
DUKES COUNTY REGIONAL HOUSING AUTHORITY
MEMORANDUM

TO: TOWN PLANNING BOARDS, ZBA & HOUSING COMMITTEES
FROM: PHILIPPE JORDI, EXECUTIVE DIRECTOR
SUBJECT: ZONING ANALYSIS FOR AFFORDABLE HOUSING
DATE: JUNE 2, 2004

The purpose of this analysis is to get an overview of the town's zoning regulations as they relate to affordable housing and suggest ways to increase the stock of affordable housing within the context of a planning process.

The review and revision of local zoning regulations is an important step, yet should be seen within a comprehensive planning process that can include:

- diagnostic study or needs assessment,
- community input/ involvement to identify goals,
- identification of concrete action recommendations for change in regulations to implement community's goals,
- revisions to local zoning regulations,
- budget plan and environmental assessment,
- revision and adoption.

As Joel Russell, an attorney practicing in land use law who has worked on the Vineyard, describes in an article entitled "The Need for New Models of Rural Zoning" the major challenge facing local rural communities are the land use regulations adopted over the past thirty-years that are often a recipe for suburbanization. As a result, more land gets bulldozed and more roads must be built for each house, people have more yard than they know what to do with, and land and house prices go through the roof. New England town centers that define the Vineyard's down-island towns and village centers that define the up-island towns, give our communities a center and a unique sense of place, yet they are often illegal under current zoning laws.

Zoning solutions can be crafted to include more flexibility, carefully sited low-density development, cluster development, construction of mixed-use traditional villages, and at the same time ensuring long-term affordable housing by:

- 1) significantly reducing (or eliminating) land and construction costs through the use or creation of small lots and apartments, and recycled houses, and
- 2) requiring permanent resale and rental restrictions that include a monitored agent for compliance.

Aquinnah Zoning By-Law (July 16, 1997)

Residential District (Article 2.20)

- 2 acre zoning unless provided for by compact siting in Section 6.30. *Compact siting is no longer located in Section 6.30 nor can it be found elsewhere in the by-law.*
- detached one-family dwelling
- accessory uses including renting of rooms up to eight persons.
- Two-family dwelling included in definitions but not within by-law.

Conclusions

- *Guesthouse apartments can be rented without year-round or affordable lease restrictions.*
- *No affordable housing consideration for developments of three or more lots over a five-year period.*

Recommendations:

- *To encourage the creation of affordable year-round housing make a policy statement within the purpose of the town's zoning by-law supporting affordable housing.*
- *To encourage recycling of homes for affordable housing, consider adoption of a Demolition Delay By-Law that provides the public and the DCRHA at least 30-days notification prior to issuance of a demolition permit.*
- *To increase the stock of year-round affordable rental housing, consider limiting accessory apartments and guesthouses to oversized parcels (1.5 times min. lot size) by right and allowing accessory apartments and guesthouse (300 – 800 sq.ft.) for perpetually deed restricted affordable rentals (80% of area median income rents) by special permit for standard or substandard size lots, along with bringing illegal apartments into compliance. To assure compliance with resale, rental, or transfer restrictions, assign a monitoring agent (town or DCRHA) and require for rentals annual affidavits listing rent charged and tenant income to be verified by the town or the DCRHA.*
- *To increase the stock of affordable homeownership, consider allowing income eligible town residents to build on existing substandard lots and created affordable lots with long-term affordability requirements, as provided for in the DCRHA Model Deed Rider. To assure compliance with resale, rental, or transfer restrictions, assign a monitoring agent (town or DCRHA).*
- *To increase stock of land available for affordable housing, consider requiring at least 20% of the lots for affordable housing for developments containing three or more lots developed over a five-year period.*
- *To increase the town's Ch. 40B inventory of affordable housing (only for properties whose buyers or renters are 80% or less of the area's median income), consider using the DHCD Local Initiative Program and using permanent deed restrictions to make sure all units created within the town are counted.*
- *To ensure that title researchers do not overlook recorded deed riders, require the applicant to grant a mortgage lien against the property for a certain value (i.e. land) that becomes due and payable upon an unpermitted sale or transferable to the subsequent buyer.*

Chilmark Zoning By-law (January 2000 w/ October 2002 amendments)

Homesite Housing (Article 6.9)

