

Affordable and Community Housing Zoning Analysis on Martha's Vineyard

Martha's Vineyard Commission
December 2014

Table of Contents

Executive Summary

A. Overview of Residential Zoning on Martha's Vineyard

B. Analysis of Affordable Housing Provisions

Note that this report is accompanied by two appendices.

Appendix 1 – Matrix of Town Residential Zoning Provisions –released along with the main report

Appendix 2 – Sample Regulations – to be released in 2015

Funded in part with a District Local Technical Assistance Grant from the Massachusetts Department of Housing and Community Development

This study was carried out by Ed O'Connell, intern for the MVC, in collaboration with Christine Flynn, MVC Economic Development and Affordable Housing Planner.

Executive Summary

Affordable and Community Housing Zoning Analysis on Martha's Vineyard is a resource document that identifies zoning practices that are or could be used on Martha's Vineyard to promote, create, and preserve housing that responds to the needs of the population that are not adequately met by market rate housing.

Zoning is a powerful tool for not only directing growth but also for integrating public benefits such as affordable housing. The 2009 Martha's Vineyard Island Plan and the 2013 Martha's Vineyard Housing Needs Assessment (MVHNA) identified zoning as a key to the creation of more affordable and community housing, as well as other housing that meet the needs of the population that are not presently served by market rate housing.

The *Affordable and Community Housing Zoning Analysis on Martha's Vineyard* was prepared by the Martha's Vineyard Commission. The purpose is to assist town boards, local decision makers, civic and community/business leaders, and residents to re-examine zoning with an eye to producing a diverse range of housing types.

The housing needs that are not well served by market housing include the following.

- Affordable Housing: permanently deed-restricted, year-round housing affordable to individuals and families earning up to 80% of Area Median Income (AMI, as determined annually by HUD and defined by state and federal guidelines).
- Community Housing: permanently deed-restricted, year-round housing affordable up to 150% AMI (as defined in the 2009 Island Plan).
- Workforce Housing: Year-round or seasonal housing used by working people.
- Housing for Seniors and Those Needing Assisted Living: This includes a range of level of assistance for the elderly as well as for people with disabilities.
- Homeless: Island residents without housing, including those without housing in the summertime. (definition to be clarified)

Well-conceived zoning practices can not only help create a more diverse housing stock, but it can help create jobs, promote economic development, and enhance town tax revenues, while protecting the Island's character and environment. Many of these measures provide for additional density to allow for additional units such as multi-family dwellings, mixed use buildings, accessory units, and apartment buildings. This can reduce land costs, take advantage of economies of scale, and reduce or possibly eliminate the need for public subsidy in the production of needed housing.

For the last fifteen years, as documented in the Housing Needs Assessment, much has been accomplished by the six towns and Island non-profits to respond to the affordable

housing needs of the Island community. However, we continue to fall behind as pressure on the availability of non-market-rate housing continues to grow, due to changes in demographics, service needs, a shrinking middle class, and the continued high cost of real estate.

Much more work is needed to adequately address the present and future affordable housing needs of the Island particularly the 65 plus aging demographic. The MVHNA established several goals for the Island. One goal is to develop 50 affordable housing units each year with 80% of the 50 units be dedicated to rental housing while 20% of the 50 units be dedicated to homeownership opportunities. Further, 20% of the 50 units should be set aside for senior or elderly housing. The key to accomplishing this annual goal of creating 50 units of affordable housing Island-wide is zoning.

Organization of the Report

- Section A presents a table outlining each of the Island towns' residential zoning provisions that directly relates to housing production, both affordable and otherwise.
- Section B looks at 28 zoning measures related to affordable housing that are or could be used on Martha's Vineyard. For each provision, there is a description, the current status of the provision on the Island, and a brief assessment of the actual or potential impact of the provision on the creation of affordable housing.
- Appendix 1 is a matrix detailing each of the residential zoning provisions in effect on Martha's Vineyard, town by town, with specific reference to the by-law sections - This information is summarized in Section A.

Recommendations

The following are key recommendations for Towns to consider:

- **Town Purpose Clause:** Towns could consider ensuring that Affordable Housing is included in each Island town zoning by-law's purpose clause, as a clear statement of public policy in favor of the creation of affordable housing and as an affirmation of the opportunities that zoning presents for the creation of affordable housing.
- **Definition:** It would be desirable to include definitions of "affordable housing" and "community housing" in the definitions section of each town zoning by-law to ensure that there is clear consensus as to what these terms mean.
- **New Use Categories and Fast Track Permitting:** Towns could amend their zoning by-laws to create a new use category for such housing and, also, create a separate permitting fast-track to expedite development. Some consideration may need to include streamlining permitting at both the local and regional levels for

developments that trigger regulatory review by the Martha's Vineyard Commission's Development of Regional Impact (DRI) Checklist.

