

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
September 3, 2020**

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

Members Absent Susan Peskin (excused).

Others Present: Thaddeus Soulé (Town Planner).

Town Planner Thaddeus Soulé, the moderator of the meeting, introduced the virtual Public Hearing at 6:00 P.M. He then called the roll.

Chair Jeremy Callahan called the meeting to order.

Mr. Soulé then 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. Public Hearings:

ZBA 20-43 (*request to postpone to the meeting of October 1st*)

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)**. **Steven Latasa-Nicks moved to postpone ZBA 20-43 to the Public Hearing of October 1, 2020 at 6:00 P.M., Robert Nee seconded and it was so voted, 7-0 by roll call.**

ZBA 20-53 (*request to postpone to the meeting of September 17th*)

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)**. **Steven Latasa-Nicks moved to postpone ZBA 20-53 to the Public Hearing of September 17, 2020 at 6:00 P.M., Robert Nee seconded and it was so voted, 7-0 by roll call.**

ZBA 20-56 (*request to continue to the meeting of September 17th*)

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 to continue ZBA 20-56 to the Public Hearing of September 17, 2020 at 6:00 P.M.) *Steven Latasa-Nicks moved to continue ZBA 20-56 to the Public Hearing of September 17, 2020 at 6:00 P.M., Robert Nee seconded and it was so voted, 7-0 by roll call.*

ZBA 20-65

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)**. Jeremy Callahan, Daniel Wagner, Peter Okun, Steven Latasa-Nicks, and Erik Borg sat on the case.

Presentation: Attorney Lester J. Murphy, Stacy Kanaga, an engineer with Coastal Engineering, and Patrick Archibald and Peter MacDonald, architects, were in the meeting to present the application. Attorney Murphy said that the applicant had re-designed the project over the past year and had had an application before the Board about a year ago in which he sought to modify and alter the structure on the site and construct an addition. The applicant has hired new architects and now seeks to demolish the three-story single structure and replace it with 2 two-story structures. The demolition of the existing structure has been approved by the Historic District Commission. The existing structure has 2 units with 8 bedrooms and it will be replaced with 2 single-family residences with 3 bedrooms apiece, a reduction in density of 2 bedrooms. The elevation plans to be considered by the Board are for the new rear building, as the front building is not involved in this project and is totally compliant with the Zoning By-Laws. Ms. Kanaga briefly reviewed the site plan for the project. The site is in FEMA flood plains; the AO Zone and the Velocity (V) Zone. The new structures will be built in conformity with current flood plain design. The rear building will be raised and will be pulled away from the beach, towards the north and out of the V Zone. Flood-compliant foundations, with vents, will be installed beneath the new structures to allow water to flow through and beneath them in case of a flooding event. The structures will be connected to the Town sewer system. The decks will be redone in their current location. Attorney Murphy said that the structure in the rear is non-compliant in several respects and its replacement will have a larger scale and be built in a different footprint, which is why relief from Article 3, s. 3110 is being requested. Because of that, the Board must find that the new structures are not substantially more detrimental to the neighborhood or Town than the existing non-conforming structure and that the benefits outweigh any adverse effects. The latter requirements are also needed for demolition and reconstruction relief. The existing structure is in poor condition and was flooded in a winter storm. As a result, the pipes were frozen in the cold weather and it needs to be demolished and relief pursuant to Article 3, s. 3115 is being sought. The building suffered from rot, mold and other water-related damage and became an eyesore in the neighborhood. The new structure will be not only pulled back from the beach, but pulled back farther from the east elevation lot line and will have only two stories, not the three that now exists. Attorney Murphy argued that the renovated and altered structure will not be substantially more detrimental than the existing structure, which was built before the Historic District was created and before building requirements for flood zones were created. The building will be moved farther away from the water, about 5', and its upper decks will be removed, which will result in the actual face of the structure being 15' farther away from the waterline. In addition, the building will be pulled farther, 3.8', off the east elevation lot line,

whereas it is currently located right next to it. The building will be a two-story conforming structure, slightly lower in height and more historic in appearance and an enhancement to the neighborhood. A benefit of the project is that the improvement of the property and the 2 proposed single-family residential structures will result in more tax revenue for the Town. Another benefit is that the property will be hooked up to the Town's sewer system. The existing Title 5 system will be removed. The new structure will be an improvement in terms of its appearance and will be a single-family structure, not a multi-family as now exists. The lot coverage is increasing, but it will still be below that allowed by the Zoning By-Laws and will have the requisite amount of green space.