- Purpose is to enhance the availability of housing that is affordable to the entire range of Town residents, without encouraging excessive growth that detracts from the Town's quality of life.
- ZBA special permit allows Housing Committee qualified residents up to 150% of the area median income to construct individual primary residents on lots (at least 1 acre) that do not satisfy minimum lot size requirements (3 acres). Substandard lots can be created by:
 - Town owned land or land donated to the Town.
 - Substandard lots not protected as a non-conforming lot.
 - Planning Board approved subdivision of a larger lot (4 acre minimum) into a 1-acre (minimum) Homesite Housing Lot, with the remaining lot meeting the minimum size (3 acre) requirement.
- Long-term affordability deed restriction for the purpose of maintaining the property in a permanently affordable pool.
- Homesite Housing Lots created by the Town are awarded by lottery, Homesite Housing Lots created by a property owner shall only be limited to eligible purchasers, and Homesite Housing Lots may be sold or donated to non-profit organizations and awarded by lottery.
- Homesite Housing Lot costs are capped by the Housing Committee (\$40,000).

Youth Lot (Article 6.46.4):

- Planning Board special permit to build on substandard lots for town residents less than 30 year old that have been residents for 8 consecutive years.
- Must retain ownership of lot for at least 10 years.

Building Cap (Article 7.2) and Non-Conforming Building Cap (8.0):

- 20 priority points for any new primary residential unit to be built by the DCRHA or pursuant to the MVC Affordable Housing Action Plan

Room Rentals (Article 4-7):

- Renting rooms to more than three persons requires an annual license from the Board of Selectmen and approval from the Board of Health, Building Inspector, and Fire Department.

Guest Houses:

- Purpose is to provide accommodations for guests or tenants, with a right of occupancy to extend beyond one year.
- Minimum lot size requirements for guest houses are:
 - 3 acres for Agricultural-Residential District II-A or II-B, III, or VI with a 50 ft. set back from lot lines.
 - 1.5 acres for Agricultural-Residential District IV with a 25 ft. set back from lot lines.
 - 2 acres for Agricultural-Residential District V with a 35 ft. set back from lot lines.
- Maximum floor area limited to 800 sq. ft.
- Deed restrictions from subdividing of the lot.
- Owner must own the principal dwelling for 5 years before a guesthouse may be built.

Conclusions

- *Guesthouse apartments can be rented without year-round or affordable lease restrictions.*
- *Size of guesthouse (800 sq. ft. max) limits units to one or two bedrooms.*
- *No affordable housing consideration for developments of three or more lots over a five-year period.*

Recommendations:

- *To encourage the creation of affordable year-round housing make a policy statement within the purpose of the town's zoning by-law supporting affordable housing.*

- *To encourage recycling of homes for affordable housing, consider adoption of a Demolition Delay By-Law that provides the public and the DCRHA at least 30-days notification prior to issuance of a demolition permit.*
- *To increase the stock of year-round affordable rental housing, consider limiting accessory apartments and guesthouses to oversized parcels (1.5 times min. lot size) by right and allowing accessory apartments and guesthouse (300 – 800 sq.ft.) for perpetually deed restricted affordable rentals (80% of area median income rents) by special permit for standard or substandard size lots, along with bringing illegal apartments into compliance. To assure compliance with resale, rental, or transfer restrictions, assign a monitoring agent (town or DCRHA) and require for rentals annual affidavits listing rent charged and tenant income to be verified by the town or the DCRHA.*
- *To increase stock of land available for affordable housing, consider requiring at least 20% of the lots for affordable housing for developments containing three or more lots developed over a five-year period.*
- *To increase the town's Ch. 40B inventory of affordable housing (only for properties whose buyers or renters are 80% or less of the area's median income), consider using the DHCD Local Initiative Program and using permanent deed restrictions to make sure all units created within the town are counted.*
- *To ensure that title researchers do not overlook recorded deed riders, require the applicant to grant a mortgage lien against the property for a certain value (i.e. land) that becomes due and payable upon an unpermitted sale or transferable to the subsequent buyer.*

Edgartown Zoning By-Law (June 1, 2001 w/ 2002 amendments)

Demolition Delay By-Law (Article 14)

- DCRHA has 30-days from receipt of Building Inspector's notification to assess determine if buildings can be moved and reused and make arrangements with owner, as well as notify the Building Inspector.
- Timely arrangement to remove building is provided before building permit is issued.

Substandard Lots as Affordable Homesites (Article 11.20)

- ZBA special permit allowing year-round town residents (who have lived in Edgartown for a substantial time) the ability to build on smaller than required lot size, as long as:
- Residency and income requirements established by Resident Homesite Committee are met.
- Lot is a minimum of 10,000 sq. ft. and meets Board of Health septage requirements
- Section 11.6 requirements are met (*section wasn't found*).
- No specific resale, rental, and transfer deed restrictions required, but subject to Resident Homesite Committee regulations at the time of permit.

