

PLANNING BOARD
Meeting Minutes
Thursday, December 13, 2018
Judge Welsh Room
6:30 P.M.

Members Present: David Abramson, John Golden, Albert Carey and Paul Graves.

Members Absent: Brandon Quesnell (excused) and Jason Potter (excused).

Staff: Jeffrey Ribeiro (Town Planner) and Ellen C. Battaglini (Permit Coordinator).

Chair David Abramson called the Public Hearing to order at 6:38 P.M.

1. **Public Comments:** None.

2. **Public Hearings:**

a) **PLN 18-29** (*continued from the meeting of September 27th*)

Application by **Cape Cod Pilgrim Memorial Association** requesting Site Plan Review by Special Permit pursuant to Article 2, Section 2320, High Elevation Protection District (A) & (B), of the Zoning By-Laws for the installation of an inclined elevator (funicular) system running from its property on Bradford Street adjacent to the Bas Relief up the hill to the site of the Pilgrim Monument and Museum located at **1 High Pole Hill Road**. Brandon Quesnell signed an affidavit attesting to having watched the video recording of the previous hearing of the application. David Abramson, John Golden, Brandon Quesnell, Jason Potter and Paul Graves sat on the case.

Presentation: Attorney Lester J. Murphy, representing the applicant, Dr. David Weidner, Executive Director of the CCPMA and Courtney Hurst, President of the Board of the CCPMA, appeared to discuss the application. Attorney Murphy said that in response to the questions regarding the potential impact the project might have on pedestrian and vehicular traffic and safety in the area, further analysis from McMahan Associates has been submitted. In addition, the Board has been provided with a peer review of the McMahan Associates' transportation documents that was done by the Town's traffic experts, Environmental Partners Group.

Mr. Ribeiro reviewed EPG's report concluding that there could be significant impacts to the transportation network, however offering potential ways to mitigate them. He said that a mitigation program has been discussed with the applicant and included as conditions in a draft decision for the Board's consideration. He added that the Board also had suggestions from staff for mitigation.

Attorney Murphy argued that the potential to incur expenses for police details at the intersection of Bradford and Ryder and Streets, one of the mitigation options raised by the Town, would be unfair to the applicant. His argument cited the project to the east of the site wherein CVS was not required to hire a police detail at a larger and busier intersection when that proposal was reviewed by the Board. He reminded the Board that the applicant has already agreed to cooperate with the Town to do infrastructure improvements at the intersection of

Ryder and Bradford Streets. He reviewed those agreed upon infrastructure improvements, which are subject to further review and approval by the Dept. of Public Works and the Select Board. The applicant has agreed to establish a baseline of traffic activity at this intersection now, before the project has been completed, by undertaking a monitoring program next summer to find out how much traffic might increase and to determine a triggering mechanism for a police detail.

Dr. Weidner added that the PMPM draws a lot of visitors into Town who then spend money with other businesses and contribute to the Town's tourist economy and the project would present an opportunity to present a new 'front door' for the museum. He updated the Board on the ADA access issue from the museum to the funicular. PMPM would complete their handicap access plan in 2019. Mr. Ribeiro added that these issues needed to be completed as part of the building permit process. Attorney Murphy refuted many of the public comments that have been given to the Board and added that the project would have the benefit of attracting more people to the Bas Relief, an important historical site, and to the museum and would be an economic benefit to the Town.

Public Comment: Napi Van Dereck, John Krajovic, Donald Beale, Kristine Hopkins, Priscilla Jacket spoke in opposition to the application. Patrick Flaherty and Glenn Shaw spoke in favor of the application.

Board Discussion: The Board questioned Attorney Murphy and Dr. Weidner and discussed the project.

There was a motion by John Golden to approve the site plan review application for PLN 18-29 pursuant to Article 2, Section 2320, High Elevation Protection District (A) & (B), of the Zoning By-Laws for the installation of an inclined elevator (funicular) system running from its property on Bradford Street adjacent to the Bas Relief up the hill to the site of the Pilgrim Monument and Museum located at 1 High Pole Hill Road with the conditions as read. Albert Carey seconded. VOTE: 4-0-0.

b) **PLN 19-06** (request to postpone to the meeting of January 10th)