- **Universal Deed Rider/Ground Lease:** As a matter of public policy, towns could develop and adopt permanent restrictions through the state's universal deed rider or Island Housing Trust's ground lease. Monitoring and enforcement could be implemented through one common application as well as create internal mechanisms to ensure consistency with fair housing practices, annual income qualifications, access to mortgage financing, property monitoring as well as maintaining one regional or central housing inventory data base.
- **Increase Density with Multi-Unit Dwellings:** Existing restrictions on the creation of and/or conversion to *Two-Family Dwellings* and *Multi-Unit Dwellings* could be eased – perhaps via special permit where currently prohibited. Increasing density to increase year-round rentals or condominium homeownership options via apartment buildings or town houses could be an option. Allowing multi-family housing could be an incentive for private developers to develop duplex or multi-family units with little to no cost to the towns. Overall, towns and developers could view this as a great economic development opportunity that generates tax revenue for the towns, creates jobs while also creating housing opportunities for the Island's year-round and seasonal workforce in addition to the Island's aging population such as independent retirees.
- **Provisions for Subordinate Dwellings:** It would be desirable to make provision for affordable housing opportunities via as-of-right or specially-permitted *Guest Houses/Subordinate Dwellings/Accessory Dwellings* and *Accessory Apartments such as the Town of West Tisbury's Accessory Unit By-law for Affordable Housing*.
- **Mixed-Use Buildings:** *Upper Floor Apartments in Mixed-Use Buildings* could be identified by each of the towns, particularly down-island, as a specially-permitted – if not as-of-right – use for affordable housing rental units in downtowns and other designated areas, perhaps through the use of an overlay district.
- **Map Priority Sites:** The Planning Boards in partnership with the Affordable Housing Committee in each of the Island towns could map *Priority Development Sites for Affordable Housing* and, thereafter, consider the *Pre-Permitting of Selected Sites* within the designated area.
- **40B Design and Development Standards:** Towns may wish to consider the adoption of *40B Design and Development Standards* to provide developers with clear parameters for the development of such projects, thereby lessening contention on many issues and, combined with the designation of *Priority Development Sites for Affordable Housing*, will help plan desired types of growth

in desired areas of town, rather than the current situation of waiting for developers to come in with development plans on a case by case basis.

- **Subdivision Provisions:** Towns could consider a *Subdivision for Affordable Housing* provision by which towns would permit subdivisions of existing lots to create undersized lots on which permanently-restricted affordable housing would be created, subject to compliance with existing (or perhaps slightly modified) dimensional requirements.
- **Rate of Development Provisions:** Towns with *Rate of Development Limitations* could automatically exempt affordable housing units, subject to design guidelines administered by the local building department or, if necessary, subject to Planning Board site plan review.
- **Demolition Delay Provisions:** Those towns without *Demolition Delay* by-law provisions could adopt them, allowing sufficient time and notice to interested parties to maximize the possibility of the structure's reuse and provided that the cost of the move is covered by the owner. All such provisions could provide for notification to the Dukes County Regional Housing Authority as well as any other affordable housing entity (e.g. *Habitat for Humanity, Island Housing Trust*, etc.) that makes itself known to the town Building Inspector as desirous of receiving such notices.
- **Revisit Impact/Linkage Fees:** Each of the Island towns could revisit the issue of *Impact/Linkage Fees* and work with town counsel to draft and adopt fees that meet legal muster and generate funding for affordable housing.
- **Density Bonuses:** West Tisbury's zoning provisions that provide density bonuses for affordable housing could serve as a model for each of the other towns.

Next Steps

The Island-based affordable housing advocates, under the umbrella of the Joint Affordable Housing Group and Healthy Aging Housing Work Group, can help facilitate on-going meetings with the town planning boards and affordable housing committees to discuss the use of zoning to promote affordable housing, as discussed in this report and the MVHNA. Town boards and affordable housing advocates will also need to consider the political realities associated with amending local zoning as well as the need and costs for adequate infrastructure for wastewater, water, schools, transportation, and other town services particularly for an aging population.

Zoning changes offer the possibility of adding significantly to the Island's pool of affordable and community housing with little or no public subsidy. It would be useful that affordable housing advocates focus on using zoning to create more affordable housing

opportunities on Martha's Vineyard. With a collaborative approach to the intersection of zoning and affordable housing, towns can transform zoning from a hurdle to a vehicle by which towns may facilitate the creation of more, and more desirable, affordable and community housing.

A. Overview of Residential Zoning on Martha's Vineyard

	Aquinnah	Chilmark	Edgar-town	Oak Bluffs	Tisbury	West Tisbury
1. Affordable Housing in By-Law Purpose Clause						
2. Affordable Housing Defined						
3. Room Rental/Boarders						
4. Time Share/Time Interval Ownership						
5. Guest House/Subordinate Dwelling/Accessory Dwelling						
6. Density Limitation/Minimum Lot Size						
7. Density Bonus for Affordable Housing						
8. Transient Residential Facilities						
9. Compact Siting/Flexible Siting/Cluster Development/Planned Development District						
10. Resident Homesite Lots/Youth Lots						
11. Remainder Lots						
12. Subdivision for Affordable Housing						
13. Rental Housing Limitation - Exception for Affordable Housing						
14. Two-Family Dwellings - Creation and Conversion						
15. Multi-Unit Dwellings - Creation and Conversion						

