

4170 Change of Use/Non-Residential to Residential Use Conversions

1. Purpose and Intent

The purpose of this by-law is to establish special permit requirements for changes of use from commercial to residential use and to minimize adverse impacts on the community from such development. In addition, this by-law is intended to create additional affordable housing opportunities for Provincetown residents and to assist the Town in creating units eligible for inclusion in its Subsidized Housing Inventory.

2. Applicability

The following types of change of use shall require Special Permit authorization from the Zoning Board of Appeals as provided for in Article 5, Section 5300:

- (a) Any change of use from a non-residential use to a residential use;
- (b) Any change of use from a boarding, lodging or tourist homes use, to a residential use; and
- (c) Any change of use involving mixed use development that alters the existing mix of uses such that a predominantly non-residential development becomes predominantly residential.

3. Requirements

The Zoning Board of Appeals, as a condition of any development referred to in Section 2(a)-(c) shall require that the applicant for special permit approval comply with the following requirements regardless whether other Special Permits or Variances are required:

- (a) Such change of use shall be authorized with a Special Permit from the Zoning Board of Appeals as provided for in Section 5300, which may require a Development Impact Statement as specified in Article 5, Section 5331.
- (b) The applicant shall obtain a finding of compliance with Title V of the State Sanitary Code, as determined by the Board of Health, with such compliance to be certified by a Registered Engineer.
- (c) Any such change of use resulting in the creation of five (5) or more dwelling units shall be required to provide Affordable Housing as defined in Article 1 of these By-laws and more fully described below in Section 4 Provision of Affordable Units.
- (d) The project must comply with the provisions of Article 4, Section 4100.
- (e) None of the above shall relieve the applicant of complying with other provisions of these By- Laws.

4. Provision of Affordable Units

Any special permit application for a change of use requiring an affordable

housing provision pursuant to Section 3(c) above shall comply with the following requirements for affordable units. For the purpose of calculating the 20% affordable housing contribution, all numbers shall be rounded to the nearest whole number. At least 20% of the units created shall be established as affordable housing units and shall be constructed or rehabilitated on the locus subject to the special permit (see Section 5).

5. Provisions Applicable to Affordable Housing Units

- (a) Siting of affordable units. All affordable units constructed under this by-law shall be situated within the development so as not to be in less desirable locations than market rate units in the development and shall, on average, be no less accessible to public amenities as the market-rate units.
- (b) Minimum design and construction for affordable units. Affordable housing units within market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units. Where feasible, interior features of affordable units shall comply in all respects to the minimum design and construction standards set forth in the Local Initiative Guidelines by the Department of Housing and Community Development (DHCD) November 2006, or as amended. There shall be a similar proportion of affordable and market rate units in developments with a mix of unit/bedroom sizes.
- (c) Timing of construction or provision of affordable units or lots. The development of affordable housing units shall take place at the same rate and timeframe as the development of market rate units.
 - 1. Building permits for any phase shall be issued at a ratio of 4 (four) market rate units to 1 (one) affordable unit. Building permits for subsequent phases will not be issued unless all the required affordable units in the preceding phase are constructed. The last unit permitted and constructed shall be a market rate unit.
 - 2. The project may also be constructed in its entirety with all permits issued at once provided that the occupancy permits are issued at a ratio of 4 (four) market rate units to 1 (one) affordable unit. The last occupancy permit to be issued shall be for a market rate unit.

6. Distribution

Distribution of affordability for rental or ownership units as Low Income Community Housing or Moderate Income Community Housing shall be set as determined by the ZBA in consultation with the Provincetown Community Housing Council.

7. Maximum Incomes and Selling Price; Affordable Housing Inventory

Maximum incomes and sales prices are set forth in Article 1 Definitions. It is intended that the affordable housing units created under this by-law be considered as Local Initiative Units or Local Action Units in compliance with DHCD requirements.

8. Preservation of Affordability; Use Restrictions:

(a) Affordable housing units created in accordance with this by-law shall use affordable housing restrictions that are recorded at the Barnstable County Registry of Deeds and that require the units to remain affordable in perpetuity. Such affordable housing restriction shall grant, among other things, the Town's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

(b) The ZBA shall require, as a condition for special permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the affordable housing restriction noted in Section 10(a) above. The Building Commissioner shall not issue an occupancy permit for any affordable unit until the affordable housing restriction is recorded.

9. Segmentation - Developments may not be phased or segmented to avoid compliance with conditions or provisions of this by-law.

10. Conflict with Other Bylaws

The provisions of this bylaw shall be considered supplemental of existing zoning bylaws/ordinances. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

11. Severability

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of Provincetown's zoning bylaw.