Staff Apartments (Article 11.21)

- Address significant shortage of affordable housing for employees working in Edgartown.
- Allowed in all districts by ZBA special permit.
- Attached or detached living units, single structure or multiple structures, each structure having no more than 8 living units in a structure and no more than 4,500 sq. ft., and in the case of conversion not increasing the size of the existing structure by more than 20%. (*Limiting ability to convert existing businesses to mixed-use second story apartments*).
- Owned and managed by an employer (public, private, or non-profit), in which employees of that employer are housed, with an on-site manager.
- Residency requirements must be assured by deed restriction. (*no affordable rental restrictions?*)
- File agreement to allow for inspections by Board of Health, Zoning Inspector, and Fire Department as needed.

Island Independent Living (Article 11.18):

- Attached or detached living units in which residents live year-round, either as tenants or owner occupants.
- Allowed in all districts by ZBA special permit
- Maintain appearance of single-family homes and clustered if multiple buildings.
- New structure shall have no more 4 living units and be larger than 3,800 sq. ft. and in the case of conversions not increase building by more than 10%. (*Limiting ability to convert existing businesses to mixed-use second story apartments*)
- Density increase allowed by discretion of ZBA and Board of Health (Title V restrictions apply).
- Limited to year-round residents for a period of at least 10 years with local preference.
- *No permits have been issued under Island Independent Living due to NIMBY and only a couple of permits under the Family Apartment exception below.*

Family Apartment Exception:

- One island independent living unit may be built as a "family apartment" in an existing single family dwelling or accessory structure in any zone without special permit, if:
 - No guesthouse on property.
 - Single-family house in existence for 5-years.
 - Apartment doesn't add to the footprint of existing building.
 - Limited to max. 600 sq. ft. (*Limiting units to one bedroom*).
 - Owner occupied
 - Cannot be rented or used as a rental unit.
 - Deed restricted residency and rental restrictions. (*How has the town monitored residency and rental restrictions?*)

Accessory Apartments (Article 11.19):

- One commercial rental accessory apartment per lot with ZBA special permit if: (*Does not limit rental to year-round or affordable rents*)
 - No guesthouse or accessory apartment already existing.
 - Owner occupied and both units can be rented at the same time.
 - Limited to max. of 900 sq. ft. nor occupy more than 33% of the gross floor area of the structure.
 - Density increase allowed by discretion of ZBA and Board of Health.
 - Bring pre-existing or illegal apartments into compliance.

Multi-Unit Dwellings (Article 11.15):

- Allowed in all residential zones by special permit from Planning Board and limited to a max. of 4 units in a single building and approved under the cluster development (5 acre minimum).

Cluster Developments (Article 12.0):

- Planning Board special permit required.
- Requires 5 acres or more.
- Density limited to 1.1 times the developable lot size divided by the min. lot area requirement for that district.
- Density increase for each multi-family unit counted as 50% of a dwelling unit for affordable housing with restrictive covenants.

Assisted Housing (Article 11.17):

- Provides a range of services to elder and disabled residents.
- Allowed in any district and no more than 3,800 sq. ft.
- Limited to year-round seniors and disabled persons, preference to Edgartown residents.

R-60 (1.5 acres) Residential District (Article 4.1) (west of Pennywise Path to Airport & parts of Katama and north of town center):

- Prohibited Uses:
 - “transient residential facilities” defined as hotels, motels, inns, or lodging house with a capacity of more than four guest beds.
- Permitted Uses:
 - Guesthouse not more than 900 sq. ft. on a 15,000 min. sized lot if pre-existing single family dwelling is at least five-years old. (*Leasing of guesthouse prohibited?*)
- Special Permit:
 - Conversion of an existing single family dwelling to a two family dwelling on a 15,000 sq. ft. min. sized lot if pre-existing single-family dwelling is at least five-years old.
 - Guest house more than 900 sq. ft. or if pre-existing single family dwelling is less than five-years old and meets permitted guest house regulations (see above).

R-20 (.5 acres) Residential District (Article 5.0) (from town center west to Meeting House Road and Pennywise Path out to Sengekontacket Pond):

- Prohibited Uses:
 - “transient residential facilities” defined as hotels, motels, inns, or lodging house with a capacity of more than four guest beds.
- Permitted Uses:
 - Guesthouse not more than 900 sq. ft. on a 15,000 min. sized lot if pre-existing single family dwelling is at least five-years old.
 - Leasing of rooms with not more than four boarders by a family residing on the premises.
- Special Permit:
 - Construction of a two-dwelling unit or conversion of an existing single family structure on a 15,000 sq. ft. min. sized lot, as long as R-5 multi-family requirements are met (see below)
 - Guest house more than 900 sq. ft. or if pre-existing single family dwelling is less than five-years old and meet permitted guest house regulations (see above).

