

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
JOINT MEETING WITH THE PLANNING BOARD
May 28, 2020

Members Present: Jeremy Callahan, Daniel Wagner, Susan Peskin, and Robert Nee.

Members Absent: Steven Latasa-Nicks, Peter Okun and Quinn Taylor (all excused).

Staff: Thaddeus Soulé (Town Planner), Anne Howard (Building Commissioner), and David Gardner (Assistant Town Manager).

Others: Attorney Amy Kwesell (Town Counsel).

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

Planning Board Chair Brandon Quesnell called the meeting to order at 6:00 P.M.

1. Joint Meeting with the PB: Consideration of proposed motions drafted by Town Counsel to temporarily delegate to staff certain zoning process relief pursuant to Town of Provincetown Board of Health Rule and Order for the protection of public health by facilitating the Town's social distancing compliance under the Governor's Re-Opening Plan for all duly licenses businesses in Provincetown: David Gardner reviewed the request and noted a staff report that was sent to the Board. He said that at an earlier meeting today, the BOH and the Select Board voted to adopt a joint Emergency Order Imposing Certain Measures to Prevent the Spread of Covid-19 Within the Town. He then presented a PowerPoint overview of the actions that were taken. The measures include regulatory relief for businesses in order to prevent the causes of illness to spread out of their establishments so as to achieve the Governor's social distancing directives. The BOH will work with the Administration and other regulatory boards to implement a streamlined process to obtain temporary regulatory relief from the Town's by-laws and regulations to achieve this goal. The list of zoning and licensing relief considerations are as follows:

- Seating area requirements;
- Outdoor display of merchandise;
- Prohibition of food trucks or outdoor dispensing of food at large hotels on the outskirts of Town;
- Limitations on temporary structures or temporary use restrictions;
- Dimensional schedule/setback requirements;
- Parking requirements allowing expansion into parking lots;
- Signage restrictions; and
- Tent, awnings and temporary coverings.

Mr. Gardner said that some of these areas of consideration for regulatory relief came out of the meetings of the business sub-group of the Town's Recovery Coalition and the intent to delay or excuse certain zoning by-law requirements. However, upon subsequent review, it was the opinion of Town Counsel that the Town did not have the authority to waive zoning requirements. The limitations include not exempting local zoning requirements, as these cannot be changed except for a zoning by-law and state-wide zoning relief can only come from the State Legislature. These also may be further influenced by the Governor's Directives and the Department of Public Health. The PB and the ZBA can make a finding to take actions to ensure businesses affected by the Joint Emergency Order may make temporary modifications to existing Special Permits in a timely manner.

Mr. Gardner reviewed the actions that can be taken by the ZBA and the PB to effectuate regulatory relief, such as:

- Establishing a process that would allow temporary modifications to existing SPs specifically to address the Town's goals of advancing the social distancing criteria and guidance required by the Governor;
- Tying the timeline modification directly to the Emergency Order;
- The Boards making a finding pursuant to the by-law, that temporary modifications of existing SPs for the purpose of complying with the Covid-19 guidance and "...does not represent a substantive change of the findings or conditions of the approval of the project";
- Approving an expedited permitting process allowing staff to approve modifications provided they comply with all guidelines; and
- Waiving fees for temporary modifications.

Mr. Gardner said that a caveat was that the Town does not know what additional parameters will be placed on businesses to comply with until the Governor speaks to the issue for Phase 2 of the state's reopening.

Temporary relief applies to the ZBA for:

- Temporary modifications to existing SPs under Article 2, Section 2460 of the Zoning By-Laws for restaurant, alcohol and entertainment (seating plans); and
- Outdoor display of merchandise pursuant to Article 3, Section 3420.

Temporary relief applies to the PB for:

- Temporary modifications to existing site plans under Article 4.

If businesses that do not have existing SPs or site plan review for these activities, they must obtain an SP or a site plan review through the normal processes. The Town is simply providing an expedited process for consideration of modifications for the purpose of allowing businesses to comply with COVID-19 guidelines.

The following are issues that may be considered as part of staff review of the temporary modifications:

- Temporary pick-up/loading zones;
- Relaxed signage relating to COVID-19 operations;
- Flexible seating plans/outdoor restaurant seating;
- Outdoor entertainment uses;
- Reduced parking requirements;

- Liquor for take-out and delivery;
- Expanded liquor service areas for restaurants (potentially bars);
- Outdoor display of merchandise;

These are given expanded explanations in the staff report.

