

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
April 2, 2020**

Members Present: Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun, Susan Peskin, Robert Nee, and Quinn Taylor.

Members Absent: None.

Others Present: Thaddeus Soulé (Town Planner) and Ellen C. Battaglini (Permit Coordinator).

Mr. Soulé introduced the virtual hearing, explaining the reason the Public Hearing was being held in this manner, detailing how the Board, the applicants, and the public could participate remotely, and the meeting protocol. He then called the roll.

VIRTUAL WORK SESSION

Chair Jeremy Callahan called the virtual Work Session to order at 6:02 P.M. There were 7 members of the Zoning Board of Appeals participating in the virtual hearing. None were absent.

1) PENDING DECISIONS:

ZBA 20-51 (Jeremy) revise motions and re-approve decision.

Application by **Don DiRocco**, of **Hammer Architects**, on behalf of **William Lampeter**, seeking a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to construct a new dormer up and along a pre-existing, non-conforming east front yard setback on the structure located at **10 Atwood Avenue (Residential 2 Zone)**. **Jeremy Callahan, Caleb Eigsti, Daniel Wagner, Peter Okun, and Robert Nee sat on the case.** Jeremy Callahan read the revised decision. *Peter Okun moved to approve the language as written, Robert Nee seconded and it was so voted by roll call, 4-0.*

Robert Nee moved to appoint Town Planner, Thaddeus Soulé to sign decisions and plans that are approved by the Zoning Board of Appeals on its behalf, Susan Peskin seconded and it was so voted by roll call, 7-0.

ZBA 20-54 (Jeremy)

Application by **William N. Rogers, II**, on behalf of **Noho Properties, LLC**, seeking a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and reconstruct decks and stairs at the rear of the property

located at **452 Commercial Street (Residential 3 Zone)**. **Jeremy Callahan, Daniel Wagner, Peter Okun, and Robert Nee** sat on the case. Jeremy Callahan read the decision. *Peter Okun moved to approve the language as written, Robert Nee seconded and it was so voted by roll call, 4-0.*

ZBA 20-58 (Peter)

Application by **Tim McNulty**, on behalf of **Mark Birnbaum**, seeking a Special Permit pursuant to Article 3, Sections 3230, Sign Size, and 3240, Multiple Signs, of the Zoning By-Laws to remove and replace a sign with a similar-sized sign and to add two individual sign panels to the structure on the property located at **281 Commercial Street (Town Center Commercial Zone)**. **Steven, Daniel, Peter, Susan, and Robert** sat on the case. Peter Okun read the decision. *Robert Nee moved to approve the language as written, Daniel Wagner seconded and it was so voted by roll call, 5-0.*

- 2) **Discussion regarding the Board’s policy for reading decisions and applicants’ recording requirements.** The issue was discussed after the Public Hearing.
- 3) **Approval of Minutes:**

March 19, 2020: *Steven Latasa-Nicks moved to approve the minutes of the March 19, 2020 Public Hearing, Robert Nee seconded and it was so voted by roll call, 5-0.*

- 4) **Any Other Business that may properly come before the Board:** None.

VIRTUAL PUBLIC HEARING

Chair Jeremy Callahan called the virtual Public Hearing to order at 6:30 P.M.

1) **PUBLIC HEARINGS:**

ZBA 20-32 *(continued from the meeting of March 19th)*

Application by **Ted Smith**, on behalf of **Mitchell Klein**, seeking a Special Permit pursuant to Article 2, Sections 2470, Parking Requirements, and 2640, Building Scale, of the Zoning By-Laws for relief from parking requirements and an increase in building scale due to the addition of a new dwelling unit in the structure located at **26 Bradford Street (Residential 3 Zone)**. Chair Jeremy Callahan explained that since there were only 4 members seated on the application and a unanimous vote would be required in order to be granted a Special Permit, the applicant could continue until 5 members were available or proceed. The applicant chose to proceed. Jeremy Callahan, Peter Okun, Susan Peskin, and Robert Nee sat on the case.

Presentation: Ted Smith was present at the meeting to discuss the application. He reviewed the changes to the project that were a result of the Planning Board’s approval. The changes include a reconfiguration of parking spaces on the site and decks on the main structure, the installation of a trench drain across the driveway that accesses Carnes Lane, and the installation of a drywell near

the cottage to mitigate stormwater runoff from the property. The deck on the main structure was on two levels and it was proposed that the lower be brought up to the level of the higher and raised to accommodate a higher ceiling height inside, however this proposal was revised, pursuant to the Planning Board approval, so that the decks will remain as existing, but with a slightly larger footprint. There are 7 parking spaces existing on the site. Two are tandem spaces. The site previously needed 9 parking spaces for the main structure and 1 for the cottage, for a total of 10, but now that the bedrooms are being reconfigured in the main house, only 5 parking spaces are now needed for the main house, 2 of which will be for the newly created dwelling unit in the main structure, and 2 parking spaces for the cottage where a bedroom is being added from the main structure, for a total of 9. Therefore, the applicant is seeking less relief for parking after the reconfiguration, in that instead of being 3 parking spaces short of what is required, the site is now only 2 parking spaces short. As to the building scale, Mr. Smith reviewed the change, which consists of raising the roof on the east side of the north elevation to align with the higher part of the roof on the west side, which is being lowered slightly. The structure is already above the average scale for the neighborhood and is not going higher. The applicant is seeking to clean up the mass and add headroom on the second floor to make the structure more liveable, both of which require more building volume. There is no difference in the building scale between the original proposal and the revised proposal, as the increase is still 2.6%.