- Taking of boarder or the leasing of rooms by a family residing on the premises. (*How does this differ from what is permitted by right?*)

R-5 (10,000 sq. ft.) Residential District (Article 6.0) (town center):

- Permitted Uses:
 - Two family dwelling per 15,000 sq. ft. lot
 - Guesthouse not more than 900 sq. ft. on a 15,000 min. sized lot if pre-existing single family dwelling is at least five-years old. (*Leasing of guesthouse prohibited?*)
- Special Permit:
 - Conversion of residential structure to a transient residential facility
 - Conversion of existing one or two family residential structure to a maximum three dwelling unit structure with a 15,000 min. lot size, 1 ½ off-street parking per unit and min. 400 sq. ft. of livable floor area.
 - Guest house more than 900 sq. ft. or if pre-existing single family dwelling is less than five-years old and meet permitted guest house regulations (see above).
 - Taking of boarder or the leasing of rooms by a family residing on the premises. (*Leasing of a guesthouse without a Special Permit is not allowed?*)

B-1 Business District (Article 9.0) (Main Street):

- Purpose: “provide a mixture of residential and business uses...”
- Moratorium:
 - Addition to an existing building not to exceed 150 sq. ft.
- Permitted Uses:
 - Any principal or accessory uses in R-5, including:
 - Two family dwelling per 15,000 sq. ft. lot
 - Guesthouse not more than 900 sq. ft. on a 15,000 sq. ft. min. sized lot if pre-existing single-family dwelling is at least five-years old.

B-2 Business District (Article 10.0) (Upper Main Street):

- Purpose: “provide a mix of residential and non-residential uses...”
- Permitted Uses:
 - Any principal or accessory uses in R-5, including:
 - Two family dwelling per 15,000 sq. ft. lot.
 - Guesthouse not more than 900 sq. ft. on a 15,000 min. sized lot if pre-existing single family dwelling is at least five-years old.
- Special Permit:
 - Transient residential facilities. *Allows 4 or more beds.*
 - Use that would add parking or add more than 10% of the gross floor area.

B-3 Business District (Article 10.A) (Airport):

- Special Permit:
 - Dormitory Housing limited to 100 beds per building, resident manager, one parking space per 4 beds, maximum 8 months occupancy, and island employment requirement.

Conclusions

- *Guesthouses and accessory apartments are rented without any year-round or affordable lease restrictions, except those permitted as a Family Apartment Exception under Island Independent Living or Assisted Living that can't be rented.*
- *Size of guesthouse (600-900 sq. ft. max.) and accessory apartments limit units to one or two bedrooms.*
- *Mix-use opportunities on the Upper Main Street business district are severely limited due moratorium restricting conversion to 150 sq. ft. and limitation to of permitted principal or accessory use to R-5.*
- *No affordable housing consideration for developments of three or more lots over a five-year period.*

Recommendations:

- *To encourage the creation of affordable year-round housing make a policy statement within the purpose of the town's zoning by-law supporting affordable housing.*
- *To increase the stock of affordable housing, consider excluding affordable housing from the building cap.*
- *To encourage mixed-use within existing business districts, consider decreasing lot size requirements for business district second-story apartments, permitting apartments by right, not counting apartments toward the maximum floor area for the structure, providing density bonus (1,000 sq. ft. for every one or two-bedroom) toward the maximum permitted floor area for the ground floor non-residential use, reducing parking requirements, and allowing business district sewer systems for areas not covered by the town's system.*
- *To increase the stock of year-round affordable rental housing, consider limiting accessory apartments and guesthouses to oversized parcels (1.5 times min. lot size) by right and allowing accessory apartments and guesthouse (300 – 800 sq.ft.) for perpetually deed restricted affordable rentals (80% of area median income rents) by special permit for standard or substandard size lots, along with bringing illegal apartments into compliance. To assure compliance with resale, rental, or transfer restrictions, assign a monitoring agent (town or DCRHA) and require annual affidavit listing rent charged and tenant income to be verified by the town or the DCRHA.*
- *To assure permanent affordability of Affordable Homesites under Article 11.20, consider deeded resale, rental, or transfer restrictions and assign a monitoring agent (town or DCRHA).*
- *To assure affordable rentals of Staff Housing under Article 11.21, consider assigning a monitoring agent (town or DCRHA) and require annual affidavit listing rent charged and tenant income to be verified by the town or the DCRHA.*
- *To increase stock of land available for affordable housing, consider requiring at least 20% of the lots for affordable housing for developments containing three or more lots developed over a five-year period.*
- *To increase the town's Ch. 40B inventory of affordable housing (only for properties whose buyers or renters are 80% or less of the area's median income), consider using the DHCD Local Initiative Program and using permanent deed restrictions to make sure all units created within the town are counted.*
- *To ensure that title researchers do not overlook recorded deed riders, require the applicant to grant a mortgage lien against the property for a certain value (i.e. land) that becomes due and payable upon an unpermitted sale or transferable to the subsequent buyer.*