Application by **J. Bruce MacGregor, Trustee, Cape Commerce Nominee Trust**, requesting a Special Permit pursuant to Article 4, Section 4015, Site Plan Review by Special Permit, a. (1), of the Zoning By-Laws for the construction of a one-bedroom, single-family residence on the property located at **13 Willow Drive** with requested waivers pursuant to Article 4, Section 4030, Waivers, including from Article 4, Sections 4053, Commercial Design Standards, 4163, Residential Design Standards, 2. and 3. and 4600, Street Trees and Article 5, Section 5331, Developmental Impact Statements. There was a request from the applicant to postpone PLN 19-06 to the Public Hearing of January 10, 2019 Public Hearing. *There was a motion by John Golden to grant the request to postpone PLN 19-06 to the January 10, 2019 Public Hearing at 6:30 P.M. Paul Graves seconded. VOTE: 4-0-0.*

c) **PLN 19-16**

Application by **Paul Kelly** requesting Site Plan Review pursuant to Article 2, Section 2320 (A), High Elevation Protection District (A), of the Zoning By-Laws to add a dormer to a studio on the property located at **22 Brewster Street**.

Presentation: Ed Dusek appeared to present the application. He reviewed the project, which is to add an 11' 3" by 6' dormer to the rear of an existing studio, a 24' by 20' accessory building

on the property. The materials will match the existing ones. The dormer will not higher than the existing ridge of the studio, which is surrounded by taller structures and only slightly visible from the street.

Public Comment: None.

Board Discussion: The Board briefly questioned Mr. Dusek.

There was a motion by John Golden moved to approve the Site Plan Review application pursuant to Article 2, Section 2320 (A), High Elevation Protection District (A), of the Zoning By-Laws to add a dormer to a studio on the property located at 22 Brewster Street. Albert Carey seconded. VOTE: 4-0-0.

d) **PLN 19-17**

Application by **Alan Cabral**, of **ARC Designs, LLC**, on behalf of **Mark Doherty**, requesting Site Plan Review pursuant to Article 2, Section 2320 (A), High Elevation Protection District (A), of the Zoning By-Laws for the construction of a two-story addition on the structure located at **35 Franklin Street, #2**.

Presentation: Alan Cabral appeared to present the application. He reviewed the project, which is a 3'4" by 9' two-story addition built to replace a previously existing deck and will not be visible from Franklin Street.

Public Comment: None.

Board Discussion: The Board briefly questioned Mr. Cabral.

There was a motion by Paul Graves moved to approve the Site Plan Review application pursuant to Article 2, Section 2320 (A), High Elevation Protection District (A), of the Zoning By-Laws for the construction of a two-story addition on the structure located at 35 Franklin Street, #2. John Golden seconded. VOTE: 4-0-0.

e) **PLN 19-18** (request to postpone to the meeting of January 10th)

Application by **Katherine Braucher Adams, Esq.**, on behalf of **Heal, Inc.**, requesting a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, B14, Marijuana Establishments, Retail, of the Zoning By-Laws for a change in use of a structure to a retail marijuana establishment at the property located at **48 Shank Painter Road**. There was a request from the applicant to postpone PLN 19-18 to the January 10, 2019 Public Hearing at 6:30 P.M. *There was a motion by John Golden to grant the request to postpone PLN 19-18 to the January 10, 2019 Public Hearing at 6:30 P.M. Albert Carey seconded. VOTE: 4-0-0.*

f) **PLN 19-19** (request to postpone to the meeting of January 10th)

Application by **Katherine Braucher Adams Esq.**, on behalf of **Heal, Inc.**, requesting Site Plan Review by Special Permit pursuant to Article 4, Section 4015 Site Plan Review by Special Permit, a. (4), of the Zoning By-Laws for the development of a commercial property that has a curb cut greater than 25% of its existing street frontage on the property located at **48 Shank Painter Road** with requested waivers pursuant to Article 4, Section 4030, Waiver, from Article 4, Sections 4140, Lot Coverage, 4150, Green Space, 4163, Residential Design Standards, 2. and 3., and 4600, Street Trees. There was a request from the applicant to postpone PLN 19-19 to the January 10, 2019 Public Hearing at 6:30 P.M. *There was a motion by John Golden moved to grant the request to postpone PLN 19-19 to the January 10, 2019 Public Hearing at 6:30 P.M. Albert Carey seconded. VOTE: 4-0-0.*

g) PLN 19-21

Application by the **Town of Provincetown** requesting Site Plan Review by Special Permit pursuant to Article 4, Section 4015, Site Plan Review by Special Permit, a. (5), of the Zoning By-Laws for land removal or earth-moving of more than 750 cu. yds. that will alter the topography from natural grade, to construct a two-story police station to include a bureau of records, a dispatch and patrol command, administration and senior command, detectives' and sergeants' units, police operations, detention, personnel support and operations support on the property located at **16 Jerome Smith Road** with a requested waiver pursuant to Article 4, Section 4030, Waiver, of Article 4 Section 4163, Residential Design Standards, 3., of the Zoning By-Laws that the minimum width of traveled surface within the site shall not be less than eighteen feet.

