

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
January 7, 2021**

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 (*postponed to the meeting of March 4th*)

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 January 21st*)

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 January 21, 2021 at 6:00 P.M., Robert Nee seconded and it was so voted, 7-0 by roll call.**

ZBA 20-2043 (*postponed from the meeting of December 17th*)

Application by **Robin B. Reid, Esq.**, on behalf of **Victor's Restaurant**, seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, and Article 2, Section 2471, Parking Requirements, of the Zoning By-Laws to add an 18-seat outdoor service area of less than 300 sq. ft. and to waive the parking requirement of 6 spaces on the property located at **175 Bradford Street Extension, UC1 (Residential 1 Zone)**. Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks, Peter Okun, and Robert Nee sat on the case.

Presentation: Attorney Robin B. Reid and Victor DePaolo, the owner of the applicant restaurant, were in the meeting to present the application. As background, Attorney Reid informed the Board that everyone involved in the project and its review by Town staff had understood that this property was conforming as to its front yard setback. However, it was discovered that, in fact, the property was pre-existing, non-conforming as to its front yard setback. She has already submitted an application for a Special Permit pursuant to Article 3, Section 3110 for relief for the further encroachment into the front yard setback. This application will be heard by the Board on February 4, 2021. She will be requesting a withdrawal without prejudice for ZBA 20-2044 at the end of her presentation, however she would like to reference the awning in her review of this application to give a complete view of what the applicant is requesting.

She said that this is not the same proposal as Victor's proposed pursuant to the emergency orders related to the pandemic. This proposal is smaller in scope than what was on the premises this past summer. The awning area is smaller, less than 300 sq. ft., with fewer seats, 18 rather than the 26, that were in place during the summer season. She said that proposed new seats, in addition to the 55 seats currently assigned to the restaurant. She added that Victor's is in the Economic Development queue for obtaining gallons for the new seats. She reviewed the proposal that includes adding 18 seats and a parking waiver for the 6 spaces that would be required for the new square footage of service area. She reviewed the site plan delineating the new service area. It is located on the west side of the property along Bradford Street Extension. She also reviewed the new proposed seating plan. This new area of service would normally require 6 new parking spaces. The existing parking area has 18 spaces and there are 9 metered parking spaces across Bradford Street Extension. The latter are limited after 4:00 P.M. to 3 hours. The restaurant parking area to the north is rarely full, as most customers bike or walk to the premises. She noted the footprint, via a dotted line on an inset, of the awning on the site plan. The awning will be secured to the building and attached to 5 bollards along the hedge. The bollards serve to fix the awning and provide a barrier, as requested by the Building Commissioner, between the road and the customers. She stated that both of these requests require that the applicant show that the benefits of the proposal outweigh any adverse effects. She argued that granting these requests would add amenities available to residents and visitors, particularly to those who are staying or reside in this west end neighborhood. It will also support the sustainability of this small business, which is a significant benefit to the Town and to the restaurant's employees. She said that there will be no adverse effects as a result of these requests. The applicant had installed attractive landscaping and sound buffers around the seating area during the past summer as part of his pandemic seating plan. The awning will also provide a sound barrier for noise, similar to that offered by the sails that covered the seating area during the summer season and provide rain protection for customers. The additional seating will not result in increased vehicular traffic coming to the site, although foot and bike traffic may increase slightly, but not enough to cause congestion. There already is ample parking on the site and across the street. Attorney Reid said that for many years this site used to have a Dairy Queen located on it, as well as a fast food restaurant called Silva's Seafood, both of which had outdoor seating. When the owner purchased the property, it was required that he keep a part as commercial use, so he established a restaurant.

Public Comment: There were 29 letters submitted; 23 in support, 5 opposed and 1 with concerns about the proposal. April Venables, Derek Howe, Sean Martin, abutters, spoke in support of the application.

Steven Latasa-Nicks 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 Reid. She reviewed the operating hours proposed for the new seating area and she said there was an agreement that the applicant voluntarily entered into with the neighbors regarding dining hours. She said there was only one noise complaint made last summer. She said that the neighbors were contacted before the submission of the application. Mr. DePaolo explained a complaint that he had received after Labor Day about noise and said that the agreement with the neighbors stipulated no dining after 9:00 P.M. He said he added more sound buffering material after he got that complaint. The Board briefly discussed the issue.

Peter Okun moved that pursuant to Article 5, Section 5330, Special Permit Consideration, the Board finds that the economic, social or other benefits of the project 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 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to add an 18-seat outdoor food and alcoholic beverage service area of less than 300 sq. ft. as depicted on a seating plan by Ted Smith, Architect, LLC, dated November 16, 2020, labeled sheet A1.1, and a Special Permit pursuant to Article 2, Section 2471, Parking Requirements, to grant relief where the Board has determined that special circumstances, such as proximity to a municipal off-street parking lot, render a lesser provision adequate for all parking needs on the property located at 175 Bradford Street Extension, UC1 (Res 1), Robert Nee seconded and it was so voted, 5-0 by roll call.