Oak Bluffs Zoning By-Law (April 8, 2003)

Accessory and Guest Apartments (Article 3.4)

- Conversion or construction of an addition to a home or conversion or construction of an accessory building to provide for a guest apartment allowed by right within R-1, R-2, and R-3 residential districts, with the following conditions:
 - House must be owner occupied for five years and must continue to be owner occupied. An affidavit provided by property owner. *Is the affidavit provided annually to Planning Board or when leasing-up?*
 - One-off street parking for each dwelling unit.
 - Maximum floor area of guest apartment is limited to 750 sq. ft.
 - Lot must contain at least 7,500 sq. ft. of unpaved open space.
 - Seasonal or year-round tenant may occupy guest apartment.
- *Two family uses as outlined in Use Regulations Table of the latest Zoning By-law doesn't appear in the body of the Zoning By-law?*

Affordable Housing (Article 4.3)

- Planning Board special permit required for construction of an affordable dwelling unit on a lot not less than five thousand sq. ft. in all districts, subject to the following conditions:
 - Priced affordable to household or person at 80% or less of the median income using DHCD guidelines. *Is price based on mortgage formula?*
 - Not less than 30 yr. deed restriction for households making 80% or less of the area median income. *Is price based on mortgage formula?*
 - Deed restriction terms approved by Planning Board's legal counsel. *Who's the monitoring agent enforcing the deed restrictions (town, DCRHA)?*
 - Lot served by municipal water.
 - Meet front setback requirements.
 - *Any rental restrictions?*

Duplex Conversion (Article 7.1)

- ZBA special permit required for conversion of a single-family house existing at the time of the by-law to accommodate two or more families, within the R1, R-2, R-3, R-4 resident districts, with the following conditions:
 - Sanitary sewerage approved by the Board of Health.
 - Lot must contain at least 8,000 sq. ft. of usable unpaved open space.
 - One off street parking for each family unit.

B-1 Business District Apartment Conversion (Article 7.2) (Dukes County Ave, Circuit Ave & Circuit Ave Extension, Kennebec Ave, parts of Oak Bluffs Ave, and Lake Ave) allowed by right, with the following conditions:

- Conversion of existing one and two story buildings to apartment units:
 - Maximum of two apartments units for up to the first 5,000 sq. ft. of lot area, and one additional apartment for each additional 1,000 sq. ft. of lot area.
 - Apartments comply with the Board of Health
- Conversion of existing three story buildings to apartments units:
 - Maximum of three apartments units for up to the first 5,000 sq. ft. of lot area, and one additional apartment for each additional 1,000 sq. ft. of lot area.
 - Each apartment unit has one off street parking area
 - Apartments comply with the Board of Health
- ZBA special permit for conversion and expansion of existing buildings to apartments with the same conditions as conversion of three story buildings.
- *Rooming, Boarding and Guest House provisions under Article 5.1 and 5.2 in the Zoning By-law dated June 22, 2000 don't appear in the latest Zoning By-law?*

Open Space Community (Article 7.3)

- Purpose – Planning Board special permit to allow flexibility in the use of land, to provide variety and choice in residential development, and to meet housing needs.
- Land area must include at least 10 acres.
- Number of family units allowed is same as normal minimum lot area requirement for that district for the “applicable land area” or developable land, with a 25% density bonus for state or federally subsidized family units.
- Multi-family units that contain no more than 24 units per building are allowable.

