

1 **Public Hearing April 7, 2011 7:15 p.m.**

2 **TOWN OF AQUINNAH DCPC**

3 **Conformance of Proposed Amended Regulations**

4 **Staff Notes (Jo-Ann Taylor, DCPC Coordinator) (notes dated April 5, 2011)**

5 **1. Prelude**

6 The Town of Aquinnah District was first designated in 1999 as a Cultural or Historic Resource District,
7 with Goals and Guidelines protecting the scenic vistas and rural character. Regulations were proposed
8 to the Commission and to the Aquinnah voters and duly approved. Amendments have also been made
9 since 1999.

10 Goals of the Town of Aquinnah District:

11 The Goals of the Town of Aquinnah District are to: *“To protect the scenic character of the District from*
12 *undue visual intrusion and to promote and maintain its rural character and culture”.*

13 Guidelines (excerpts):

14 *“That appropriate exterior design, height and/or siting regulations be developed for any potential new*
15 *structure proposed for construction within the District, to ensure that any and all new construction shall*
16 *be consistent with the rural character of the Town of Aquinnah and shall not radically alter or interrupt*
17 *the existing skyline of the Town as viewed from any public way including any public water body and*
18 *including the lookout at the Gay Head Cliffs.*

19 *“That the appropriate administration of exterior design, height and/or siting regulations, through a*
20 *procedure to include site plan review, be developed; and that the site plan review procedure include*
21 *clear and objective criteria for review...”*

22 **2. Purpose of hearing:**

23 **CONFORMANCE of Proposed Amended Regulations**

24 To review **CONFORMANCE** of proposed regulations to the Goals and Guidelines in the Commission’s
25 *Decision Designating the Town of Aquinnah District as a District of Critical Planning Concern*, as
26 amended. The Planning Board has prepared and presented proposed amendments to Article III: Siting,
27 Dimensional and Density Regulations, Article VI: Administration, and Article XIII: Town of Aquinnah
28 District of Critical Planning Concern. Note that the Town has submitted a proposal for amendment to
29 Article X Section 10.2 Flood Plain Zone, which does not need conformance review. The Commission
30 has no designation, goals or guidelines regarding the Flood Plain Zone.

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3. Proposed Amended Regulations and Analysis

- **HOMESTEAD LOTS**

- **proposed text HOMESTEAD LOTS** Delete the language in Sections 3.3-3 and 13.12 and replace both with the following:

A. For the purpose of helping Aquinnah residents who have lived here for a period of time and who, because of rising land prices, have been unable to obtain suitable land for their permanent homes at a reasonable price, and who desire to continue to live in Aquinnah, the Planning Board Plan Review may grant a Special Permit to build a one-family dwelling for owner occupancy upon a Homestead Lot as prescribed in this By-Law.

B. Lots which are one acre or more and were created after the adoption of zoning, may be built upon by an individual who has been qualified by the Aquinnah Housing Committee under current Resident Homesite guidelines and by Special Permit from the Planning Board Plan Review Committee under the following conditions:

1. The lot satisfies all applicable Zoning and Board of Health requirements with the exception of section 3.1-1.¹

2. The applicant for the Special Permit transfers ownership of the Homestead Lot, prior to the issuance of a building permit, to the Dukes County Regional Housing Authority (“DCRHA”) or to an entity selected by the Town, through the Aquinnah Housing Committee, through an RFP or other process in accordance with governing law, to lease the Homestead Lot to the applicant, or other lessee approved by the Aquinnah Housing Committee, under a long term lease, which lease ensures the perpetual affordability of the Homestead Lot under terms acceptable to the Aquinnah Housing Committee and which provides the Town the option, in the case of a default, foreclosure, dissolution, or bankruptcy of either the applicant, the DCRHA, or any entity to which the Town has delegated the right to manage the Homestead Lot, to acquire the Homestead Lot.

C. Owners of lots containing three acres or more may create by subdivision or division a Homestead Lot for conveyance to an Aquinnah resident who has been qualified by the Aquinnah Housing Committee under current Resident Homesite guidelines, and who obtains a Special Permit from the Planning Board Plan Review Committee under the same conditions specified under Section 3.3-3-B, provided, however, that the remainder lot(s) must be at least 2 acres in area.

- Note that the proposed regulation would **replace** the following text presently in effect:

(Text proposed to be replaced with the text above) SECTION 13.12 HOMESITE LOTS
13.12-1 For the purpose of helping Aquinnah residents who have lived here for a substantial period of time and who, because of rising land prices, have been unable to obtain suitable land for their permanent homes at a reasonable price, and who desire to continue to live in Aquinnah the Planning Board Plan Review may grant a Special Permit to build a one-family

¹ Note from Jo-Ann Taylor – Section 3.1-1 requires a minimum lot size of 2 acres.

