

**WARRANT
FOR THE SPECIAL TOWN MEETING
MAY 8, 2012
TOWN OF AQUINNAH
COMMONWEALTH OF MASSACHUSETTS**

County of Dukes County, ss
To either of the Constables of the Town of Aquinnah:

GREETINGS:

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn the inhabitants of the Town of Aquinnah who are qualified to vote in elections and town affairs to meet at the **Aquinnah Old Town Hall in said Town on the Eighth day of May 2012, at 6:45 PM**, then and there to act upon the articles of this Warrant.

**ARTICLE ONE
Board of Health**

To see if the Town will vote to transfer the sum of **\$50,400** (fifty thousand four hundred dollars) from the Town's General Stabilization Fund for engineering fees and construction costs relative to corrective work required by MassDEP for the Town Landfill's storm water drainage and erosion control systems and the LDO's concrete pad and pavement area, or take any other action relative thereto. **(2/3 VOTE REQUIRED)**

**ARTICLE TWO
Planning Board**

To see if the Town will vote to amend the Aquinnah Zoning By-Law,

- 1.) To correct a numbering error in Article XIV, change the number 9 to number 14 in all section numbers and references to section numbers.
- 2.) To correct a typo in the new Section 14.1-2B, change the name "Lobsterville Road" to "Old Lobsterville Road (Jeffers Way)."
- 3.) To delete the Impact Fee which was never implemented on advice of Town Counsel, delete Section 13.14-1 Impact Fee Guidelines.

Item 4 defines and allows the use of Zoning Determinations in the Aquinnah Town wide DCPC.

- 4.) Add New Section:

13.14-1 Zoning Determinations

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

B. A Zoning Determination cannot be used to approve: a single-family residence; structures that will be visible in open and highly visible areas; or accessory structures or additions, including decks, with a footprint greater than 70 square feet. Examples of projects that might qualify for a zoning determination, as set forth in this

section, include: the siting of a small shed in an area that is not open or highly visible; a small extension of a deck; or the addition of an outdoor shower. Zoning Determinations may also be used to determine whether a site is open and highly visible and to allow hand dug perc tests in the presence of a qualified archaeological observer instead of submission of a Project Notification Form to Mass Historic.

C. If the Planning Board Plan Review Committee determines that the small development or a certain part of a larger project qualifies under this Section, it will issue a written and signed Zoning Determination to the applicant, with a copy to the building inspector, granting permission to proceed with the work, including any conditions or limitations the Planning Board Plan Review Committee deems reasonable to impose consistent with the goals and purposes of this District of Critical Planning Concern.

Item 5 adds Pre-existing nonconforming language to the ADCPC and items 6, 7 & 8 update the same language in the summary section 3.4

5. Add new Section:

13.4-11 Pre-existing, nonconforming Structures and Uses

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

B. Construction or operations under a building or Special Permit shall conform to any subsequent amendment of this By-Law, unless the use or construction authorized thereby is commenced within a period of not more than six months after the issuance of the permit.

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

6.) Replace Section 3.4-2A with the language in proposed section 13.4-11A above.

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

8.) Replace Section 3.4-2C with the language in proposed section 13.4-11C above.

Item 9 summarizes where the PBPRC may vary setbacks for pre-existing nonconforming structures and where there is a municipal exception for new structures.

9.) Amend **Section 3.5 Setbacks** to read:

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

1. Thirty (30) feet from any lot line.
2. One hundred and fifty (150) feet from Moshup Trail,
3. Twenty (20) feet from the centerline of Old Lobsterville Road, Old South Road and Old Church Road (The Special Ways Zone).
4. Forty (40) feet measured from the centerline of all other roads and public ways.
5. One hundred and fifty (150) feet from the crest of bluffs or cliffs in the Gay Head Cliff Area

DCPC.

6. One hundred (100) feet from wetlands, waterbodies, beaches, dunes or the crest of bluffs over 15 feet high in the Coastal District, except for fishing related marine commercial structures.

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

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

Item 10 allows the PBPRC to vary setbacks in Article 10, the Coastal District DCPC, for pre-existing nonconforming structures and it allows a municipal exception for new structures. It also puts this same language in summary section 2.4-1.

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

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

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

Item 11 allows the PBPRC to vary setbacks in Article 11, the Moshup Trail DCPC, for pre-existing nonconforming structures and it allows a municipal exception for new structures.