Conclusions:

- *Guesthouses and apartments can be rented without any year-round or affordable lease restrictions.*
- *Size of guest apartments (750 sq. ft. max.) and accessory apartments limit units to one or two bedrooms.*
- *No affordable housing consideration for developments of three or more lots over a five-year period other than a density bonus under the Open Space Community.*

Recommendations:

- *To encourage the creation of affordable year-round housing make a policy statement within the purpose of the town’s zoning by-law supporting affordable housing.*
- *To encourage recycling of homes for affordable housing, consider adoption of a Demolition Delay By-Law that provides the public and the DCRHA at least 30-days notification prior to issuance of a demolition permit.*
- *To increase the stock of year-round affordable rental housing, consider limiting accessory apartments and guesthouses to oversized parcels (1.5 times min. lot size) by right and allowing accessory apartments and guesthouse (300 – 800 sq.ft.) for perpetually deed restricted affordable rentals (80% of area median income rents) by special permit for standard or substandard size lots, along with bringing illegal apartments into compliance. Also limit rental of affordable housing created under Article 4.3 to income eligible tenants. To assure compliance with resale, rental, or transfer restrictions, assign a monitoring agent (town or DCRHA) and require annual affidavits listing rent charged and tenant income to be verified by the town or the DCRHA.*
- *To assure compliance with resale, rental, or transfer restrictions, assign a monitoring agent (town or DCRHA) under the affordable housing by-law provision (Article 4.3).*
- *To increase stock of land available for affordable housing, consider requiring at least 20% of the lots for affordable housing for developments containing three or more lots developed over a five-year period.*
- *To increase the town’s Ch. 40B inventory of affordable housing (only for properties whose buyers or renters are 80% or less of the area’s median income), consider using the DHCD Local Initiative Program and using permanent deed restrictions to make sure all units created within the town are counted.*

Tisbury Zoning By-Law (April 11, 2001)

Purpose (Article 1.01):

- “to encourage housing for persons of all income levels”

Residential Districts (Article 4.0):

- Renting of rooms to more than 3 persons requires Special Permit (MGL Ch. 140, Sec. 22) and Board of Selectmen’s license (Article 4.03)
- Detached Guest House (Article 4.03.08) – allows commercial rentals.
 - ZBA special permit required.
 - Lot area exceeds by 25% for R-10, R-20, R-25, and R-50.
 - Schedule A requirements, including setbacks.
 - No larger than ½ of principal structure, max. 600 sq. ft. for R-10 and 800 sq. ft. for R-20, R25, and R-50. (*Why the need to link size of principal structure to size of guesthouse?*)
 - No closer than 10 ft. in R-10 and 20 ft. in other districts from principal structure.
 - Guesthouse or principal unit occupied by principal owner or immediate family.
 - No more than one accessory unit per lot.
 - One parking space per unit
- Multiple Dwelling Units (Article 4.03.12) – 2 or 3 dwelling units and/or dwelling structures per lot by new construction or modification.
 - ZBA special permit required under Article 4.03.12 and Planning Board Special Permit under 4.04.02.
 - Schedule A requirements, including min. lot size multiplied by the number of dwelling units (except for Cluster Developments).
 - Two septic systems per lot, no more than 2 units per septic system.
 - Minimum of one (*or two under the Article 7.07.04 Parking Regulations*) parking space per unit.
 - Affordable housing considerations as conforming to public policy for ZBA and master plan for Planning Board.
- Accessory Apartments (Article 4.03.13) – contained within or added to a single-family dwelling that allows commercial rentals.
 - ZBA special permit required.
 - No more than one accessory unit, including guesthouses.
 - Not increase the habitable area of the original structure by more than 20%. (*ZBA allows up to 30% currently, recommends change to 40% for modest sized apartments - 400-800 sq.ft.*)
 - Accessory apartment or principal unit occupied by principal owner (town resident).
 - Neither accessory apartment or principal unit shall be rented seasonally (owner’s unit shall be rented for period not exceeding two years).
 - One parking space per unit.
 - Violations of Bylaw are fined up to \$300 per day. (*Process for annual compliance is not in place and therefore enforcement is not carried-out.*)
- Cluster Developments (Article 8.01) – multi-family dwellings units with more than 3 units and/or more than 2 dwellings, except for affordable housing units where there can be no more than 8 units and/or 4 dwellings. (*Density bonus for affordable housing*)
 - Planning Board permit required.
 - Package septic treatment system allowable.

Business Districts (Article 5.00)

- Business District 1 (Main Street) – Apartments (Article 5.12.01)
 - ZBA special permit required.
 - Only on second floor with one window per bedroom, two separate exits.
 - Hazardous material and commercial inventories of foodstuffs not kept on floor level used for habitation purposes.
- Business District 2 (State Road) – Multiple Dwelling Units (Article 5.20.02)
 - ZBA permit required.