	Aquinnah	Chilmark	Edgar- town	Oak Bluffs	Tisbury	West Tisbury
16. Demolition Delay						
17. Rate of Development Limit						
18. Impact/Linkage Fees						
19. Dormitory Housing						
20. Assisted Housing/Island Independent Living/Family Apartment						
21. Staff Apartment						
22. Upper-floor Apartments in Mixed-Use Buildings						
23. Inclusionary Zoning for Affordable Housing						
24. Priority Development Sites for Affordable Housing						
25. Pre-Permitting of Selected Sites for Affordable Housing						
26. Streamlined Permitting for Affordable Housing						
27. 40B Design and Development Standards						
28. Amnesty Program for Illegal Apartments						



Provision in Place



*Some form of
provision in place*

B. Analysis of Residential Zoning Provisions

1. Affordable Housing in By-law Purpose Clause

Description: Throughout Massachusetts, zoning ordinances and by-laws open with a statement of purpose, explaining the aims of the particular municipality to be achieved through zoning. In many Massachusetts cities and towns, these policy statements include reference to the municipality's commitment to the creation of affordable housing. Ideally, this statement of purpose is a reflection of a municipality's comprehensive planning – planning that is reflected not only in the zoning by-law's statement of purpose but also in the various provisions contained in the by-law with regard to the development of housing, generally, and affordable housing in particular. Just as the inclusion of affordable housing in the purpose clause is a reflection of the municipality's commitment to that particular public policy, the absence of such a reference leads one to draw the opposite conclusion.

Current Status: The towns of Tisbury and West Tisbury include affordable housing in their zoning statements of purpose. The Town of Chilmark has a detailed public policy statement in favor of affordable housing within the text of its by-law. The other three Island towns make no reference to affordable housing in their zoning purpose clauses.

Affordable Housing Impact: Including a reference to affordable housing in a town's zoning by-law is a strong statement of the town's commitment to affordable housing development and recognition of the role of zoning in facilitating the development of affordable housing. The inclusion of an Affordable Housing Purpose Clause reinforces a town commitment to facilitating the creation of affordable housing. More significantly, it gives a measure of support to planning boards and zoning boards sitting in review of affordable housing projects for a decision to waive certain zoning requirements or to grant a special permit in the face of opposition.

2. Affordable Housing Defined in By-Law

Description: Where a zoning by-law clearly defines just what is meant by affordable housing, planning and zoning boards are provided with important guidance in assessing the merits of affordable housing developments under their review. Likewise, such a definition may guide an applicant in designing a project and planning the financing of affordable housing. Further, such a definition can reflect the aims of a town in terms of just what types of affordable housing developments are desirable in the town and, with the inclusion of income guidelines and other restrictions, a town may target certain income levels and establish the parameters by which such developments will remain affordable.

Current Status: Only Chilmark and West Tisbury define affordable housing in their zoning by-laws. In Oak Bluffs, certain provisions within the body of the zoning by-law work to define what is meant by affordable housing but there is no definition.

Affordable Housing Impact: The absence of a clear definition of affordable housing in the zoning by-law may leave zoning and planning boards without an important means of assessing the merits of a project under review. Likewise, developers of affordable housing may also be left at a loss. The inclusion of such a definition is useful for planning and regulation of affordable housing as a public policy.

3. Room Rental/Boarding Houses

Description: Zoning provisions regulating *Room Rental/Boarding Houses* set out the circumstances under which both individual homeowners and small business owners may rent out rooms to individuals in existing residential structures. Affordable housing advocates have cited such housing as an important means of providing temporary, interim housing for individuals or families in transition and/or beset with financial limitations as well as seasonal workforce housing. Additionally, when appropriate, such housing may provide a long-term living situation at an affordable price. On Martha's Vineyard, with its seasonal fluctuation in housing availability and affordability, such housing may very well be a more important resource for temporary housing for year-round residents forced to move twice or more per year; however, room rental or boarding houses are not Affordable Housing units as defined by state and federal guidelines such as income qualified tenants, permanently restricted, or Fair Housing practices.

Current Status: Notably, each of the Island towns has zoning provisions dealing with this type of housing.

Affordable Housing Impact: It is not clear that the regulation of *Room Rental/Boarding Houses* has any impact on affordable housing, largely because of the apparent discrepancy between the prevalence of the use and the absence of its permitting. Arguably, if such uses were shifted more to as-of-right or more widely allowed by special permit, *Room Rental/Boarding Houses* might be a more effective tool in addressing seasonal and year-round workforce housing while easing some of the need for year-round housing. However, in the absence of effective regulations, one is left to anecdotal evidence of its prevalence and efficacy.

4. Time Share/Time Interval Ownership

Description: The regulation of *Time Share/Time Interval Ownership* housing is an effort to control or direct the location of a certain type of transient housing. Where adopted, such provisions are often the equivalent of those provisions regulating hotels, motels, and the like. Given the limited residency timeframes of such housing, along with the often exorbitant costs, it is unlikely that such uses will be considered as a useful tool to address the need for more affordable housing.

Current Status: While Edgartown is the only Island town to explicitly regulate *Time Share/Time Interval Ownership* housing, both Chilmark and Aquinnah have other zoning provisions restricting rental periods that were designed and adopted at least in part to prohibit this type of transient housing. Notably, while Chilmark's provision includes an exception for affordable rental housing, the similar provision in Aquinnah does not.

