



MEMORANDUM

To: Town Clerk – Town of Aquinnah
Planning Board
Board of Selectmen
Conservation Commission
Board of Health
Board of Appeals
Building Official

cc: Town Clerks

From: Jo-Ann Taylor, DCPC Coordinator
Martha's Vineyard Commission

A handwritten signature in cursive script, reading "Jo-Ann Taylor".

Date: April 10, 2012

Re: Amendments to Regulations for DCPCs in the Town of Aquinnah

Please be advised that on Thursday, April 5, 2012, the Martha's Vineyard Commission voted to accept as Conforming to its Goals and Guidelines for the Town of Aquinnah District of Critical Planning Concern, the Coastal District of Critical Planning Concern, the Moshup Trail District of Critical Planning Concern, and the Gay Head Cliff Area District of Critical Planning Concern, amendments to the regulations governing the Districts, as follows:

Add new Section

13.4-11 Pre-existing, nonconforming Structures and Uses

A. Any pre-existing, nonconforming structure or use which does not conform to the provisions of this By-Law or any amendment thereto may nevertheless continue in its use. Pre-existing, nonconforming structures and uses in existence as of June 17, 1999 may be reconstructed, altered, or extended by Special Permit from the Planning Board Plan Review Committee; provided, however, that the reconstruction, extension, or alteration bears a reasonable relationship to the original size and nature of the nonconforming structure or use, and that the Planning Board Plan Review Committee finds that the change, extension or alteration is not substantially more detrimental than the existing nonconforming structure or use to the neighborhood. Changes qualifying for a zoning determination under Section 13.14-1 do not require a Special Permit if the Planning Board Plan Review Committee makes a finding that the proposed reconstruction, alteration, or extension does not increase the nonconforming nature of the structure or use.

B. Construction or operations under a building or Special Permit shall conform to any subsequent amendment of this By-Law, unless the use or construction authorized

thereby is commenced within a period of not more than six months after the issuance of the permit.

C. If a pre-existing, nonconforming structure or use in existence as of June 17, 1999 is damaged or destroyed, it may be restored to its previous nonconforming status; however, pre-existing, nonconforming structures or uses abandoned or not used for more than five years shall not thereafter be revived.

Replace Section 3.4-2A with the language in proposed section 13.4-11A above, and add Where Districts of Critical Planning Concern overlap, the earliest designation date (December 22, 1975 for the Coastal District, May 4, 1989 for the Gay Head Cliff Area District, September 7, 1995 for the Moshup Trail District, and June 17, 1999 for the Town of Aquinnah District) shall define the date of "pre-existing, nonconforming".

Replace Section 3.4-2B with the language in proposed section 13.4-11B above.

Replace Section 3.4-2C with the language in proposed section 13.4-11C above, and add "Where Districts of Critical Planning Concern overlap, the earliest designation date (December 22, 1975 for the Coastal District, May 4, 1989 for the Gay Head Cliff Area District, September 7, 1995 for the Moshup Trail District, and June 17, 1999 for the Town of Aquinnah District) shall define the date of "nonconforming".

Amend Section 13.4-6 (Setbacks) to read:

A. Except as provided in Section 13.8 (Special and Historic Places, also in Section 14.2 and 2.4-3), Section 11.3 (Moshup Trail DCPC, also in section 3.5), Section 12.0 (Cliffs DCPC, also in Section 3.5) and Section 10.1 (Coastal District, also in section 2.4-1 and 3.5) of this By-Law, all structures shall be set back at least:

1. Thirty (30) feet from any lot line;
2. Forty (40) feet measured from the centerline of all roads and public ways.

B. The Planning Board Plan Review Committee shall have the authority to modify or vary these dimensional requirements by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures in existence as of June 17, 1999, based on the standards established in Section 13.4-11A .

C. On Municipal lots, the Planning Board Plan Review Committee shall have the authority to modify or vary these dimensional requirements by Special Permit for new structures if it determines that the siting of the new structure is in harmony with the goals of this By-Law.

Change existing language in Sections 13.4-10 and 3.7-1 (Minimum Frontage) to 13.4-10(A.)and 3.7-1(A) and add Section 13.4-10(B.)and 3.7-1(B):

B. The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of this By-law by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures in existence as of May 10, 2011 situated on lots containing less than the minimum frontage required by Section 13.4-10(A.) and 3.7-1(A).

Amend Sections 13.11-1B and 2.4-2B (Coastal Areas) to read:

Except on municipal lots, there shall be no new boardwalks or parking lots.

Delete Section 13.14-1 Impact Fee Guidelines

Add New Section:

13.14-1 Zoning Determinations

A. To simplify the implementation of this By-Law and to speed up the approval process for projects that have no negative impact on the resources that these By-Laws seek to protect, the Planning Board Plan Review Committee may determine that certain small developments, or certain parts of larger projects, can be approved by issuing a Zoning Determination rather than requiring the applicant to apply for a Special Permit. There shall be no fee for a Zoning Determination. Issuance of a Zoning Determination shall be made after site review at a public meeting only if the Planning Board Plan Review Committee unanimously determines that the proposed project: 1.) has no negative impact on the resources the applicable By-Laws protect; 2.) is consistent with the goals and within the guidelines of this District of Critical Planning Concern; and 3) does not appear to be detrimental to the interests of abutters.

