

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
June 4, 2020**

**Members Present:** Jeremy Callahan, Steven Latasa-Nicks (left at 8:35 P.M.), Daniel Wagner, Peter Okun, Susan Peskin, Robert Nee, and Quinn Taylor.

**Members Absent:** None.

**Others Present:** Thaddeus Soulé (Town Planner).

Town Planner Thaddeus Soulé introduced the virtual Public Hearing and called the roll at 6:20 P.M.

Chair Jeremy Callahan called the virtual Public Hearing to order at 6:20 P.M. Mr. Soulé, the moderator of the meeting, explained 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.

**A. Work Session:**

- 1) **Any other business that may properly come before the Board.** None.

**B. Public Hearings:**

**ZBA 20-43** (*postponed to the meeting of July 16<sup>th</sup>*)

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)**.

**ZBA 20-53** (*request to postpone to the meeting of June 18<sup>th</sup>*)

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 postpone ZBA 20-53 to the Public Hearing of June 18, 2020 at 6:30 P.M. **Robert Nee moved to approve the request to postpone ZBA 20-53 to the Public Hearing of June 18, 2020 at 6:30 P.M., Susan Peskin seconded and it was so voted by roll call, 7-0.**

**ZBA 20-56** (*request to postpone to the meeting of June 18<sup>th</sup>*)

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)**. There was a request from the applicant to continue ZBA 20-56 to the Public Hearing of June 4, 2020 at 6:30 P.M. **Robert Nee moved to approve the request to continue ZBA 20-56 to the Public Hearing of June 18, 2020 at 6:30 P.M., Susan Peskin seconded and it was so voted by roll call, 7-0.**

**ZBA 20-57**

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 20-66**

Application by **Meili West, LLC**, on behalf of **Shank Painter Medical**, seeking a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish a building and replace it with a three-story multi-family development on the property located at **30 Shank Painter Road (General Commercial Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Peter Okun, Daniel Wagner and Susan Peskin sat on the case.

**Presentation:** Attorney Christopher J. Snow, representing the applicant, Ted Roach, the principal of Meili West, LLC, and Randy Carpenter, a realtor, were in the meeting to discuss the application. Attorney Snow reviewed the project, detailing how the plans have been reduced in scope since it was first introduced to the Planning Board. He said that the project proposes 8 units with one affordable on-site, (Unit 102), and one affordable proposed for an off-site location on Nelson Avenue, a description of which has been provided. The proposed building has been scaled down from 9000 cu. ft. to 7068 cu. ft., a 22% reduction. A quarter of the scale calculation is dedicated to the ground parking aspect of the project. He said that the design was also taking an existing hazardous parking situation on Shank Painter Road and moving it around the corner to Browne Street, making it safer and more organized for ingress and egress purposes. In addition, because of the proposed gambrel roof configuration, more interior space has been created and will allow for more natural light and air through additional windows that have been added. There will be more exterior architectural details than the previous design and its creativity has added to its appeal. He clarified that there will be a 173.9% increase over the existing building scale and the actual structure will be 318% over the neighborhood average building scale allowed by right. The property will have a new stormwater drainage system, mitigating runoff from storms, and will be connected to the Town's sewer system, bringing environmental benefits to the site. The increase in scale is conforming to other large structures in the neighborhood, such as the Methodist Church and the Fire Station, and is not disruptive to its character. He reviewed how the project supported the objectives and goals of the Local Comprehensive Plan; Chapter 1, Goal 1, Policy A and B; Goal 2, Policy A; Goal 3, Policy A, B and C; Chapter 4, Goal 2; Chapter 5, Goal 1, Policy E, Goal 2 and Goals 4-7; and Chapter 6, Goals 1-3. He argued that the project conformed with several of the criteria of Article 2, Section 2640E, in that the structure is an important one to the community, as it will result in 2 affordable

housing units, a priority of the Town, and that it successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to or views from neighboring structures. As to Article 5, Section 5330, the social, economic and other benefits to the Town and neighborhood outweigh any adverse effects. He added that the new building will generate more tax revenue and increase the value of the structures around it, again adding to the tax base, and the project will provide jobs to local contractors and subcontractors.

**Public Comment:** Randy Carpenter spoke in support of the application. There were 12 letters in support of the application.