Attorney Murphy argued that the project's increase in building scale by 8.75% meets the requirements of subparagraph 5 of Article 2, s. 2640E, as the new structures will integrate into its surroundings and reduce the appearance of mass from the streetscape and not interfere with the views from, or light and air to, abutting structures, and subparagraph 6, as was approved by the Historic District Commission. One of the reasons that the building scale was above the neighborhood average scale is that the structural mass of an existing shack from 51 Commercial Street has now been incorporated into the structure on the north elevation. This was the result of a request by the HDC. Another factor that drove the increase in scale was compliance with new Building Code requirements for construction in flood zones and FEMA requirements because of its location. Attorney Murphy said, based upon his presentation, that the Board would be able to approve the relief sought by the applicant. This has resulted in the elimination the basement, so the building must be designed to accommodate its mechanical systems within the above-ground areas.

Mr. MacDonald and Mr. Archibald reviewed the intent behind the design of the structure, in conjunction with several meetings of the HDC. The design included breaking up the mass of the rear structure as seen from the streetscape and maintaining the character of the neighborhood structures and the new structure on 51 Commercial Street. Attorney Murphy added that the proposal includes the addition of full-sized trees on the east elevation to block the view from the public parking lot abutting the property. He also said, in response to concerns voiced by the public, that no view easements exist for abutting properties in the neighborhood. He also addressed a concern about an increase in the flooding of the neighborhood and damage to abutting structures given the new structure's larger footprint, by saying that because of the new FEMA-compliant design, any flood waters from storm events will be passing through or beneath the new structure and not be displaced as with the existing structure.

Public Comment: None. There were 3 letters with concerns about flood waters, views, and building scale.

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 Murphy, Ms. Kanaga, Mr. MacDonald, and Mr. Archibald, including about what appears to be an increase in the massing of the structure on the east elevation. Attorney Murphy reiterated that the new structure had to be situated 2' above the base flood elevation, pursuant to FEMA requirements, and would result in an increase in the building height by about 4'.

Steven Latasa-Nicks moved to find that pursuant to Article 5, Section 5330, the project's economic, social, and other benefits to the neighborhood or Town outweigh any adverse

effects such as hazard, congestion, or environmental degradation, that pursuant to Article 2, Section 2640E, the project meets the criteria of subparagraphs 5 and 6, and that the Board grant a Special Permit pursuant to Article 2, Section 2640E, 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 (Res 2 Zone), Peter Okun seconded and it was so voted, 5-0 by roll call. Jeremy Callahan will write the decision.

Chair Jeremy Callahan stated his dislike of 3-hour Board meetings and, given that the previous application was an hour in duration and that the agenda was quite extensive, he warned those present in the meeting that the Board may decide to postpone or continue some items on the agenda.

ZBA 20-68 (continued from the meeting of August 6th)

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)**. Jeremy Callahan, Daniel Wagner, Peter Okun, Steven Latasa-Nicks, and Robert Nee sat on the case. Mr. Callahan said that the Board had been waiting for a letter from Town Counsel and a response from Attorney Murphy with concerns regarding that letter. Mr. Callahan then summarized Town Counsel's letter.

Presentation: Attorney Lester J. Murphy, Cliff Schorer, and Tom Tannariello were present in the hearing to discuss the application. Mr. Callahan polled the Board as to whether each member had read both letters. All answered in the affirmative.

Public Comment: None.

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

Board Discussion: The Board questioned Attorney Murphy, including about the possibility of re-designing or re-positioning the structure so that it does not need relief in the form of a Variance. He said that the applicant would be willing to look at the option to reduce the size of the structure slightly. However, he added that the economic aspect of the project would not support making the house totally compliant with the 30' front yard setback. Mr. Callahan polled the Board as to its support of the request and the arguments made by Attorney Murphy to satisfy the 3 prongs of the Variance By-Law that were required for relief. Mr. Callahan and Mr. Latasa-Nicks were not in support of the request. Mr. Okun, Mr. Wagner, and Mr. Nee said that they did not support all of the arguments made by Attorney Murphy. Attorney Murphy reiterated that the applicant would be willing to work with the Board about re-positioning the structure and making it narrower if it would make the project more palatable to the Board. Mr. Schorer argued in support of the application. Mr. Tannariello opined on the Town Planner's report about the project, rebutting several of its arguments with which he did not agree.

Steven Latasa-Nicks moved to grant a Variance pursuant to Article 5, Section 5222 of the Zoning By-Laws where the Board of Appeals finds the following: that a literal enforcement of the provisions of this By-Law would involve a substantial hardship, financial or otherwise, to the petitioner; that 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; and that desirable relief may be granted without either substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this By-Law, Robert Nee seconded and it was so voted, 0-5 by roll call. The request was denied. Jeremy Callahan will write the decision.