ZBA 20-2044 (request to withdraw without prejudice)

Application by **Robin B. Reid, Esq.**, on behalf of **Victor's Restaurant**, seeking a Variance pursuant to Article 5, Section 5222 of the Zoning By-Laws to install an awning that will encroach into a pre-existing, non-conforming side yard setback on the property located at **175 Bradford Street Extension, UC1 (Residential 1 Zone)**. Attorney Reid requested that the applicant be allowed to withdraw ZBA 20-2044 without prejudice. ***Steven Latasa-Nicks moved to grant the request to withdraw ZBA 20-2044 without prejudice, Robert Nee seconded and it was so voted, 7-0 by roll call.***

ZBA 20-2045 (request to continue to the meeting of January 21st)

Application by **Robin B. Reid, Esq.**, on behalf of **The Bradford House and Motel**, seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, and Article 2, Section 2471, Parking Requirements, of the Zoning By-Laws to establish an 11-seat bar on the first floor of an existing guesthouse and to waive the parking requirement of 6 spaces on the property located at **41 Bradford Street (Residential 3 Zone)**. Jeremy Callahan said that this application is requesting relief under Article 2, Section 2440, Permitted Principal Uses, B5, Restaurant, bar. There was a request to continue ZBA 20-2045 to the Public Hearing of January 21, 2021 at 6:00 P.M. ***Steven Latasa-Nicks moved to continue ZBA 20-2045 to the Public Hearing of January 21, 2021 at 6:00 P.M., Robert Nee seconded and it was so voted, 7-0 by roll call.***

ZBA 20-2046 (request to continue to the meeting of January 21st)

Application by **Kurt Raber**, on behalf of **Riley Brothers Realty, LLC**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to remodel and improve an existing bike shop with a residential use above, including expanding interior bike

shop storage and adding a new residential unit, thereby increasing the scale of the building above the allowed neighborhood average scale on the property located at **134 Bradford Street (Town Center Commercial Zone)**. There was a request to continue ZBA 20-2046 to the Public Hearing of January 21, 2021 at 6:00 P.M. *Steven Latasa-Nicks moved to continue ZBA 20-2046 to the Public Hearing of January 21, 2021 at 6:00 P.M., Robert Nee seconded and it was so voted, 7-0 by roll call.*

ZBA 20-2048 (*request to continue to the meeting of January 21st*)

Application by **Ginny Binder**, on behalf of **419 Commercial St. Partners, LLC**, seeking a Special Permit pursuant to Article 2, Section 2630D, Building Height, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws for a change from a three-family to a two-family use and for an increase in the height of that structure above the maximum allowed for a gambrel roof on the property located at **419 Commercial Street (Residential 3 Zone)**. There was a request to continue ZBA 20-2048 to the Public Hearing of January 21, 2021 at 6:00 P.M. *Steven Latasa-Nicks moved to continue ZBA 20-2048 to the Public Hearing of January 21, 2021 at 6:00 P.M., Robert Nee seconded and it was so voted, 7-0 by roll call.*

ZBA 20-2050

Application by **Ted Smith** seeking a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G13, Utility/Garden Shed, of the Zoning By-Laws to install a garden shed on the property located at **6 Winston Avenue (Residential 1 Zone)**. Daniel Wagner and Peter Okun recused themselves because of conflicts of interest. Jeremy Callahan, Steven Latasa-Nicks, Robert Nee, Quinn Taylor, and Erik Borg sat on the case.

Presentation: Ted Smith and Steve Lampert, the homeowner, were in the meeting to present the application. Mr. Smith reviewed the project, which includes the installation of a pre-fabricated shed, 6' by 10', on the property, which is located in a flood zone. He explained why the shed was sited where it is on the site plan. The shed is subject to footnote 2 of this section and it will meet 50% of the side or rear yard setbacks.

Public Comment: There was 1 letter that is in opposition to the application. Mo Siegel, an abutter, spoke in opposition to the placement of the shed.

Board Discussion: The Board questioned Mr. Smith about the proposed location and if the shed could be relocated to the south of the structure. The Board discussed the issue. Mr. Callahan polled the Board and the applicant did not have the requisite number of votes for approval. The Board suggested that Mr. Smith contact the Conservation Agent to identify potential limiting circumstances, given the property's location in the flood zone, for locating the shed. Mr. Smith requested to continue to the next Public Hearing.

Robert Nee moved to grant the request to continue to the January 21, 2021 Public Hearing at 6:00 P.M., Quinn Taylor seconded and it was so voted, 5-0 by roll call.

B. Work Session:

1) **Annual Report:** Mr. Callahan asked if any Board member would help him to write the report. Mr. Taylor volunteered.

2) **Pending Decisions:**

ZBA 20-2047

Application by **Lyn Plummer**, on behalf of **18 Bangs Street, LLC**, seeking 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 increase the scale of a structure that is already above the allowed neighborhood average scale to accommodate new decks and stairways for egress on the west elevation of a structure on a pre-existing, non-conforming lot located at **18 Bangs Street (Residential 3 Zone)**. *Erik Borg moved to approve the language as written, Quinn Taylor seconded and it was so voted, 4-0 by roll call.*

ZBA 20-2049

Application by **Lester J. Murphy, Esq.**, on behalf of **ERM Trust 2014, Edmond R. Macri, Trustee**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to deviate from the allowed neighborhood scale by constructing an addition to a single-family and a detached garage/artist studio accessory structure on the property located at **32 Point Street (Residential 2 Zone)**. *Peter Okun moved to approve the language as written, Erik Borg seconded and it was so voted, 4-0 by roll call.*

2) **Approval of minutes: December 17, 2020: Robert Nee moved to approve the language as written, Erik Borg seconded and it was so voted, 7-0 by roll call.**

3) **Any other business that may properly come before the Board:** Steven Latasa-Nicks suggested that the Board discuss public comments and the presence of attorneys representing a member of the public versus those members of the public who do not have legal representation. He is concerned about how much time the Board is allotting to each of those categories.

NEXT MEETING: The next virtual meeting will take place on Thursday, January 21, 2021. It will consist of a virtual Public Hearing at 6:00 P.M. followed by a Work Session.

ADJOURNMENT: *Steven Latasa-Nicks moved to adjourn the meeting at 7:30 P.M., Robert Nee seconded and it was so voted unanimously by roll call.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2021
Thaddeus Soulé on behalf of the Zoning Board of Appeals