Affordable Housing Impact: The regulation of *Time Share/Time Interval Ownership* housing does not appear to impact the creation of affordable housing in any direct way. But could impact the economy in terms of possibly eliminating shorter-term rental opportunities, much in the same way as the conversion of hotel rooms/suites to condominium use: *Time Share/Time Interval Ownership*

5. Guest House/Subordinate Dwelling/Accessory Dwelling

Description: This type of zoning provision is utilized to control density by limiting the number of buildings on any one parcel, with the result being that parcels may be limited to only one dwelling unit or an additional dwelling is allowed only under certain circumstances, often contingent upon the nature of the proposed use of either or both of the main dwelling and the *Guest House/Subordinate Dwelling/Accessory Dwelling*, and then often only in zoning districts with high minimum lot size requirements. Affordable housing advocates have identified these types of uses as a potential source of affordable housing particularly for rental housing, given their relatively small size, along with the apparent prevalence of such uses throughout the Island towns.

Current Status: All of the Island towns have some manner of provision regulating accessory units or guest houses, though only West Tisbury provides an incentive for developing accessory units for affordable housing rental units.

Affordable Housing Impact: West Tisbury's Accessory Unit By-law has demonstrated that private homeowners have a keen interest in creating such accessory rental units for either a family member or an affordable housing unit at no cost to the Town. The rental units that have been created for family members has eased the impact to affordable housing simply by not taking a needed rental unit elsewhere on the Island. The Affordable Housing units created under this by-law have been subject to special permit by the town zoning board of appeals, income affordability restrictions monitored by the Dukes County Regional Housing Authority as well as an annual compliance check through the Building Inspectors Office. In light of West Tisbury's success in creating affordable housing rental opportunities, other Island Planning Boards are considering a similar by-law subject to a Special Permit, affordability restrictions and, an annual registration to facilitate compliance and enforcement.

6. Density Limitation/Minimum Lot Size and 7. Density Bonus for Affordable Housing

Description: Under zoning, provisions limiting density or otherwise prescribing minimum lot size are an obvious means of controlling the development of parcels and, ultimately, controlling the number of structures to be located on a parcel. Such provisions in residential districts clearly limit the number of dwelling units to be created on a parcel of land and thus, indirectly, the number of affordable dwelling units along with market-rate units.

Current Status: Each of the Island towns employs zoning provisions to limit density and establish minimum lot sizes. Only one town, West Tisbury, provides a density bonus for affordable housing, via a Planning Board special permit. All of the Island towns employ some form of *Resident Homesite/Youth Lot* by-law provision which allows for the development of undersized lots.

Affordable Housing Impact: Relief from minimum lot size requirements and other density limitations for affordable housing units would provide new opportunities to increase the affordable housing stock. Resident Homesite/Youth Lots have provided many Islanders an opportunity to build their own home but without a permanent restriction or meeting Fair Housing practices. It should be noted that Resident Homesite/Youth Lots do not meet state or federal guidelines such as income qualifications, permanent restrictions, or Fair Housing practices to be considered affordable housing.

Density bonuses for projects that include a percentage of affordable housing, like that presently in use in West Tisbury, would provide incentives for market-rate developers to include affordable housing when developing what would otherwise be a solely market-rate project. It would also be ideal if increased density applied to rental and homeownership units alike.

8. Transient Residential Facilities

Description: In zoning parlance, hotels, motels, and the like are often identified as *Transient Residential Facilities*. These types of uses are typically categorized as commercial in nature and are intended for short-term occupancy only. Occasionally, zoning regulations will expressly limit the size of such units, the duration of occupancy, and even prohibit accommodations that include kitchen facilities.

Current Status: The towns of Edgartown, Oak Bluffs, Tisbury, and West Tisbury each have zoning regulations expressly regulating *Transient Residential Facilities*.

Affordable Housing Impact: Theoretically, *Transient Residential Facilities* could provide short- to medium-term housing opportunities for seasonal workforce housing or temporarily homeless individuals / families who must move twice a year, if only in the off-season (Note these facilities may not be suitable for the chronically homeless who are in need of housing as well as health and social services). Zoning provisions limiting the size and occupancy of such units meet standards similar to timeshares, room rental or board houses could provide seasonal workforce housing or temporary housing for year-round residents at an affordable rate as well as temporary shelter for displaced individuals or families. These types of uses should not be considered as a potential source for affordable housing as defined by the state and federal guidelines.

9. Compact Siting/Flexible Siting/Cluster Development/Planned Development District

Description: This type of zoning provision, sometimes referred to as “cluster zoning,” is typically intended as a means of conserving open space in and around proposed residential developments. Additionally, such provisions often include density bonuses not otherwise available. Rarely do these provisions include a component for affordable housing.

Current Status: All of the Island towns, save for West Tisbury, have some form of zoning by-law provision that includes *Compact Siting/Flexible Siting/Cluster Development/Planned Development District*. Only Oak Bluffs includes affordable housing as a component of flexible siting with affordable housing guidelines consistent with state guidelines.

Affordable Housing Impact: The Oak Bluffs Flexible Development By-law could serve as a model for the other Island towns.