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

**Board Discussion:** The Board questioned Attorney Snow. Chair Callahan polled the Board which was in favor of the project.

*Peter Okun move that the Board find pursuant to Article 2, Section 2640E, Building Scale, subparagraph 5, the proposed new construction integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have significant negative impact on the natural light to, or views from, neighboring structures on the property located at 30 Shank Painter Road, Susan Peskin seconded and it was so voted, 5-0 by roll call.*

*Peter Okun move that the Board approve a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, to demolish the pre-existing, non-conforming structure and construct a new structure on the property located at 30 Shank Painter Road (GC), seconded and it was so voted, 5-0 by roll call.*

*Peter Okun moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a structure to include 8 condominium units in a structure that will be greater than the neighborhood average scale on the property located at 30 Shank Painter Road (GC), subject to the conditions that the project will comply with the all terms of Special Permits issued by the Planning Board, PLN 20-14 and 20-15, including, but not limited to the provision of one unit of affordable housing within the project and one addition unit of affordable housing to be located off-site, that reconstruction of said premises shall commence within 2 years after demolition and timing or deadlines to begin/finish construction work so as not to block/obstruct traffic on Shank Painter Road, Browne Street or any other public ways, and that the Special Permit shall lapse 24 months following the grant thereof (plus such time required to pursue or await the determination of an appeal referred to in M.G.L. c. 40A, s. 17 if substantial use thereof or construction has not sooner commenced except for good cause as determined by the Board of Appeals, Steven Latasa-Nicks seconded and it was so voted, 5-0 by roll call .*

*Peter Okun move that the Board find pursuant to Article 5, Section 5330, Special Permit Considerations, the social, economic, and other benefits of the proposal for the Town and neighborhood outweigh any adverse effects such as hazard, congestion or environmental degradation, Steven Latasa-Nicks seconded and it was so voted, 5-0 by roll call. Jeremy Callahan will write the decision.*

**ZBA 20-65** (*request to postpone to the meeting of June 18<sup>th</sup>*)

Application by **53 Commercial Provincetown, LLC** seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Sections 3110, Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish a structure and replace it with two new structures, one of which will exceed the neighborhood average building scale and extend up and along a pre-existing, non-conforming east side yard setback on the property located at **53 Commercial Street (Residential 2 Zone)**. There was a request from the applicant to postpone to the Public Hearing of June 18, 2020 at 6:30 P.M.

**Robert Nee moved to approve the request to postpone ZBA 20-65 to the Public Hearing of June 18, 2020 at 6:30 P.M., Susan Peskin seconded and it was so voted 7-0 by roll call.**

**ZBA 20-67** (*request to withdraw without prejudice*)

Application by **Robin B. Reid, Esq.**, on behalf of **Marcus Builders, LLC**, seeking a Special Permit pursuant to Article 2, Sections 2460, Special Permit Requirements, and 2470, Parking Requirements, of the Zoning By-Laws to allow the flex-seating of 18 existing interior seats to an exterior parking area and relief from parking requirements for a period of one year on the property located at **175 Bradford Street Extension (Residential 3 Zone)**. There was a request from Attorney Reid to withdraw without prejudice. **Steven Latasa-Nicks moved to grant the request to withdraw ZBA 20-67 without prejudice, Peter Okun seconded and it was so voted, 5-0 by roll call.**

**ZBA 20-68**

Application by **Tri-T, LLC** seeking a Variance pursuant to Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws to allow for the construction of a new single-family dwelling with a 15' front yard setback, resulting in the creation of a non-conformancy on the property located at **4 Commercial Street (Residential 1 Zone)**.

**Presentation:** Attorney Lester J. Murphy and Tom Tannariello, the principal of Tri-T, LLC, and Cliff Schorer, the owner of the former Murchison property, were present in the meeting to discuss the application. Attorney Murphy reviewed the project. He said the project includes the construction of a single-family house whose front yard setback is 15' from the south lot line, rather than the 30' requirement of the dimensional schedule. It was designated as Lot 8 of a subdivision formed and endorsed by the Planning Board in 2009. He said that recent changes in the Zoning By-Laws have been revised to increase the size of lots and lot frontage in the Residential 1 Zoning District, however this lot had been grandfathered, via a more recent Zoning By-Law revision, and was not affected by these changes. Attorney Murphy said that in order to grant a Variance, 3 criteria must be met:

- A literal enforcement of the provisions of this By-Law would involve a substantial hardship, financial or otherwise, to the petitioner or appellant;
- The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;
- Desirable relief may be granted without either: 1) substantial detriment to the public good; or 2) nullifying or substantially derogating from the intent or purpose of this By-Law.