67 dwelling for owner occupancy upon a Homesite Lot as prescribed in this By-Law.

68 13.12-2 Lots which are one acre or more may be built by an individual who has been
69 qualified by the Resident Homesite Committee under current Resident Homesite guidelines and
70 by Special Permit from the Planning Board Plan Review under the following conditions-

71 A. The lot contains at least 15,000 square feet of land area per bedroom and satisfies other
72 applicable Board of Health requirements.

73 B. The applicant for the Special Permit attaches to the property deed, before the issuance
74 of a building permit, the Resident Homesite long-term affordability Deed Rider.

75 13.12-3 Owners of lots containing 4 acres or more may create by subdivision a Homesite Lot
76 for conveyance to an Aquinnah resident who has been qualified by the Resident Homesite
77 Committee under current Resident Homesite guidelines, and by Special Permit from the
78 Planning Board under the same conditions specified under Section 13.12.-2

- 79 ○ Analysis - The section on homesite (homestead) lots was included in the Town of
80 Aquinnah District to address the goal "...to promote and maintain its rural character and
81 culture". Although the main purpose is to address visual intrusion, the Town of Aquinnah
82 District also protects rural character, including the need for housing to keep lower and
83 middle income residents from involuntary emigration. The proposed amendment would
84 appear to meet the standard at least as well as the original, and appears to be in
85 conformance.

- 86 • **FRONTAGE**

- 87 ○ **Proposal**

- 88 ■ Add a new section: 13.4-10 MINIMUM FRONTAGE All lots shall have a
89 minimum frontage of 200 feet on a public or private way.

- 90 ■ Amend section 3.7 MINIMUM FRONTAGE to read (amendment is in italics):
91 All lots shall have a minimum frontage of 200 feet on a public or private way.

- 92 ■ To section 7.1 (Definitions) add the following:

93 FRONTAGE: The boundary of a lot running along a private or public way, but not
94 along a common driveway, which contains at least one point of vehicular access to
95 the lot at a location providing safe and adequate sight distance.

- 96 ○ **Analysis** This matches the regulation Section 3.7 MINIMUM FRONTAGE 3.7-1 All lots
97 shall have a minimum frontage of 200 feet..., so is already required for development in
98 Aquinnah. The proposal appears to conform to the Commission Guideline "That
99 appropriate exterior...siting regulations be developed to ensure that any and all new
100 construction shall be consistent with the rural character of the Town of Aquinnah..."

102 • **ADMINISTRATION**

- 103 ○ **Proposal** Amend Section 6.4-1 as follows:

104 In the second sentence, change the word *including*, to *excluding*.²

105
106 Add a new section:

107 6.4-2 Extension of Special Permits

108 If the rights authorized by a Special Permit are not exercised within the time period authorized in
109 Section 6.4-1³ the special permit shall lapse; provided, however, that the special permit granting
110 authority, in its discretion and upon written application by the recipient of the special permit, may
111 extend the time for exercise of the rights granted by the special permit, for a period not to exceed
112 one year; and provided, further, that the application for such extension is filed with the special
113 permit granting authority prior to the expiration of the original special permit. If the special permit
114 granting authority does not grant the extension within 45 days of the date of application therefore,
115 and upon the expiration of the original time period, the special permit may be re-issued only after
116 notice and a new hearing pursuant to the provisions of G. L. c. 40A, § 11 and the notice provisions
117 of this By-law.
118

119 Add a new section:

120 6.4-3 Zoning Determinations

121 To simplify the implementation of this By-law, the Planning Board Plan Review Committee may
122 determine that certain small developments, or certain parts of larger projects, identified on a
123 particular application, do not require a special permit granted at a public hearing with public notice
124 and notification of abutters. Such determination shall be made by a unanimous vote at a properly
125 noticed public meeting and the project must be consistent with the goals and purposes of the
126 applicable District(s) of Critical Planning Concern set forth in the Town of Aquinnah Zoning By-law.
127 Examples of projects that might qualify for a zoning determination, as set forth in this section,
128 include: the siting of a small shed in an area that is not openly or highly visible; a small addition, or
129 extension, of a deck; the addition of an outdoor shower; conducting perc tests without submission of
130 a Project Notification Form; determination if a site is open and highly visible before design work is
131 started; or the cutting of trees or brush for well drilling or perc tests. If the Planning Board Plan
132 Review Committee determines that the small development or certain part of a larger project qualifies
133 under this Section, it will issue a written and signed Zoning Determination to the applicant, with a
134 copy to the building inspector, granting permission to proceed with the work, including any
135 conditions or limitations the Planning Board Plan Review Committee deems reasonable to impose
136 consistent with the goals and purposes of the applicable section(s) of the Aquinnah Zoning By-law.