10. Resident Homesite Lots/Youth Lots

Description: These types of provisions, not always included in zoning by-laws, provide a means by which towns may allow the development of undersized lots for the creation of housing opportunities for town residents. Programs such as these are sometimes limited to its applicability to Affordable Housing Programs as defined by state and federal guidelines which include income qualifications, permanent affordability restrictions, and or Fair Housing practices. Typically administered by a town's Housing Committee, these provisions either include or cite to residency requirements and/or income guideline qualifications.

Current Status: Each of the Island towns has some form of by-law provision permitting the creation of *Resident Homesite Lots/Youth Lots*. Such provisions, however, are not always included in the town's zoning by-law.

Affordable Housing Impact: These types of provisions have proven valuable in creating housing opportunities in each of the towns. With the rapid appreciation of land values since 1999 and current economic realities as well as financial lending practices, the Resident Homesite/Youth Lot programs typically require incomes above 100% AMI and are therefore above affordable housing income thresholds as defined by state and federal guidelines. The Resident Homesite/Youth Lot Programs also require potential homeowners to build their own home as opposed to more current affordable housing programs. Most importantly, Resident Homesite/ Youth Lot Programs may not serve income thresholds where Island's housing needs are greatest. Should the towns revise definitions for Affordable Housing as well as including an Affordable Housing Purpose clause, towns may want to consider replacing new language for Affordable Housing in place of the Resident Homesite/Youth Lot programs.

11. Remainder Lots and 12.Subdivision for Affordable Housing

Description: *Remainder Lots*, along with those provisions addressing other types of subdivisions for affordable housing, involve zoning provisions which allow the creation and/or development of undersized lots for affordable housing. Such lots are sometimes called “remainder lots” because they are typically what are left over when a lot is subdivided such that one legally buildable lot is created – meeting minimum lot size, frontage, etc. – and an additional “undersized” lot remains. In those municipalities with these types of zoning provisions, such remainder lots may in certain circumstance be built upon.

Current Status: Each of the Island towns has some form of remainder lot provision, either for the development of affordable housing, generally, or, more specifically, for *Resident Homesites/Youth Lots*. Oak Bluffs section 4.3 allows Special Permit for Affordable Housing as defined by DHCD to be restricted for not less than 30 years. Additionally, Aquinnah also has a separate zoning by-law permitting certain subdivisions for community housing, separate and apart from their *Resident Homesite/Youth Lot* provisions.

Affordable Housing Impact: While a useful tool in the context of the *Resident Homesite/Youth Lot* programs, the towns may wish to broaden the scope of such provisions to include the development of affordable housing as defined by state and federal guidelines on undersized lots. Should the towns revise definitions for Affordable Housing as well as including an Affordable Housing Purpose clause, towns may want to consider replacing new language for Affordable Housing in place of the *Resident Homesite/Youth Lot* programs. See item #10 for more information..

13. Rental Housing Limitation/Affordable Housing Exception

Description: This type of zoning provision places explicit time and scope of use limitations on residential uses within a town, such that a dwelling may only be rented for a limited period of time, with renewals usually prohibited. Likewise, these provisions might limit the use of multi-family dwellings to only the members of the owner's family. Ideally, such provisions exempt rentals for affordable housing from such limitations. Absent such an exemption, these types of provisions can effectively ban affordable housing rentals, save for short-term rentals, and then possible subject to non-renewal.

Current Status: The towns of Chilmark and Aquinnah both include *Rental Housing Limitation* provisions in their zoning by-laws. In Chilmark, there is an exemption from such limitations for the purposes of community housing. In Aquinnah, there is no such exemption.

Affordable Housing Impact: This type of provision, in the absence of an exemption, would directly impede the rental of dwellings on a continuing basis for affordable housing. Beyond creating such an exemption, towns with this type of provision may wish to revisit the aim of the exemption and determine whether there may be a more direct way of controlling unwanted development without impairing the ability of property owners to rent their property for affordable housing purposes or rent their property at a fair market rate on a year-round basis.

14. Two-Family Dwellings – Creation/Conversion

Description: These types of provisions limit where and under what circumstances two-family dwellings may be created – either via new construction or by conversion of existing single-family residences.

Current Status: Each of the Island town zoning by-laws, except for that of Tisbury, expressly regulates by special permit the development of two-family dwellings. In Oak Bluffs, notably, there are provisions which allow the conversion of existing single-family dwellings to two dwelling units but there are not similar provisions allowing the *creation* of two-family dwellings (absent sufficient minimum lot size to support each of the two dwellings to be created). Equally as notably, West Tisbury allows the creation of two-family dwellings in all of its zoning districts *as-of-right* except the area zoned for light industrial, where such use is prohibited.

Affordable Housing Impact: Like any other zoning limitation, those relating to the development of two-family dwellings may be seen as limiting (rather than facilitating) the creation of affordable housing particularly rental opportunities. Obviously, there is no such limitation in West Tisbury. Further discussion may help discern exactly why the other towns wish to limit such housing opportunities, or, why such uses are not strategically facilitated in certain areas, rather than limiting them across the board. In Oak Bluffs, it would appear that the conversion-creation disparity was the result of oversight rather than design. Allowing two-family or multi-family affordable and community housing in appropriate areas with incentives for density bonuses could have enormous long term benefits in addressing the Island's affordable housing and community housing needs.