Public Comment: Arthur Mahoney, an abutter, had a question about roof runoff, and Tom Tostengard, Peter Kassel and Greg Lombardi, all abutters, voiced concerns about the project, including the repair of any damage due to construction processes and the increase in height of the roof. There were no new letters submitted.

Board Discussion: The Board questioned Mr. Smith. There were concerns from the Board about the height of the upper deck and whether there were other similar decks at that height in the neighborhood, given the concern of several abutters. Mr. Smith then requested a poll of the Board and, as a result, requested to continue to the virtual Public Hearing of April 16, 2020 at 6:30 P.M. ***Robert Nee moved to grant the request for a continuance to the virtual Public Hearing on April 16, 2020 at 6:30 P.M., Peter Okun seconded and it was so voted by roll call, 4-0.*** Mr. Latasa-Nicks will view the previous recording of the application and invoke the Mullin Rule in order to sit on the case.

ZBA 20-43 (*request to continue to the meeting of April 16th*)

Application by **Christine Barker** seeking Special Permit pursuant to Article 2, Section 2470, Parking Requirements, of the Zoning By-Laws to construct a building containing 31 hotel units, 4 condominium units, and a restaurant/bar, with a parking area beneath, on the property located at **227R Commercial Street (Town Center Commercial Zone)**. There was a request from the applicant to continue to the Public Hearing of April 16, 2020 at 6:30 P.M. ***Steven Latasa-Nicks moved to approve the request to continue ZBA 20-43 to the Public Hearing of April 16, 2020 at 6:30 P.M., Susan Peskin seconded and it was so voted by roll call, 5-0.***

ZBA 20-53 (*request to continue to the meeting of April 16th*)

Application by **Christopher Page**, on behalf of **The Pilgrim House**, seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to expand an existing full-service restaurant space, add a live music venue for entertainment and reconfigure seats at the property located at **336 Commercial Street (Town Center Commercial Zone)**. There was a request from the applicant to continue to the Public Hearing of April 16,

2020 at 6:30 P.M. *Steven Latasa-Nicks moved to approve the request to continue ZBA 20-53 to the Public Hearing of April 16, 2020 at 6:30 P.M., Susan Peskin seconded and it was so voted by roll call, 5-0.*

ZBA 20-56 (*continued to the meeting of April 16th*)

Application by **Shank Painter Associates, Inc.** seeking a Special Permit pursuant to Article 2, Sections 2470, Parking Requirements, 2630, Roofs, and 2640, Building Scale, of the Zoning By-Laws to develop workforce housing, including requesting a waiver from parking requirements and to add a third story to, and allow an increase above the neighborhood average building scale of, the structure on the property located at **207 Route 6 (General Commercial Zone)**.

ZBA 20-57 (*postponed to the meeting of May 7th*)

Application by **Meilli West, LLC**, on behalf of **Shank Painter Medical Bldg. Trust**, seeking a Special permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to develop 11 condominium units in a structure that will be greater than the neighborhood average scale on the property located at **30 Shank Painter Road (General Commercial Zone)**.

ZBA 20-59 (*postponed from the meeting of March 19th*)

Application by **Ted Smith, Architect, LLC**, on behalf of **Sean McConnell**, seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a new foundation and to add a second story, including a cantilevered addition on the south elevation, up and along pre-existing, non-conforming west side and north rear yard setbacks of a cottage located at **25 Watson's Court (Residential 3 Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Peter Okun, Daniel Wagner, and Susan Peskin sat on the case.

Presentation: Ted Smith and Sean McConnell were present to discuss the application. Mr. Smith reviewed the project, which includes putting a foundation under the existing structure on the rear of the property and add a story to it, which will be cantilevered outward. A wall facing Watson's Court will be moved outward towards the south by 3' as well. The second story will go up and along pre-existing, non-conforming setbacks, that is the back, or north, and the west, or side elevations. He said that the changes to the cottage will result in the structure better reflecting the character of the neighborhood. The building is a single-family dwelling and can be considered under the *Goldhirsh v. McNear* ruling.

Public Comment: None.

Peter Okun moved to close the public portion of the hearing, Susan Peskin seconded and it was so voted by roll call, 5-0.

Board Discussion: The Board had no questions for Mr. Smith.