B. A Zoning Determination cannot be used to approve: a single-family residence; structures that will be visible in open and highly visible areas; or accessory structures or additions, including decks, with a footprint greater than 70 square feet. 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 open or highly visible; a small extension of a deck; or the addition of an outdoor shower. Zoning Determinations may also be used to determine whether a site is open and highly visible and to allow hand dug perc tests in the presence of a qualified archaeological observer instead of submission of a Project Notification Form to Mass Historic.

C. If the Planning Board Plan Review Committee determines that the small development or a 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 this District of Critical Planning Concern.

Add the following as Sections 10.1-4 E, and F and Sections 2.4-1 C, and D.

(10.1-4E and 2.4-1C) The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of sections 10.1-4B and 2.4-1B by Special Permit for the reconstruction or alteration of pre-existing, nonconforming structures in existence as of December 22, 1975, based on the standards established in Section 13.4-11A, however; pre-existing nonconforming municipal structures may also be extended.

(10.1-4F and 2.4-1D) On Municipal lots, the Planning Board Plan Review Committee shall have the authority to modify or vary the requirements of section 10.1-4B and 2.4-1B by Special Permit for new municipal structures and uses if it determines that the siting of the new structure is in harmony with the goals of this By-Law.

Add the following to Section 11.3-1:

G. The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of section 11.3-1F by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures in existence as of September 7, 1995, based on the standards established in Section 13.4-11A.

H. On Municipal lots, the Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of section 11.3-1F by Special Permit for new structures if it determines that the siting of the new structure is in harmony with the goals of this By-Law and with *Moshup Trail: Site Design Guidelines*.

Switch the language in Section 12.3(E)2 with the language in section 12.3(E)3, label the language in the new section 12.3(E)3 as 12.3(E)(3a) and add the following:

b. The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of section 12.3(E)(3a) by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures in existence as of May 4, 1989, based on the standards established in Section 13.4-11A

c. On Municipal lots, the Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of section 12.3(E)(3a) by Special Permit for new structures if it determines that the siting of the new structure is in harmony with the goals of this By-Law, provided however that the setback from the crest of bluffs or cliffs shall not in any case be less than 50' (fifty feet).

Amend **Section 3.5 Setbacks** to read:

A. Except as provided in Section 13.8 (Special and Historic Places, also in Section 2.4-3) of this By-Law, all structures shall be set back at least:

1. Thirty (30) feet from any lot line.
2. One hundred and fifty (150) feet from Moshup Trail,
3. Forty (40) feet measured from the centerline of all other roads and public ways.
4. One hundred and fifty (150) feet from the crest of bluffs or cliffs in the Gay Head Cliff Area DCPC.
5. One hundred (100) feet from wetlands, waterbodies, beaches, dunes or the crest of bluffs over 15 feet high in the Coastal District, except for fishing related marine commercial structures.

B. The Planning Board Plan Review Committee shall have the authority to modify or vary these dimensional requirements by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures based on the standards established in Section 13.4-11A (also in 3.4-2A), except in the Coastal District in which only municipal structures can be extended, provided, however, that in the Gay Head Cliff Area District the setback from the crest of bluffs or cliffs shall not in any case be less than 50' (fifty feet). Where Districts of Critical Planning Concern overlap, the earliest designation date (December 22, 1975 for the Coastal District, May 4, 1989 for the Gay Head Cliff Area District, September 7, 1995 for the Moshup Trail District, and June 17, 1999 for the Town of Aquinnah District) shall define the date of "pre-existing, nonconforming".

C. On Municipal lots, the Planning Board Plan Review Committee shall have the authority to modify or vary these dimensional requirements by Special Permit for new structures if it determines that the siting of the new structure is in harmony with the goals of the applicable By-Laws and in the Moshup Trail District the *Moshup Trail: Site Design Guidelines*, provided however that in the Gay Head Cliff Area District the setback from the crest of bluffs or cliffs shall not in any case be less than 50' (fifty feet).

Please be advised that the Martha's Vineyard Commission voted that several amendment proposals for "zoning determination" in place of a Special Permit **do not Conform** to its Goals and Guidelines for the Coastal District of Critical Planning Concern, the Moshup Trail District of Critical Planning Concern, and the Gay Head Cliff Area District of Critical Planning Concern, amendments to the regulations governing the Districts. The Commission did not find conformance because the Goals and Guidelines for those Districts specify a Special Permit requirement. Proposals, as follows, to NOT require a Special Permit, are NOT in conformance:

Add the following as Sections 10.1-4 G and Sections 2.4-1 E:

(10.1-4G and 2.4-1E) In the Coastal District, the Planning Board Plan Review Committee shall have the authority to make Zoning Determinations as provided for in Section 13.14-1. **(not in conformance)**

Add new section:

11.9 Zoning Determinations

In the Moshup Trail DCPC, the Planning Board Plan Review Committee shall have the authority to make Zoning Determinations as provided for in Section 13.14-1.

(not in conformance)

Add new section:

12.3F In the Gay Head Cliff Area DCPC, the Planning Board Plan Review Committee shall have the authority to make Zoning Determinations as provided for in Section 13.14-1 **(not in conformance)**

The Commission did not discuss and took no action on proposed amendments regarding regulations for the Island Road District of Critical Planning Concern; not noticed for hearing on March 22 .