The expedited permitting process includes:

- Applications for temporary modifications submitted to the Dept. of Community Development in the form of a site plan or seating plan as applicable;
- Review in consultation with the Health, Licensing, Building, Fire, Police, and Zoning Depts.; and
- Seating area plans may be, “conditionally approved based on seating area, final approval may be contingent upon an inspection confirming compliance with valid orders from the Commonwealth and Provincetown BOH regarding restaurants and social distancing”.

He said that staff will consider approved plans for seating areas will be accepted and require compliance and actual seating plans when further guidance has been issued by the Governor.

Attorney Kwesell commented, adding that in the zoning by-laws both the ZBA and PB have the opportunity to amend SPs and site plan review approvals at a public meeting with a note to the file and which contemplates staff input. This is a good way to get things moving and help out businesses.

Chair Quesnell asked ZBA Chair Jeremy Callahan if his Board had questions. No ZBA Board members had questions or comments on the presentation or the substance of the material.

Chair Quesnell asked PB members if they had comments or questions. Mr. Mulliken asked for a clarification of the proposed procedure. The Board briefly discussed the issue of reviewing applications for modifications. He asked about requiring site plans or seating plans to scale. Mr. Gardner explained that in order to expedite the process and not cost the business more expense, this requirement was deliberately left out of the process. He said that more important aspects are where the proposed seating area is located and whether it violates any Town regulations. Mr. Zachs had a question about whether applications for modification were required. Attorney Kwesell responded that since the request was only for a modification or an amendment because an application would infer that a public hearing would be required. The motion states that this is a temporary state of affairs, not a permanent situation. She reviewed what each of the PB and he ZBA would be reviewing. She noted that the scope of the amendment and the time of the amendment are both quite narrow. She said that minor modifications with notations to the file are allowed under the Town’s Zoning By-Laws. The notation to the file will refer to the plan submitted and it is valid only until the Emergency Order is lifted. Mr. Zachs asked for clarification as to whether a form would be required. Mr. Gardner said that restaurants will make the actual modifications on their seating plans that are filed with their SPs, as this will make future compliance checks easier.

Mr. Gardner asked Town Counsel about revising the motion to include indoor seating as well as outdoor seating, to which Attorney Kwesell agreed.

Mr. Kelly asked about what would be required of seating plans. Mr. Gardner replied that the SPs were already existing. Many could be old, he conceded, but he understands that the Town is willing to work with restaurants to modify their seating in order to operate. Staff will be using plans filed with both the ZBA and Licensing files and not require businesses to spend money to acquire new plans that would incur at substantial cost. Mr. Azar asked about the use of parking spaces in public right of ways for seating. Mr. Gardner said that it would require Select Board approval and a license agreement between the business and the Town. He said that the Town has considered sidewalks, but that is not a realistic scenario given its layout. He said that the seating has to be done on the business property or alternative plans would be considered on a case by case basis. He asked about the temporary structures being considered by the Historic District Commission. Anne Howard said she would bring up the topic at the next HDC meeting.

Chair Callahan requested that the proposed motion have a date certain, such as January 1, 2021, for expiration or expire at the end of the Emergency Order, whichever is earlier. The Zoning Board members voting on the motion were Jeremy Callahan, Daniel Wagner, Susan Peskin, and Robert Nee.

Pursuant to the Provincetown Zoning By-Law, Section 5350, Robert Nee moves to issue an amendment and minor modification to the valid Special Permit to allow for compliance with the Town of Provincetown Board of Health Rule and Order on Use of Outdoor Space for On-Premises Dining effective May 28, 2020 (The “Board of Health Rule and Order”) by allowing all restaurants in Provincetown to submit a revised seating plan to the Building Commissioner. Said amendment and minor modification shall be noted in the file and shall only be valid upon the earlier of the Board of Health Rule and Order terminating or January 1, 2021, Daniel Wagner seconded. It was so voted, 4-0 by roll call.

Pursuant to the Provincetown Zoning By-law, Section 5350, Robert Nee moves to issue an amendment and minor modification to the valid Special Permit to allow for compliance with the Commonwealth of Massachusetts Governor’s Order Prohibiting Gatherings of More Than 10 People (COVID-19 Order No. 13) by allowing any retail establishment with an existing Outdoor Display Special Permit to submit a revised outdoor display plan to the Building Commissioner. Said amendment and minor modification shall be noted in the file and shall only be valid while COVID-19 Order No. 13 is in effect and shall terminate at the earlier of the termination of the COVID-19 Order No. 13 or January 1, 2021. Susan Peskin seconded. It was so voted, 4-0 by roll call.

Robert Nee moved to adjourned the Joint Meeting at 6:57 P.M. Jeremy Callahan seconded and it was so voted, 5-0 by roll call.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2020
Thaddeus Soulé, Town Planner,
on behalf of the Planning Board