- More than 3 units and/ or 2 dwelling up to a max. of 8 units and 4 dwellings for affordable housing.
- Multiple dwelling unit requirements are met (see above)
- Lot size equal to 10,000 sq. ft. times the number of units, with min. of 20,000 sq. ft. (*Limits amount of apartment based on lot size. Need almost 2 acres to achieve max.8 affordable housing units per lot*)
- Waterfront/ Commercial District (Beach Road) (Article 6.00)
 - Mixed use permitted in Waterfront & Commercial Management Area. (*Mixed-use definition limits apartments to one dwelling on any other floor per parcel*).

Rate of Development (4.97.02)– exemptions from Planning Board with special permit for affordable housing.

Conclusions:

- *Guesthouses can be rented with no year-round or affordable lease restrictions. Accessory Apartments are restricted to year-round rentals by ZBA special permit, yet a annual monitoring process is not in place.*
- *Accessory apartments size limited to 20% of the principal residence, although ZBA currently allows 30% and has proposed amendments to 40% to permit modest sized apartments (400 – 800 sq. ft.).*
- *Second-story apartment along State Road business district are limited due to lot size (10,000 sq. ft. per unit) requirements for apartments.*
- *Waterfront/ Commercial District limits second story apartments to one dwelling per floor, less than other Business Districts.*
- *No affordable housing consideration for developments of three or more lots over a five-year period.*

Recommendations:

- *To encourage recycling of homes for affordable housing, consider adoption of a Demolition Delay By-Law that provides the public and the DCRHA at least 30-days notification prior to issuance of a demolition permit.*
- *To encourage mixed-use within existing business and waterfront districts, consider decreasing lot size requirements for business district second-story apartments, permitting apartments by right, not counting apartments toward the maximum floor area for the structure, providing density bonus (1,000 sq. ft. for every one or two-bedroom) toward the maximum permitted floor area for the ground floor non-residential use, reducing parking requirements, and allowing business district sewer systems for areas not covered by the town's system.*
- *To increase the stock of year-round affordable rental housing, consider limiting accessory apartments and guesthouses to oversized parcels (1.5 times min. lot size) by right and allowing accessory apartments and guesthouse (300 – 800 sq.ft.) for perpetually deed restricted affordable rentals (80% of area median income rents) by special permit for standard or substandard size lots, along with bringing illegal apartments into compliance. To assure compliance with resale, rental, or transfer restrictions, assign a monitoring agent (town or DCRHA) and require annual affidavits listing rent charged and tenant income to be verified by the town or the DCRHA.*
- *To increase the stock of affordable homeownership, consider allowing income eligible town residents to build on existing substandard lots and created affordable lots with long-term affordability requirements, as provided for in the DCRHA Model Deed Rider. To assure compliance with resale, rental, or transfer restrictions, assign a monitoring agent (town or DCRHA).*
- *To assure compliance with existing year-round rental housing provision in Article 4.03.13, require annual certification of leases by the town or the DCRHA.*
- *To increase stock of land available for affordable housing, consider requiring at least 20% of the lots for affordable housing for developments containing three or more lots developed over a five-year period.*
- *To increase the town's Ch. 40B inventory of affordable housing (only for properties whose buyers or renters are 80% or less of the area's median income), consider using the DHCD Local Initiative Program and using permanent deed restrictions to ensure all units created within the town are counted.*
- *To ensure that title researchers do not overlook recorded deed riders, require the applicant to grant a mortgage lien against the property for a certain value (i.e. land) that becomes due and payable upon an unpermitted sale or transferable to the subsequent buyer.*

West Tisbury Zoning By-Law (May 24, 2000 w/ November 15, 2000 amendments)

Goal (Article 1.1): Provide a supply of year-round housing that is affordable to residents of West Tisbury.

Definitions (Article 14.1):

- Affordable Housing - Housing units priced at a level determined by the West Tisbury Affordable Housing Committee to be appropriate for rental or purchase exclusively by persons who will be making such housing their primary residence and whose annual household is less than 80% of the Dukes County median income, based on income eligibility standards established by the DCRHA.
- Year-Round Housing – Housing units priced at a level determined by the West Tisbury Affordable Housing Committee to be appropriate for rental or purchase exclusively by persons who will make such housing their primary residence and whose annual household income is less than 140% of the Dukes County median income.
- *What does “affordable year-round housing” as referred to in Article 4.4-3 and 4.5 mean – 80% or 140%*

Demolition Delay for Residential Buildings (10.1-2):

- Zoning Inspector determines if building can be moved and reused and notifies applicant within 14 days.
- Applicant places a public notice in a local newspaper and provides 20 days from publication of notice for responses.
- Zoning Inspector provides another 30 days before issuing a demolition permit to interested parties.