Susan Peskin moved to a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a new foundation and to add a second story, including a cantilevered addition on the south elevation, up and along pre-existing, non-conforming west side and north rear yard setbacks of a cottage located at 25 Watson's Court (Res 3), Peter Okun seconded and it was so voted by roll call, 5-0. Susan Peskin will write the decision.

ZBA 20-60

Application by **Ted Smith, Architect, LLC**, on behalf of **Strangers & Saints, Inc.**, requesting a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110,

Change, Extensions or Alterations, of the Zoning By-Laws to add a canvas awning over an existing wood deck/terrace on the east elevation of the property located at **404 Commercial Street (Town Center Commercial Zone)**. Steven Latasa-Nicks recused himself because of a conflict of interest. Jeremy Callahan, Peter Okun, Daniel Wagner, Susan Peskin, and Robert Nee sat on the case.

Presentation: Ted Smith and Fred Latasa-Nicks were present to discuss the application. Mr. Smith reviewed the project. He reminded the Board that since the awning will be affixed to the structure, it becomes a part of the structure and its scale becomes part of the scale for the entire structure. The entire structural unit is above the neighborhood average building scale. In addition, the awning will be located within the east side yard setback and relief from that situation is needed. Mr. Smith said that there already is dining outside and argued that there will be benefits for the neighborhood, such as a reduction in light pollution visible to abutters. In addition, as awning will be dark green, it will blend in with its surrounding and runoff from the canvas will be directed into a planting bed on the property. The awning will allow the business to operate in inclement weather, thus providing more meals taxes to the Town.

Public Comment: None. There were 4 letters from abutters in favor of the application.

Robert Nee moved to close the public portion of the hearing, Susan Peskin seconded and it was so voted by roll call, 5-0.

Board Discussion: The Board questioned Mr. Smith

Susan Peskin moved to find that pursuant to Article 5, Section 5330 the economic, social, or other benefits to the Town or neighborhood outweigh any adverse effects such as hazard, congestion, or environmental degradation, Robert Nee seconded and it was so voted by roll call, 5-0.

Susan Peskin moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to add a canvas awning over an existing wood deck/terrace on the east elevation of the property located at 404 Commercial Street (Town Center Commercial Zone), Peter Okun seconded and it was so voted by roll call, 5-0.

Susan Peskin moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to add a canvas awning over an existing wood deck/terrace on the east elevation of the property located at 404 Commercial Street (TCC), Robert Nee seconded and it was so voted by roll call, 5-0.

Jeremy Callahan will write the decision.

ZBA 20-61

Application by **Our Moms, Inc., Irvin D. Morgan, Manager**, seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to add an interior service bar and an additional 22 flex-seats at the property located at **177 Commercial Street (Town Center Commercial Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.

Presentation: Attorney Christopher J. Snow, Tim Klink, and Erv Morgan were present to discuss the application. Attorney Snow reviewed the project, which is to flex 22 existing interior seats outside in nice weather and to install a service bar that will allow more efficient service to customers of the establishment. He argued that the economic benefits of providing customers with more outside seating and thus provide more meals taxes to the Town outweigh any adverse

effects and would not be substantially more detrimental than the existing situation. The restaurant has operated with exterior seats for a period of a year now and it was very successful and lucrative for the business. The changes to the restaurant will make the business run more efficiently and eliminate crowding in the dining room.

Public Comment: None.

Peter Okun moved to close the public portion of the hearing, Susan Peskin seconded and it was so voted by roll call, 5-0.

Board Comment: The Board questioned Attorney Snow and inquired about a site plan that shows 91 seats. The submitted seating plan, if approved, will supersede the latter and indicate 94 seats. The Board asked how the remaining seats would be cordoned off in the interior when the 22 seats were moved outside.

Susan Peskin moved to find that pursuant to Article 5, Section 5330 the economic, social, or other benefits to the Town or neighborhood outweigh any adverse effects such as hazard, congestion, or environmental degradation, Robert Nee seconded and it was so voted by roll call, 5-0.

Susan Peskin moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to add an interior service bar and an additional 22 flex-seats at the property located at 177 Commercial Street (TCC), Peter Okun seconded and it was so voted by roll call, 5-0. Peter Okun will write the decision.

The Board discussed the protocol for reading decisions. Mr. Soulé suggested that Board members could email him their decisions and he could then distribute them for review by the rest of the Board. That way the Chair would just take a vote in the Work Session, thereby saving time. The Board discussed the idea. It was decided that Board members would write decisions in time to send them to Mr. Soulé, who will then distribute them to the rest of the Board by the Wednesday before the Thursday ZBA meeting, which should be enough time for comments and revisions.

NEXT MEETING: The next virtual meeting will take place on Thursday, April 16, 2020. It will consist of a virtual Work Session at 6:00 P.M. and a virtual Public Hearing at 6:30 P.M.

ADJOURNMENT: ***Peter Okun moved to adjourn the Public Hearing at 8:15 P.M., Robert Nee seconded and it was so voted unanimously by roll call.***

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2020
Steven Latasa, Vice Chair