ZBA 20-2003

Application by **Adam Rogers** seeking a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish a garage and build a studio, adding a half story, in the same footprint on the property located at **10-12 West Vine Street, U3 (Residential 2 Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, Steven Latasa-Nicks, and Erik Borg sat on the case.

Presentation: Adam Rogers was in the meeting to present the application. He said that he had appeared before the Board for a proposal to replace a garage with an art studio last year. The project was approved by the Board, however upon further investigation by an structural engineer, the structure and the foundation were found to be unstable. It would have to be totally replaced and he is looking for the approval of the Board to demolish and rebuild the structure.

Public Comment: None.

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 had no questions for Mr. Rogers.

Steven Latasa-Nicks moved to find that pursuant to Article 5, Section 5330, Special Permit Considerations, the project's economic, social, and other benefits to the neighborhood or Town outweigh any adverse effects such as hazard, congestion, or environmental degradation and that the Board grant a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish a garage and build a studio, adding a half story, in the same footprint on the property located at 10-12 West Vine Street, U3 (Res 2), Erik Borg seconded and it was so voted, 5-0 by roll call. Erik Borg will write the decision.

The Board took a 5-minute break.

ZBA 20-2004

Application by **William N. Rogers, II** on behalf of **Escargot, LLC**, seeking a Special Permit pursuant to Article 3, Section 3110 Change, Extensions or Alterations, of the Zoning By-Laws to raise a structure and repair a foundation on the property located at **437-439 Commercial Street (Residential 3 Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, Steven Latasa-Nicks, and Robert Nee sat on the case.

Presentation: Gary Locke, Ginny Binder, and Deborah Paine were in the meeting to present the application. Mr. Locke said that 2 buildings on the site were in dire need of a new foundations. One of the buildings was listing towards Commercial Street by about 8", and the other has a buried foundation. He said that the buildings were in the 'VE' flood zone with a base flood elevation of 13', and that consequently, pursuant to FEMA guidelines, the lowest structural member of the building has to be at 15'. The building in question will have to be lifted and rebuilt with a steel beam and timber pile foundation and the decks rebuilt, which will have to be enlarged due to Building Code compliance clearances for exiting purposes. In addition, the new

beams to be installed require the decks to be larger. The lot coverage will be slightly increased, by about 1%, and the green space will be decreasing slightly.

Ms. Paine reviewed the project and said changes in the climate and the environment that have occurred on the site over the last 5 years, including the erosion of a dune in front of the building, has resulted in the proposal to lift the building. That dune was a protective barrier for the west building. She said that the east building on the site had to be lifted 12 years ago. Ms. Binder reviewed the photographs that were submitted and reviewed the relief requested. She said that the historical character of the building will be retained even though it is being lifted. The property is already non-conforming as to lot coverage and will only increase by 1%. The building will be going up and along pre-existing, non-conforming lines. She argued that the social, economic and other benefits outweighed any adverse effects, adding that the project actually avoids environmental degradation by the proposed elevation and it will only go up to the minimum FEMA-standard height. She added that raising the buildings will result in protecting the abutting structures from wind- and wave-borne debris and storm damage and the building itself, an historical resource, from flood damage. She said that raising the buildings would not have an effect on their status as a contributing structure in the Historic District. She reviewed other buildings on the beach in Town that have been lifted already. The applicant is asking for only what FEMA minimally requires and no more. She reviewed elevation drawings showing the existing and the proposed buildings. She said that there will be no other changes except to enlarge the decks. Mr. Locke added that the project has been approved by the HDC.

Public Comment: Robert Longley, an abutter, spoke in opposition to the project. Terri Hiebert, an abutter, had a question about the height of the buildings. There was 1 letter with concerns about the height of the proposed building and storm surge protection for exposed properties. *Peter Okun moved to close the public portion of the hearing, Steven Latasa-Nicks seconded and it was so voted, 5-0 by roll call.*

Board Discussion: The Board questioned Mr. Locke, Ms. Binder and Ms. Paine. Mr. Locke said that if the team did not have to raise the building as much as proposed and as FEMA requires, they would. He said that the design sought to minimize the height and raise the building only as much as required by FEMA. However, the proposed building will allow the storm surge to flow beneath the building and not break the building apart, causing debris to damage abutting buildings.

Robert Nee moved to find that pursuant to Article 5, Section 5330, Special Permit Considerations, the project's economic, social, and other benefits to the neighborhood or Town outweigh any adverse effects such as hazard, congestion, or environmental degradation and to grant a Special Permit pursuant to Article 3, Section 3110 Change, Extensions or Alterations, of the Zoning By-Laws to raise a structure and repair a foundation on the property located at 437-439 Commercial Street (Res 3), Steven Latasa-Nicks seconded and it was so voted, 5-0 by roll call. Robert Nee will write the decision.