Presentation: George Cruz, of Flansburgh Architects, and David Michniewicz, of Coastal Engineering Co., appeared to present the application. Mr. Cruz briefly reviewed the architectural and site and landscaping elements and Mr. Michniewicz the engineering aspects of the project.

Public Comment: None.

Board Discussion: The Board questioned Mr. Cruz and Mr. Michniewicz about the proposed plantings on the Jerome Smith Road side of the property and lighting. The Board continued the application to the Public Hearing on January 10, 2019 at 6:30 P.M. Mr. Ribeiro said that this presentation was to introduce the Board to the project and for the applicant to hear some of its concerns and what kind of additional information should be submitted. He reviewed aspects of the project that the Board should be concerned with. He added that the applicant will be submitting traffic information and a storm water report regarding the site before the next hearing.

There was a motion by Albert Carey to continue PLN 19-21 to the Public Hearing of January 10, 2019 at 6:30 P.M. John Golden seconded. VOTE: 4-0-0.

4. Work Session:

a) Approvals Not Required:

PLN 19-24

Application by **John McElwee, of Coastal Engineering Col.** on behalf of **Dwyer Family, LLC**, for the endorsement of a plan believed not to require approval (ANR) to convey Parcel A, an unbuildable lot, of Lot 1 at the property located at **264-270 Bradford Street (Assessor's Map 15-2, Parcel 51)** to Christopher Enos in accordance with M.G.L. c. 41, s. 81P. Mr. McElwee reviewed the ANR plan.

There was a motion by John Golden to endorse a plan believed not to require approval (ANR) to convey Parcel A, an unbuildable lot, of Lot 1 at the property located at 264-270 Bradford Street (Assessor's Map 15-2, Parcel 51) to Christopher Enos in accordance with M.G.L. c. 41, s. 81P. Paul Graves seconded. VOTE: 4-0-0.

PLN 19-25

Application by **John McElwee, of Coastal Engineering Co.**, on behalf of **RBA Flyer's, LLC**, for the endorsement of a plan believed not to require approval (ANR) to combine Lots 2 and 3 into one lot at the property located at **72A Commercial Street (Assessor's**

Map 6-2, Parcel 61) in accordance with M.G.L. c. 41, s. 81P. Attorney Lester J. Murphy reviewed the ANR plan.

There was a motion by John Golden to endorse a plan believed not to require approval (ANR) to combine Lots 2 and 3 into one lot at the property located at 72A Commercial Street (Assessor's Map 6-2, Parcel 61) in accordance with M.G.L. c. 41, s. 81P. Paul Graves seconded. VOTE: 4-0-0.

PLN 19-26

Application by **John McElwee, of Coastal Engineering Co.,** on behalf of **John W. Croucher & Robert E. McCamant,** for the endorsement of a plan believed not to require approval (ANR) to add Lot 2 to the property located at **72 Commercial Street (Assessor's Map 6-2, Parcel 63)** in accordance with M.G.L. c. 41, s. 81P. Attorney Lester J. Murphy and Mr. McElwee reviewed the ANR plan.

There was a motion by John Golden to endorse a plan believed not to require approval (ANR) to add Lot 2 to the property located at 72 Commercial Street (Assessor's Map 6-2, Parcel 63) in accordance with M.G.L. c. 41, s. 81P. Paul Graves seconded. VOTE: 4-0-0.

b) **Administrative approval for location of utilities at 132 Bradford Street.** Brian Dundon appeared on behalf of CVS. Mr. Ribeiro reviewed the issue regarding the Board's condition that CVS put the utilities underground at the property. When Eversource was contacted about the proposal, the response was that it was not possible to do at the site, thus the applicant is returning to obtain the Board's approval of the condition from the Special Permit. *There was a motion by John Golden to acknowledge that condition #17 of the Site Plan Review by Special Permit decision in Case #FY17-17 has been met. Paul Graves seconded. VOTE: 4-0-0.*