Affordable Accessory Apartments (Article 4.4-3):

- Provide affordable year-round rental housing.
- ZBA special permit for any sized lot (and by right for lots created before effective date of by-law May 24, 2000 or a lots created after effective date of by-law greater than 1.5 times minimum lot size for the district).
- Minimum lot size of 10,000 sq. ft. per bedroom.
- Attached apartment maximum floor area of 800 sq. ft. and minimum 300 sq. ft. and detached apartments maximum floor area of 500 sq. ft. and minimum 300 sq. ft.
- Owner occupied either principal or accessory unit.
- Occupancy restriction apply (resident or employed in West Tisbury). *(No mention of permanent deed restrictions for resale or rentals as found in Article 4.5 for substandard and affordable lots).*

Affordable or Year-Round Housing Requirement (Article 4.4-6)

- Any development containing 3 or more lots developed over any 5-year period, at least 20% of the lots shall qualify as “affordable” or “year-round.”
- Lots created for the use of family members are exempt.

Second-story Apartments in Business District (Article 4.4-2):

- Permitted by right and not counted toward the maximum floor area for the structure.
- For every one or two-bedroom apartment created, the maximum permitted floor area for the ground floor non-residential use increases by 1,000 sq. ft.
- Maximum floor area of apartments is limited to 600 sq. ft. for a one-bedroom and 800 sq. ft. for a two-bedroom.
- Occupancy restrictions apply (resident or employed in West Tisbury).

Substandard and “Affordable” Lots (Article 4.5)

- ZBA special permit for lots as of the effective date of the by-law that do not satisfy minimum lot size requirements.
- Minimum lot size of 10,000 sq. ft. per bedroom.
- Permanent deed restriction on purchase, rental, or transfer to persons qualified to own affordable or year-round housing at a price level established by the Affordable Housing Committee *(Which definition should be used, affordable housing or year-round housing?)*

Open Space Development (Article 5.0)

- Foster compact development patterns using flexible regulations and density and lot dimension, and to promote affordable housing for year-round residents.
- 50% density bonus for 20% affordable housing or year-round housing.
- Include single-family, two-family, or multi-family residences.
- 60% open space preservation with permanently deeded easement.

Rental of Rooms (Article 8.5-7)

- Renting of four or more rooms conditioned upon approval of water, sewerage, and other matters under its jurisdiction, screening of parking.

Rate of Development (7.0):

- Waived for developments serving the needs of low and moderate-income year-round residents. *Low and moderate income is not defined.*

Employee Dormitories (Article 4.4-5):

- Single and two-family dwellings and mixed-use building can be used for up to 8 seasonal residents who meet occupancy requirements that is owner occupied or resident managed.

Conclusions

- *Guesthouses and accessory apartments can be rented without year-round affordable lease restrictions on lots that meet minimum lot size in existence on the effective date of the by-law (May 24, 2000) or lots less than 1.5 times the minimum lot size created after the effective date of the by-law.*
- *Size of guesthouse (300-800 sq. ft. max.) and accessory apartments limit units to one or two bedrooms.*
- *Unclear what the income eligibility for affordable year-round housing is 80% or 140% of the area's median income?*
- *No mention of permanent affordable housing deed restrictions on the sale, rent, or transfer of accessory apartments created under Article 4.4-3.*

Recommendations:

- *In order to increase the stock of permanently affordable rental housing, consider amending Article 4.4-3 to set rents levels according to the affordable housing definition (80% or less of the area's median income) and subject to permanent deed restrictions for the sale, rent, or transfer as established in Article 4.5-1.*
- *In order to increase the opportunity of recycling homes, consider amending the Demolition Delay By-Law to provide 30-day notification to the DCRHA prior to issuance of a demolition permit.*
- *In order to assure compliance with resale, rental, or transfer restriction, assign a monitoring agent (town or DCRHA) and require for rental properties annual affidavits listing rent charged and tenant income to be verified by the town or the DCRHA.*
- *To increase the town's Ch. 40B inventory of affordable housing (only for properties whose buyers or renters are 80% or less of the area's median income), consider using the DHCD Local Initiative Program and using permanent deed restrictions to make sure all units created within the town are counted.*
- *To ensure that title researchers don't overlook recorded deed riders under Article 4.5-1 or ZBA permit conditions under Article 4.4-3, require the applicant to grant a mortgage lien against the property for a certain value (i.e. land) that becomes due and payable upon an unpermitted sale or transferable to the subsequent buyer.*