11.) Add the following to Section 11.3-1:

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

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

Item 12 allows the PBPRC to vary setbacks in Article 11, the Cliffs DCPC, for pre-existing nonconforming structures and it allows a municipal exception for new structures.

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

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

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

Items 13 and 14 allow the PBPRC to use Zoning Determinations in Article 14, the Island Road DCPC, and to vary setbacks for pre-existing nonconforming structures in the Special Ways Zone. There is no exception for municipal structures in the Special Ways Zone.

13.) Add new section:

14.1-3(B)(3) In the Island Road District, the Planning Board Plan Review Committee shall have the authority to make Zoning Determinations as provided for in Section 13.14-1.

14.) Add new section:

14.1-5(D)(4) The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of section 14.1-5(D)(2) by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures based on the standards established in Section 13.4-11A.

Item 15 allows the PBPRC to vary setbacks in Article 13, the Aquinah Townwide DCPC, for pre-existing nonconforming structures and it allows a municipal exception for new structures.

15.) Amend Section 13.4-6 (Setbacks) to read:

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

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

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

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

Item 16 allows a municipal exception for new boardwalks and parking lots in Coastal areas (within 500 feet of mean high water).

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

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

Item 17 allows the PBPRC to vary the frontage requirement for pre-existing nonconforming structures and uses in the Aquinnah Townwide DCPC and in the summary Section 3.7-1.

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

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

(2/3 VOTE REQUIRED)

ARTICLE THREE
Community Preservation Committee

To see if the Town will vote to appropriate monies, from existing Community Preservation Open Space reserves, for the undertaking of the following Open Space efforts, as recommended by the Community Preservation Committee:

\$15,000 (fifteen thousand dollars) from the Community Preservation Open Space Reserve for the creation of a traditional ballfield at the Aquinnah Wampanoag Community Center, or take any other action relative thereto.

ARTICLE FOUR
Highway/Fire – Ambulance Department

To see if the Town will vote to transfer the sum of **\$9,000.00** (Nine thousand dollars) from the Town's Building & Grounds Stabilization Fund for paving the area in front of the ambulance bay door of the fire house and to repave and landscape the driveway area closest to the Town Hall Building, or take any other action relative thereto.

(2/3 VOTE REQUIRED)

ARTICLE FIVE
Board of Selectmen

To see if the Town will vote to transfer the sum of **\$14,900.00** (Fourteen thousand nine hundred dollars) from free cash to the FY 2012 line item for legal services, or take any other action relative thereto.

ARTICLE SIX
Town Accountant

To see if the Town will vote to appropriate the sum of **\$80.00** (Eighty dollars) for prior year MV Tech bills, and to transfer that amount from the unexpended balance in STM 5-11-10, Article 5 (Utilities at Aquinnah Circle Restroom and Philbin Beach), or take any other action relative thereto. **(9/10 VOTE REQUIRED).**

ARTICLE SEVEN
Town Harbormaster

To see if the Town will vote to transfer an additional sum of **\$12,500.00** (Twelve thousand five hundred dollars) from the Waterways Improvement Fund to be used in conjunction with the balance in STM 5-9-06, Article 2, for the engineering and incidental costs associated with the installation of a solar powered fresh water well in the West Basin dock area, or take any other action relative thereto.

ARTICLE EIGHT
Fire/Police Department

To see if the Town will vote to transfer the sum of **\$1,640.00** (One thousand six hundred forty dollars) from the unexpended balance in STM 5-11-10, Article 5 (Utilities at Aquinnah Circle Restroom and Philbin Beach), for the government-mandated reprogramming of 40 public safety radios, or take any action relative thereto.

And you are hereby directed to serve this warrant by posting up attested copies at the Schoolhouse Library and Town Hall in said Town, at least fourteen days prior to time of said meeting. Hereof, fail not, and make due return of this warrant with your doings thereon to the Town Clerk at the time and place of said meeting.

Given under our hands this 24th day of April in the year of our Lord Two Thousand and Twelve, we the undersigned members of the Aquinnah Board of Selectmen.

James Newman, Chairman

Spencer Booker, Vice Chairman

Beverly Wright

Betty Joslow
Aquinnah Constable

posted April 24 , 2012