15. Multi-Unit Dwellings – Creation/Conversion

Description: As with the regulation of two-family dwellings, most municipalities seek to regulate the development of multi-unit dwellings, typically in the name of controlling density.

Current Status: While Aquinnah and Chilmark have no zoning by-law provisions expressly regulating the development of multi-unit dwellings, the remaining Island towns do have such provisions. Edgartown allows the creation of and conversion to multi-unit dwellings by special permit. In Oak Bluffs, such conversions are allowed as of right in the B-1 district but the conversion and creation of such units is prohibited in all other districts (note the creation of units in B-1 district is not prohibited but is not mentioned as an allowed use either). Notably, in Tisbury, where such uses are allowed by special permit, the zoning by-law requires that the Planning Board make a preliminary finding regarding the “need” for such a use and its “consistency with public policy.” In West Tisbury, creation or conversion to multi-unit dwellings is allowed as of right in its mixed-use business district and is subject to Planning Board site plan review. The creation or conversion of such units in the residential districts is allowed by Special Permit from the Board of Appeals. There is a density bonus for affordable housing but each building is limited to 4 units.

Affordable Housing Impact: The issues surrounding this type of use warrant further review and discussion relating to density, water quality, traffic, parking or community character. It is striking that such uses are seemingly favored within the Island town zoning by-laws yet few if any such developments take place. Such developments present an obvious opportunity for the creation of affordable housing and community housing rental units or condominiums yet the existing provisions regarding Multi-family housing do not appear to facilitating such developments. Further, Tisbury may wish to revisit its “special finding” requirements relative to need and consistency with public policy while clarifying which public policy is being referenced in the by-law. Allowing two-family or multi-family affordable and community housing in appropriate areas with incentives for density bonuses could have enormous long term benefits in addressing the Island’s affordable housing and community housing needs.

16. Demolition Delay

Description: Affordable housing advocates often point to local *Demolition Delay* by-law provisions as presenting an opportunity for the reuse of existing structures for affordable housing. Ideally, such provisions would not only interpose a delay following a property owner's application for a permit to demolish a residential structure, thereby affording time to develop plans for the reuse of the structure to be demolished, but said provisions would also include requirements relative to the direct notification of affordable and community housing developers/program administrators regarding the availability of a structure planned for demolition. This often applies only to historic structures, either officially designated or deemed historic because of being more than 100 years old.

Current Status: The towns of Edgartown and West Tisbury have zoning by-law provisions requiring a delay upon application for a permit to demolish a residential structure. In Edgartown, this provision requires notification of the Dukes County Regional Housing Authority ("DCRHA") of the proposed demolition, along with general notice by publication in a local newspaper. In West Tisbury, there is no requirement that DCRHA or any other affordable housing entity be notified of a proposed demolition.

Affordable Housing Impact: Short of revamping the problematic logistics associated with moving a residential structure slated for demolition, many will be left to conclude that *Demolition Delay* by-law provisions are too often an empty gesture. The efficacy of such provisions is more a function of one's ability to surmount the logistical difficulties associated with the removal of such structures for reuse rather than whether the interposed delay creates a reuse opportunity. Further, there is concern that the limited supply of ready, willing, and financially able recipients was also a hurdle to the reuse of structures to be demolished. Towns may want to consider an Island-wide holding place for such structures in anticipation of their future reuse.

17. Rate of Development Limitation

Description: *Rate of Development Limitation* is a means by which a town may limit the pace of development in a particular project. Typically applied in the context of a PGA's review of a proposed subdivision, *Rate of Development Limitation* caps the number of building permits that may be issued in any one year for any one project or subdivision. In this way, a town may lessen the annual impact of such project or subdivision. In the absence of such a provision – and in the absence of any kind of annual town-wide building permit cap – a project developer could theoretically achieve maximum build-out of a project or subdivision in a much shorter timeframe, thereby imposing the full impacts of a project all at once rather than in a phased manner over time.

Current Status: Four Island towns – Chilmark, Edgartown, Tisbury, and West Tisbury – employ *Rate of Development* limitations in their zoning by-laws. Chilmark, Tisbury, and West Tisbury have exemptions for affordable housing. In Chilmark, the exemption is automatic, whereas in Tisbury a Planning Board special permit is required to allow the exemption. In West Tisbury, the Planning Board may waive the development limitation for affordable housing as part of its subdivision review process.

Affordable Housing Impact: Like any type of residential development limit or control, *Rate of Development Limitation* has the potential for not only limiting market-rate housing creation but the creation of affordable and community housing units as well. As noted above, three of the four Island towns that employ this zoning provision provide an exemption for affordable housing units. While the exemption is automatic in Chilmark, Tisbury requires that a developer obtain a special permit to exempt its affordable units from the limitation. The exemption is not automatic in West Tisbury, either, though the Planning Board may grant a waiver as part of its subdivision review process, negating the need for a separate special permit as required in Tisbury. However, the existence of the automatic exemption in Chilmark raises the question why such isn't the case in the other two towns but keeping in mind that this type of provision is not implicated with the same frequency as when first adopted, simply by virtue of the low number of multi-lot subdivisions occurring on the Island.