c) **Discussion with Doug Dolezal regarding 30 Shank Painter Road and the Inclusionary By-Law.** Attorney Lester J. Murphy and Mr. Dolezal appeared to review Mr. Dolezal's project at 30 Shank Painter Road, particularly in respect to the Inclusionary Zoning By-Law. He presented a PowerPoint about the project. He said that the project will meet several of the zoning guidelines, such as setbacks, frontage, parking and green space, however the density of dwelling units, lot coverage and building height and scale are not in conformity with the zoning by-laws. He said that the project, however, could potentially be allowed pursuant to the Inclusionary Zoning by-law. He reviewed the structural composition of the General Commercial zoning district and said that the building will be in keeping with neighboring structures. The project involves the removal and replacement of an existing structure with a new one containing residential units and a retail unit on the first floor corner of Browne Street and Shank Painter Road. It will include 3 affordable units constituting 25% of the total number of units, and will have parking spaces on the site. The proposed building needs to be lifted up out of the flood zone in which the existing currently sits. He described the specific layout of the building, which will include parking on the basement level with an entrance from Browne Street, eliminating all existing curb cuts on Shank Painter Road. There will be no exposed parking on the site. There will be three stories in addition to the basement parking area. He described the proposed materials to be used on the structure, including those that will minimize the impact of the increase in volume and height, and the proposed landscaping, which will include low-growing native wild grasses, shrubs and street trees. He

reviewed the dimensional elements of the lot and how the project is compliant with those requirements. The lot coverage is 47%, the hardscape is 13% and green area is 40%. These, he argued, are within the parameters that the Board could support, however, the density of residential units exceeds the zoning by-law requirement.

Attorney Murphy explained that the reason Mr. Dolezal wanted to meet the Board regarding this project was that there was a discrepancy between staff and the applicant as to how the density bonus in the inclusionary by-law would be applied to this project. The applicant is proposing that 12 residential units can legally be built and authorized according to the density bonus, however staff disagrees and is of the opinion that less units would be allowed. He said the difference is whether you get the allowed units as a matter of right and then the density bonus is applied to units above that or if the density bonus includes the number of units allowed as of right. Mr. Ribeiro reviewed staff opinion regarding this project and the ambiguity of the language in the by-law. He said that the Board should be thinking about how this provision of the zoning by-law should be read and applied going forward. He encouraged the Board to think about the language itself and how it relates to the intent and goals of the inclusionary by-law. Does the Board have the right to set the density of units for each site as it deems appropriate, in other words, does the Board have the right to waive the density schedule and if it does, would that achieve the density bonus as intended in the by-law? The Board questioned Mr. Dolezal, Attorney Murphy and Mr. Ribeiro and discussed how the Board would interpret the by-law. Attorney Murphy reminded the Board that it would be the ultimate arbiter of density of a site.

Mr. Dolezal reiterated that what he is looking for in this discussion is feedback regarding the merits of the project, and if the Board would support it, and if the Board has a consensus as to how bonus density units are counted. He reviewed the design elements of the structure and said that they were considered in terms of how the structure would fit into the neighborhood given its proposed increase in height and volume. He reviewed the part of the inclusionary by-law that states that with at least 20% affordable or community units, the density bonus can be based on the number of bedrooms served by a non-varianced septic system contained on the parcel and that the project may have up to as many dwelling units as bedrooms that can be supported. Applying that to his project with 25% of affordable units, he would be able, as of right, to build three units, each with four bedrooms and would be allowed 12 units on the site. He reviewed various scenarios of market-rate, community and affordable units that would be available to him through the inclusionary by-law and how the economic viability of each scenario would work or not work. He explained how his interpretation of the density bonus for this project would incentivize developers to actually build units and not to just make the payments in lieu, which is more in keeping with the intent and purpose of the inclusionary by-law. He said it was important that this project, as the first to actually proposed building units, have a well-defined path with a clear interpretation and guidance as to how the density bonus would be applied. The Board continued to discuss the issue and question Mr. Dolezal.

d) Discussion of zoning amendments to be proposed at the Spring Annual Town Meeting, including potential amendments to encourage the production of housing. Mr. Ribeiro suggested topics of future discussion, such as tiny homes and the commercial and residential density schedule

e) **Discussion of planting list and categories** (placeholder).

f) **Discussion of proposed standard conditions for telecommunications facilities** (placeholder).

g) **Minutes of April 23, August 27 and October 22, 2015, January 14, March 24, April 28, June 9, 2016 and October 25, 2018.**

October 25, 2018: *There was a motion by John Golden to approve the minutes as written. Paul Graves seconded. VOTE: 4-0-0.*

h) **Any other business that may properly come before the Board:** None.

There was a motion by John Golden to adjourn the Planning Board meeting at 9:45 P.M. Paul Graves seconded. VOTE: 4-0-0.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2019
David Abramson, Chair