He argued that this project is a situation where there is a substantial hardship created by the particular topography of the lot that justifies the relief from the front yard setback requirements. The front portion of the lot is fairly flat or slightly sloped. This is where the proposed structure will be built. However, as you proceed farther back on the lot, beyond the 30' setback, there is an increase in elevation from 11' to 25' over a 30' distance, a 2-to-1 slope. This would make building a structure exceedingly expensive for the applicant and destabilize to the lot. He said that there were other building projects in Town that involved similar issues in comparable situations, such as 29 Point Street and 25 Cottage Street, both of which ran into difficulties with these issues, including trying to stabilize steep slopes. In addition, according to Attorney Murphy, all building will be done on a steep slope in sandy soil, a very unstable medium, and when trying to build retaining walls in sand, it creates a problematic situation. He said that to require a 30' setback would create a financial hardship for the applicant to stabilize the property and a house to the rear. Thus, owing to both the topography and soil conditions of the lot, a hardship has been created for the applicant. In addition, he argued that this particular lot topography was different from the topography on most lots in Res 1.

In other regards, such as house size, height, and design, the project complies with all Zoning By-Laws. He said that the house is modest in size and there is a proposed 4' bump-out to be constructed on pilings to reduce the necessity of trying to support the rear slope. It is designed to be narrow in width to fit the other setback requirements and it is only a two-bedroom house. The design has been reviewed and approved by the Historic District Commission. It will share driveway access with an abutting property. He reiterated that there are significant topographical features that create a hardship and necessitate building a structure closer to the front lot line. He argued that the relief from the setback can be granted without a substantial detriment to the public good. The 30' setback was designed to create an attractive streetscape in newer residential areas of Town. However, this area was previously a Residential 3 Zone and was re-zoned in the 1980s. He said that a sketch was provided showing the setbacks of other structures in the immediate vicinity, most of the older buildings were built closer to Commercial Street than 30'. It's the newer buildings, built since the Zoning By-Law change, that comply with the 30' setback requirement. Many of the older structures are located at the same distance from Commercial Street that is proposed for this new structure, thus there would be no substantial detriment to the public good if this Variance were to be granted. Neither would there be a substantial derogation from the purpose or intent of the Zoning By-Law. The Zoning By-Laws are meant to promote the health, safety, convenience, and welfare of the Town's residents. As the proposed house would be located at the same distance from Commercial Street as many others in the neighborhood, it would, more importantly, ensure the stability of the steep slope and house in the rear of the property. The location of the structure would not negatively impact the character of the neighborhood, and not destabilize the abutting property, and is thus supportive of the intent of the by-law, to ensure the health, safety, convenience, and welfare of the town's residents.

Attorney Murphy then addressed an issue that appeared in the Town Planner's report, that similar topographical situations do exist in Res 1, and this was not a unique lot. He argued that the Zoning By-Law states that the particular topographical situation does not 'generally' affect the Res 1 Zoning District in which it exists, not that it doesn't exist at all anywhere in Res 1. He said that this is a feature sufficient to create a hardship for the applicant. This property has street frontage and then a steep slope in the rear, whereas most of the properties mentioned in the staff

report have crests of hills or flat portions in the rear, that can be built upon or there are sufficient envelopes in which structures can be built without destabilizing a slope. He said that it's important for the Board to understand that when the entire property was purchased by Mr. Schorer, there was a very rigorous review by many Town Boards and a referral of the property as a Development of Regional Impact to the Cape Cod Commission. He said that many of the other lots in the subdivision have a flat area in which to build, unlike this property, however only 2 can comply with the 30' setback. They are all accessed from the rear by a common driveway. He said that Mr. Schorer's most significant issue on the property has been with slope stability and he wants to make sure that it is not exacerbated by the building of structures and the excavation of the slope when developing the lots in the subdivision. The applicant will have to build into the side of the hill and Mr. Schorer, whose residence is adjacent to the property in question, does not want his house damaged by the proposed construction. The potential for damages to Mr. Schorer's property and the immense cost of having to shore up the slope with retaining walls constitutes a hardship to the applicant. Attorney Murphy argued that a front yard setback of 15' is not out of character with the neighborhood, which used to be a Res 3 district and allowed for a lesser front yard setback. He then read a letter from Mr. Schorer into the record that added some historical information and facts about the property for the Board's consideration.