18. Impact/Linkage Fees to Support Affordable Housing

Description: In several Massachusetts municipalities, zoning by-laws include provisions that require developers of larger-scale market-rate commercial and residential developments to pay *Impact/Linkage Fees to Support Affordable Housing*. Such fees have been approved by Massachusetts courts upon determination that the imposed fees bear a rational nexus to the proposed development and that the fees assessed are directly proportional to the impacts of the proposed development. Upon determination that a market-rate development poses a detrimental impact to the supply of affordable housing in a municipality, that municipality may, via a duly adopted by-law provision, impose an impact fee.

Current Status: None of the Island towns have adopted this type of by-law provision. (Aquinnah did as part of its town-wide DCPC regulations but amended the zoning provision per the advice of town council).

Affordable Housing Impact: This type of provision warrants further examination and discussion. Several Massachusetts municipalities have successfully implemented *Impact/Linkage Fees to Support Affordable Housing*. While there may be some question whether these types of fees would actually generate significant funds to support affordable housing (or actual units in lieu of funds), it seems that the issue should at least be fully considered and understood.

19. Dormitory Housing

Description: This type of by-law provision contemplates the development of dormitory-style housing for employees of Island businesses. Targeting primarily seasonal workers, this type of housing is typically envisioned for locations off-site from the sponsoring employer's place of business. Such provisions often have varying degrees of responsibility for sponsoring employers, including but not limited to verification of on-Island employment and/or property management of the *Dormitory Housing*.

Current Status: Two Island towns – Edgartown and West Tisbury – have *Dormitory Housing* provisions in their zoning by-laws.

Affordable Housing Impact: The Island's seasonal economy and demand for summer vacation rental housing crunch is a significant stressor on the Island's supply of readily-available housing as well as year-round affordable housing and community housing. Identifying seasonal sources of housing for the seasonal workforce housing needs would go a long way toward easing the affordable and community housing pressures on Martha's Vineyard. Merely adopting the types of *Dormitory Housing* provisions currently on the books in Edgartown and West Tisbury may be a model for the other towns. Dormitory Housing could also be utilized for temporary shelter for the chronically homeless or those in need of temporary shelter.

20. Assisted Living/Island Independent Living/Family Apartments

Description: These types of provisions are intended as a means of providing age-appropriate, accessible housing for the Island's elderly residents and their families.

Current Status: Edgartown makes express provision for all three of these types of housing, which are allowed by special permit. Notably, *Family Apartments* are allowed as of right, subject to strict design guidelines and occupancy restrictions. Also, West Tisbury has an Assisted Housing provision whereby such uses are allowed in all districts by ZBA special permit, subject to density controls.

Affordable Housing Impact: The creation of such facilities would have an enormous benefit to the Island's aging demographic including those who will be on fixed or very limited incomes. The current and future demands of the Island's aging population encompasses many topics such as social services, health care, transportation, and economic implications that stretch far beyond just the housing needs of this aging demographic. The Healthy Aging Work Group has done a tremendous job educating the Island about the projected aging population and the fiscal implications of that aging population in addition to raising serious concerns of what could happen if the towns do not begin to plan for the needs of Island residents.

21. Staff Apartment

Description: Like zoning provisions permitting *Dormitory Housing*, provisions providing for the development of employee housing in the form of *Staff Apartments* are aimed at alleviating the seasonal housing crunch while at the same time providing needed housing for a segment of the Island economy – the seasonal workforce – often hardest hit by the lack of accessible, housing.

Current Status: Only one Island town – Edgartown – provides for *Staff Apartment* housing in its zoning by-law.

Affordable Housing Impact: As with *Dormitory Housing*, a greater emphasis on and facilitation of the creation of seasonal workforce housing for employees of Island businesses would go a long way toward helping to alleviate the seasonal housing crunch on Martha's Vineyard.

22. Upper-Floor Apartments in Mixed-Use Buildings

Description: Aimed primarily at facilitating the development of residential dwellings in downtown areas, zoning provisions allowing *Upper-Floor Apartments in Mixed-Use Buildings* are very much in keeping with the tenets of “smart growth” planning and development.

Current Status: Both Tisbury and West Tisbury have zoning by-law provisions addressing the development of *Upper-Floor Apartments in Mixed-Use Buildings*. In West Tisbury, such are allowed as of right in the town’s mixed-use business district, subject to Planning Board site plan review. In Tisbury’s B-2 Business District, such uses are allowed by special permit, subject to detailed criteria for (Schedule A R10) residential frontage, depth, and setbacks that either limit or deter the development of mixed use buildings.

Affordable Housing Impact: In addition to their being “smart growth” friendly, these types of provisions would seem to be a promising source of both year-round rental affordable housing and fair market rental as well. However, in the two towns where such provisions are in place, there has been little activity, and none directed at creating affordable housing. These types of provisions may be better considered in the context of revisiting the town’s master plans, such that the prospect for *Upper-Floor Apartments in Mixed-Use Buildings* for affordable and community rental housing may be considered in a more strategic fashion, targeting specific areas and/or properties for such development.

23. Inclusionary Zoning for Affordable Housing

Description: These types of provisions require that market-rate developments include an affordable housing component – preferably on-site but alternatively off-site - and/or require the payment of fees in lieu of production of actual dwelling units.