- 137 ○ **Analysis** The proposal appears to conform to the Commission Guideline *“That the*
138 *appropriate administration of exterior design, height and/or siting regulations, through a*

² Note from Jo-Ann Taylor – The second sentence refers to the time to pursue or await determination of an appeal.

³ Note from Jo-Ann Taylor – The time period in Section 6.4-1 is one year.

139 *procedure to include site plan review, be developed; and that the site plan review procedure*
140 *include clear and objective criteria for review...*” for the Town of Aquinnah District **only**.
141 The Commission’s Guidelines for all of Aquinnah’s DCPC’s require administration including
142 site plan review. This is not unusual in Districts where specific numeric standards alone might
143 not adequately protect the critical resource. The proposal would keep site plan review by
144 Planning Board Plan Review Committee, but reserve full Special Permit review for
145 development projects with more substantial impact. However, it is important to note that the
146 proposal would alter review of other DCPC’s, where it would not necessarily be appropriate.
147 The Commission’s Guidelines for the Gay Head Cliffs District, for example, require a Special
148 Permit *for the siting of wells...* The Coastal District and the Wild and Scenic North Shore
149 District include protection regarding seemingly innocuous sheds, boathouses, etc. Should the
150 Town desire conformance review with the individual Districts, the Commission would hear
151 such a request, but it may be difficult for the Commission to find conformance. At this time, it
152 would appear to be appropriate for the Commission to find **conformance, so long as**
153 **conformance is restricted to those geographic areas designated in the Town**
154 **of Aquinnah District but not also designated in the Coastal District, Island**
155 **Road District, Special Places District, Moshup Trail District, Gay Head Cliffs**
156 **Area District and/or the Wild and Scenic North Shore District.**

157 **3. Procedure**

158 The proposed regulations were heard by the Planning Board on March 22 and amended following that
159 hearing. The amended proposal is presented to the Commission for hearing and for 2/3 vote at
160 Aquinnah’s May 10 Annual Town Meeting. The Commission hears and considers proposed
161 amendments to regulations in the same manner as the original regulations. After a public hearing, the
162 Commission votes on whether or not **THE PROPOSED REGULATIONS CONFORM TO THE**
163 **GUIDELINES FOR DEVELOPMENT SPECIFIED IN THE COMMISSION’S DESIGNATION OF**
164 **THE TOWN OF AQUINNAH DISTRICT.** In the case of proposed amendments to Article VI
165 Administration, the Commission may find it prudent to vote whether or not **THE PROPOSED**
166 **REGULATIONS CONFORM TO THE GUIDELINES FOR DEVELOPMENT SPECIFIED IN THE**
167 **COMMISSION’S DESIGNATION OF THE TOWN OF AQUINNAH DISTRICT. HOWEVER,**
168 **CONFORMANCE IS RESTRICTED TO THOSE GEOGRAPHIC AREAS DESIGNATED IN THE**
169 **TOWN OF AQUINNAH DISTRICT BUT NOT ALSO DESIGNATED IN THE COASTAL**
170 **DISTRICT, ISLAND ROAD DISTRICT, SPECIAL PLACES DISTRICT, MOSHUP TRAIL DISTRICT,**
171 **GAY HEAD CLIFFS AREA DISTRICT AND/OR THE WILD AND SCENIC NORTH SHORE**
172 **DISTRICT.** In the case of Section 10.2 Flood Plain Zone, it may be prudent for the Commission to
173 **TAKE NO ACTION.** The Commission may also find in conformance minor points of clarification
174 which may arise during the course of the 2011 Annual Town Meeting vote which do not change the
175 meaning of the regulation.

176 The amendments must also be voted by two-thirds vote of the May 10 Town Meeting. The Commission
177 should close its hearing and vote prior to May 10.

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5. Correspondence

No correspondence has been received.

ATTACHMENT – PROPOSED TEXT AS SUBMITTED

**AQUINNAH PLANNING BOARD
PLAN REVIEW**

On March 22, 2011 at 7:00pm the Aquinnah Planning Board Plan Review Committee held a public hearing in the Aquinnah Town Offices to review proposed changes to the Aquinnah Zoning Bylaw. By a unanimous vote the following changes were approved and are to be put on the warrant for the Annual Town Meeting.

1. Amend Section 6.4-1 as follows:

In the second sentence, change the word *including*, to *excluding*.

