

4.9.5.1.4 Each lot may not be used for a structure larger than three bedrooms, and there must be a minimum of 5,000 square feet of land area for each bedroom.

4.9.5.1.5 The applicable front, side and rear setbacks shall be determined by establishing an average setback based upon the principal structures on the lots immediately adjacent to and across the street from the lot to be built upon as a separate lot.

4.9.5.1.6 Where two lots are held in common ownership, one of the two lots shall be deed restricted as permanently affordable, per the applicable standards in Section 4.9.4 of the Dennis Zoning Bylaw.

4.9.5.1.7 Where more than two lots are held in common ownership, the second, third and fifty percent of the remaining lots to be built upon under the special permit shall be deed restricted as permanently affordable (i.e. the fourth lot may be market rate, fifth shall be affordable, sixth market rate etc), per the applicable standards in Section 4.9.4 of the Dennis Zoning By-Law.

4.9.5.1.8 This section shall not prevent a lot owner from building a house on such lot and from transferring the lot to an income eligible immediate family member (sibling, parent or child) by gift or inheritance, provided that the restriction required by this subsection is properly recorded prior to issuance of a building permit provided that the lot owner (or immediate family member) owned the lot as of October 18, 2005.