Current Status: Oak Bluffs has as part of its Flexible Siting zoning provisions an inclusionary zoning requirement. West Tisbury has an Affordable Housing Requirement for any subdivision containing 3 or more lots shall require that 20% of the lots shall qualify as affordable housing. None of the other Island towns have similar provisions.

Affordable Housing Impact: Used successfully in other Massachusetts municipalities to create affordable housing units in conjunction with both residential and commercial market-rate developments, *Inclusionary Zoning for Affordable Housing* may hold promise on Martha's Vineyard. However, as evidenced in Oak Bluffs, these types of provisions must be paired with development incentives to enhance their attractiveness to market-rate developers, who will otherwise typically work to avoid the inclusion of affordable units in their development schemes.

24. Priority Development Sites for Affordable Housing

Description: Taking a page from the statewide Expedited Permitting project, whereby commercial and industrial sites are targeted for streamlined permitting, the notion of *Priority Development Sites for Affordable Housing* contemplates a town planning effort to identify those sites/areas wherein affordable housing would be appropriately located. Once designated, perhaps in the form of an overlay district, such locations may be the subject of newly-crafted zoning provisions designed to incent and facilitate the development of affordable housing therein.

Current Status: None of the Island towns have this type of zoning provision.

Affordable Housing Impact: To the extent that this type of provision involves planning for the development of affordable housing in a targeted, facilitated manner, it would be seem to hold promise in those towns that have the political will to commit to facilitating affordable housing development as a public policy aim.

25. Pre-Permitting of Selected Sites for Affordable Housing

Description: Another Expedited Permitting-based initiative, the idea of *Pre-Permitting of Selected Sites for Affordable Housing* is a natural second-step after the designation of *Priority Development Sites for Affordable Housing*, discussed above. Once a site has been designated as appropriate for the development of affordable housing, the town planning effort could shift to actually scoping-out one or more possible development designs for the site. Once complete, the town could establish what permits, if any, might be needed to approve one or more of the development designs and package them as a kind of permitting pre-approval. Thereafter, any developer prepared to develop the site in accordance with a pre-planned design would be entitled to the necessary permits without further review.

Current Status: None of the Island towns have this type of zoning provision.

Affordable Housing Impact: Towns could revisit their master plans with an eye toward both *Priority Development Sites for Affordable Housing* and, thereupon, the *Pre-Permitting of Selected Sites for Affordable Housing*. If a town is committed to affordable housing, and is prepared to designate where in town such development would be most desired, and then actually lay-out development design options for developers, these provisions could go a long way toward facilitating appropriate amounts of affordable housing in locations that make the sense for developers, occupants, and the town itself.

26. Streamlined Permitting for Affordable Housing

Description: This provision would involve creating a separate use category for affordable housing and/or creating a separate track for the expedited review of affordable housing projects. Additionally, *Streamlined Permitting for Affordable Housing* might include the delegation of some level of review authority to a single zoning or planning board member or even a staff person, all subject to clear guidelines. The notion beyond this initiative is obvious: to speed-up the review process for affordable housing projects.

Current Status: None of the Island towns employ this type of zoning provision.

Affordable Housing Impact: There could be further discussion as to the possibility of streamlining the development of affordable housing provided other objectives protected by current zoning and review procedures are adequately met.

27. 40B Design and Development Standards

Description: This type of initiative is aimed at guiding the design and development of affordable housing projects proposed under M.G.L. c. 40B. Rather than simply taking each such project as it comes, on a case by case basis, this initiative involves the town actually planning for what types of affordable housing projects the town would support, and in which locations. Once adopted, these types of provisions would guide affordable housing developers in designing their projects, resulting in a less adversarial review process while providing the town with the type of housing development it has planned for. Additionally, it might be possible to link this type of zoning provision with an exemption from the MVC DRI review process.

Current Status: None of the Island towns utilize this type of zoning provision.

Affordable Housing Impact: While it seems that there have been several affordable housing projects that might have been benefited from the existence of clear design and development guidelines in place in advance of a permitting process, it is clear more discussion at the town level is needed.

28. Amnesty Program for Illegal Apartments

Description: This type of provision acknowledges the existence of a significant number of illegal apartments – apartments that have not been permitted as such or otherwise regulated or counted as part of a town’s inventory of dwelling units – and provides a means by which such units may be certified as safely in compliance with all applicable codes and, significantly, available for rent on the open market, whether as designated affordable units or otherwise.

Current Status: Tisbury has had this type of program in place for several years, with little if any activity in terms of property owners self-reporting the existence of illegal apartments.

Affordable Housing Impact: Ideally, this type of provision would present an opportunity for the owners of so-called “underground” apartment units to come forward and allow such units to be on the open market, thereby creating a possible source of affordable housing. However, like many other provisions identified in this report, absent packaging with other incentives, particularly monetary incentives, it appears unlikely that property owners will self-report such dwelling units.



MARTHA'S VINEYARD COMMISSION

BOX 1447, OAK BLUFFS, MA 02557

PHONE: 508-693-3453

FAX: 508-693-7894

INFO@MVCOMMISSION.ORG

WWW.MVCOMMISSION.ORG