ZBA 20-2005

Application by **Douglas McCall** seeking a Special Permit pursuant to Article 3, Section 3420, Outside Display, of the Zoning By-Laws to display products for sale on the property located at **205 Commercial Street (Town Center Commercial Zone)**. Neither the applicant, nor a representative, was present in the meeting. *Peter Okun moved to postpone ZBA 20-2005 to the*

Public Hearing of September 17, 2020 at 6:00 P.M., Steven Latasa-Nicks seconded and it was so voted, 7-0 by roll call.

ZBA 20-2002

Application by **Michael Andrews** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to extend a deck and stairway along a pre-existing, non-conforming rear dimension on the property located at **8 Seashore Point Park Drive, U9 (Residential 3 Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, Steven Latasa-Nicks, and Quinn Taylor sat on the case.

Presentation: Michael Andrews was present in the meeting to discuss the application. He explained that his wife was handicapped and the extension of the deck and the stairway was needed for her safe access. Currently egress was a tripping hazard. Mr. Andrews said that the deck will be widened in order to be able to place two chairs outside. The deck is proposed to measure 5'6" by 7'.

Public Comment: None. There are 5 letters, from abutters, 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 had no questions Mr. Andrews.

Steven Latasa-Nicks moved that pursuant to Article 5, Section 5330, Special Permit Considerations, the project's economic, social, and other benefits to the neighborhood or Town outweigh any adverse effects such as hazard, congestion, or environmental degradation and to grant a Special Permit pursuant to Article 3, Section 3110 Change, Extensions or Alterations, of the Zoning By-Laws to extend a deck and stairway along a pre-existing, non-conforming rear dimension on the property located at 8 Seashore Point Park Drive, U9 (Res), Peter Okun seconded and it was so voted, 5-0 by roll call. Jeremy Callahan will write the decision.

The Board decided to postpone the rest of the agenda to the next Public Hearing on September 17, 2020 at 6:00 P.M.

ZBA 20-2006

Application by **William N. Rogers, II**, on behalf of **Demetrios Daphnis**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct four new structures, three of which will exceed the allowed neighborhood average scale on the property located at **67 Harry Kemp Way (Residential B Zone)**.

Robert Nee moved to postpone ZBA 20-2006 to the Public Hearing of September 17, 2020 at 6:00 P.M., Peter Okun seconded and it was so voted, 7-0 by roll call.

ZBA 20-2007

Application by **Steven Azar** seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow entertainment on the property located at **210 Bradford Street (Residential 3 Zone)**. The Board discussed information that was missing from the application, such as a site plan showing the delineation of areas to be used by proposed entertainment, and the need for more specificity in the application. The Board deemed the application incomplete. Mr. Soulé will convey the Board's concerns to the applicant.

Peter Okun moved to postpone ZBA 20-2006 to the Public Hearing of September 17, 2020 at 6:00 P.M., Robert Nee seconded and it was so voted, 7-0 by roll call.

Steven Latasa-Nicks moved to end the Public Hearing and move into the Work Session, Quinn Taylor seconded and it was so voted, 7-0 by roll call.

B. Work Session:

1) Pending Decisions:

ZBA 20-73

Application by **Ted Smith, Architect, LLC**, on behalf of **Michael Fullen**, 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 renovate an existing structure by adding new dormers and new porches with decks above up and along pre-existing, non-conforming front, side and rear elevations and to increase the building scale of a structure located at **3 Soper Street (Residential 2 Zone)**.

ZBA 20-75

Application by **Judith R. Osowski** requesting a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G14, Utility/Garden Shed (96 sq. ft. max.), of the Zoning By-Laws to replace a metal shed on the property located at **7 Cudworth Street (Residential 3 Zone)**.

ZBA 20-2001

Application by **Doug Dolezal**, of **Design Matters, LLC**, on behalf of **Miriam Gallardo & Courtney Spitz**, seeking a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G14, Utility/Garden Shed (96 sq. ft. max.), of the Zoning By-Laws to install a utility/garden shed on the property located at **62 Mayflower Avenue (Residential 1 Zone)**.

2) Approval of minutes: August 6, 2020: *Peter Okun moved to approve the language as written, Robert Nee seconded and it was so voted, 7-0 by roll call.*

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

NEXT MEETING: The next virtual meeting will take place on Thursday, September 17, 2020. It will consist of a virtual Public Hearing at 6:00 P.M. followed by a Work Session.

ADJOURNMENT: *Peter Okun moved to adjourn the meeting at 9:00 P.M., Steven Latasa-Nicks 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,