2. Add a new section:

6.4-2 Extension of Special Permits

If the rights authorized by a Special Permit are not exercised within the time period authorized in Section 6.4-1 the special permit shall lapse; provided, however, that the special permit granting authority, in its discretion and upon written application by the recipient of the special permit, may extend the time for exercise of the rights granted by the special permit, for a period not to exceed one year; and provided, further, that the application for such extension is filed with the special permit granting authority prior to the expiration of the original special permit. If the special permit granting authority does not grant the extension within 45 days of the date of application therefore, and upon the expiration of the original time period, the special permit may be re-issued only after notice and a new hearing pursuant to the provisions of G. L. c. 40A, § 11 and the notice provisions of this By-law.

3. Add a new section:

6.4-3 Zoning Determinations

To simplify the implementation of this By-law, the Planning Board Plan Review Committee may determine that certain small developments, or certain parts of larger projects, identified on a particular application, do not require a special permit granted at a public hearing with public notice and notification of abutters. Such determination shall be made by a unanimous vote at a properly noticed public meeting and the project must be consistent with the goals and purposes of the applicable District(s) of Critical Planning Concern set forth in the Town of Aquinnah Zoning By-law. Examples of projects that might qualify for a zoning determination, as set forth in this section, include: the siting of a small shed in an area that is not openly or highly visible; a small addition, or extension, of a deck; the addition of an outdoor shower; conducting perc tests without submission of a Project Notification Form; determination if a site is open and highly visible before design work is started; or the cutting of trees or brush for well drilling or perc tests. If the Planning Board Plan Review Committee determines that the small development or certain part of a larger project qualifies under this Section, it will issue a written and signed Zoning Determination to the applicant, with a copy to the building inspector, granting permission to proceed with the work, including any conditions or limitations the Planning Board Plan Review Committee deems reasonable to impose consistent with the goals and purposes of the applicable section(s) of the Aquinnah Zoning By-law.

4. In sections 10.2-2D, and 10.2-4A,B,C,D change the term “Board of Appeals” to “Planning Board Plan Review Committee” (there are 6 mentions).

5. Amend section 3.7 MINIMUM FRONTAGE to read (amendment is in italics):

All lots shall have a minimum frontage of 200 feet on a public *or private* way.

6. Add a new section:

230 13.4-10 MINIMUM FRONTAGE

231 All lots shall have a minimum frontage of 200 feet on a public or private way.

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233 7. To section 7.1 (Definitions) add the following:

234 FRONTAGE: The boundary of a lot running along a private or public way, but not along a common
235 driveway, which contains at least one point of vehicular access to the lot at a location providing safe and
236 adequate sight distance.

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238 8. Delete the language in Sections 3.3-3 and 13.2 and replace both with the following:

239 **HOMESTEAD LOTS**

240 A. For the purpose of helping Aquinnah residents who have lived here for a period of time and who, because of
241 rising land prices, have been unable to obtain suitable land for their permanent homes at a reasonable price, and
242 who desire to continue to live in Aquinnah, the Planning Board Plan Review may grant a Special Permit to
243 build a one-family dwelling for owner occupancy upon a Homestead Lot as prescribed in this By-Law.

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245 B. Lots which are one acre or more and were created after the adoption of zoning, may be built upon by an
246 individual who has been qualified by the Aquinnah Housing Committee under current Resident Homesite
247 guidelines and by Special Permit from the Planning Board Plan Review Committee under the following
248 conditions:

249
250 1. The lot satisfies all applicable Zoning and Board of Health requirements with the exception of section
251 3.1-1.

252
253 2. The applicant for the Special Permit transfers ownership of the Homestead Lot, prior to the issuance
254 of a building permit, to the Dukes County Regional Housing Authority (“DCRHA”) or to an entity
255 selected by the Town, through the Aquinnah Housing Committee, through an RFP or other process in
256 accordance with governing law, to lease the Homestead Lot to the applicant, or other lessee approved by
257 the Aquinnah Housing Committee, under a long term lease, which lease ensures the perpetual
258 affordability of the Homestead Lot under terms acceptable to the Aquinnah Housing Committee and
259 which provides the Town the option, in the case of a default, foreclosure, dissolution, or bankruptcy of
260 either the applicant, the DCRHA, or any entity to which the Town has delegated the right to manage the
261 Homestead Lot, to acquire the Homestead Lot.

262
263 C. Owners of lots containing three acres or more may create by subdivision or division a Homestead Lot for
264 conveyance to an Aquinnah resident who has been qualified by the Aquinnah Housing Committee under current
265 Resident Homesite guidelines, and who obtains a Special Permit from the Planning Board Plan Review
266 Committee under the same conditions specified under Section 3.3-3-B, provided, however, that the remainder
267 lot(s) must be at least 2 acres in area.