**Board Discussion:** The Board questioned Attorney Murphy, including about the referral of the Murchison property subdivision to the CCC. The Board requested the Variance decision that was written for 29 Point Street, the Memorandum of Understanding that was signed with the Town for the Murchison property, and any paperwork related to the CCC referral be submitted. Moving the structure in order to negate the need for a Variance was suggested. Attorney Murphy said that this would create a large cost for the applicant in terms of slope stabilization. Mr. Schorer related that his engineering cost was close to \$340,000 for a replacement of a retaining wall on his property back in 2011. The Board decided to continue the matter until the information requested was submitted. In addition, the applicant will respond to staff's suggestions in the report about revising the project. *Steven Latasa-Nicks moved to continue ZBA 20-68 to the Public Hearing of June 18, 2020 at 6:30 P.M., Peter Okun seconded and it was so voted, 5-0 by roll call.*

### **ZBA 20-69**

Application by **Tom Thompson** seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to connect an existing accessory structure with a covered breezeway/shelter resulting in an increase in scale above the neighborhood average on the property located at **3 Fishburn Court (Residential 3 Zone)**. Steven Latasa-Nicks recused himself because of a conflict of interest. Jeremy Callahan, Peter Okun, Daniel Wagner, Susan Peskin and Quinn Taylor sat on the case.

**Presentation:** Tom Thompson was present at the meeting to discuss the application. He reviewed the project, which includes attaching a 2½ story main house to an accessory structure (960 cu. ft.). The attachment is a breezeway/shelter, measuring 8' by 12', with a roof that runs in the same direction as the shed roof on the main house. No hazard is being created by the breezeway/shelter and it is in conformity with the side yard setback. This covered area will create an additional 960 cu. ft. of building scale, for a total of 1920 cu. ft., and will make the property more useful by providing shade. He argued that the project was consistent with the goals and objectives of the Local Comprehensive Plan, Section 1.2, Goal 2 and Goal 3, will not disrupt the character of the neighborhood and was consistent with subparagraph 5 of Article 2, s.

2640E. He withdrew the application from Historic District Commission review and will be re-applying for his approval.

**Public Comment:** None.

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

**Board Discussion:** The Board questioned Mr. Thompson.

*Peter Okun moved that the Board find that pursuant to Article 2, Section 2640E, Building Scale, subparagraph 5, the proposed new construction integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures for the property located at 3 Fishburn Court, Susan Peskin seconded and it was so voted, 5-0 by roll call.*

*Peter Okun move that the Board find pursuant to Article 5, Section 5330, Special Permit Consideration, the social, economic or other benefits of the proposal for the neighborhood or Town outweigh any adverse effects such as hazard, congestion or environmental degradation, Susan Peskin seconded and it was so voted, 5-0 by roll call.*

*Peter Okun moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to connect an existing accessory structure with a covered breezeway/shelter resulting in an increase in scale above the neighborhood average on the property located at 3 Fishburn Court (R3) subject to the condition that the Special Permit shall lapse twenty-four months following the grant thereof (plus such time required to pursue or await the determination of an appeal referred to in M.G.L., c. 40A, s. 17) if a substantial use thereof or construction has not sooner commenced except for good cause as determined by the Board of Appeals, Susan Peskin seconded and it was so voted, 5-0 by roll call.*

Quinn Taylor will write the decision.

**NEXT MEETING:** The next virtual meeting will take place on Thursday, June 18, 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 meeting at 8:50 P.M. Susan Peskin seconded and it was so voted unanimously by roll call.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2020  
Thaddeus Soulé on behalf of the Zoning Board of Appeals,