

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
January 21, 2021**

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

Members Absent None.

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 February 4th*)

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 February 4, 2021 at 6:00 P.M., Peter Okun seconded and it was so voted, 8-0 by roll call.*

ZBA 20-2045 (*request to continue to the meeting of May 6th*)

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 May 6,

2021 at 6:00 P.M. *Steven Latasa-Nicks moved to continue ZBA 20-2045 to the Public Hearing of May 6, 2021 at 6:00 P.M., Peter Okun seconded and it was so voted, 8-0 by roll call.*

ZBA 20-2046 (continued from the meeting of January 7th)

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)**. Jeremy Callahan, Steven Latasa-Nicks, Peter Okun, Susan Peskin and Robert Nee sat on the case.

Presentation: Attorney Lester J. Murphy and Kurt Raber were in the meeting to discuss the application. Attorney Murphy said that since the last meeting, additional plans have been submitted. These are renderings giving a view of the building with the proposed addition from various locations along Bradford Street. A landscaping plan was also submitted. The intent of the proposed plantings was to add screening along the property line and on a corner of Bradford Street in order to soften the appearance of the building. He said that Mr. Raber will speak to how the appearance of the massing of the building was reduced through its design.

Mr. Raber said that he had submitted images of what the proposed building would look like from an east and a west viewpoint as compared to photographs of those current viewpoints. He reviewed the images. He said that a green screen, including arborvitaes, was proposed for the 134 Bradford Street side, between the existing parking spaces and the building on 136 Bradford Street. He reviewed the architecture, which was the result of working closely with the Historic District Commission. He argued that the addition is modest and the increase in size is an attempt to help the business grow and to get rid of the metal storage containers that now exist on the site. Housing will be included on the second floor of the addition. He said that the grade of the existing driveway will be lowered, so the first floor of the bike storage space will be 3' lower than the rear of the property. This means that a large percentage of the additional building scale is tucked into the existing site. This will minimize the size of the building when it is seen from Bradford Street. Also, in order to facilitate this view, the mansard roof will be wrapped around the addition and the ridgeline of the addition is 5' below the peak of the existing house.

Attorney Murphy said that this was a very commercially-oriented part of Town and what drives this project is to accommodate the growth of a business and expand employment opportunities. The additional residential units will be used by the workforce of not only the bike shop, but of the commercial parking lot abutting the property as well. He said that as a matter of right, the applicant could have proposed adding another building on the site. He reviewed the building scales of structures in the neighborhood, which are quite large, and said that the project would not be disruptive to the character of a neighborhood that currently contain large structures, such as CVS and the Cape Cod 5 Bank. He argued that subparagraph 5 of Article 2, Section 2640E was relevant given the effort to integrate the building into its surroundings and site it in the rear of the property in order to minimize the appearance of mass from the streetscape. He argued that there would be no negative effects on light and views from any abutting properties and no negative effects in general, given that a new septic system that will be installed and the number of parking spaces are sufficient to meet the requirements of the Zoning By-Laws. The positives of the project are that the design blends very nicely into the existing building on the site and

there will be residential units available to employees of the business. He said that no abutters have objected to the project.

Public Comment: There was 1 letter in opposition to the project.

Board Discussion: The Board questioned Attorney Murphy and Mr. Raber and discussed the project. Attorney Murphy said that the new unit would be specifically designated as workforce housing. The Board was concerned about the size of the building and many members suggested that all the housing on the site be designated as workforce housing. Attorney Murphy requested a continuance to the next meeting while he consults with the owner of the property as to the suggestion regarding designating all of the residential units to be workforce housing. Attorney Murphy explained that the workforce housing could be proven by the property owner by providing Town staff with copies of the rental agreements or leases for the housing. He also suggested that Mr. Soulé consult with Town Counsel regarding the means by which the Town can ensure that the residential units would as workforce housing.

Peter Okun moved to continue ZBA 20-2046 to the Public Hearing of February 4, 2021 at 6:00 P.M., Susan Peskin seconded and it was so voted, 5-0 by roll call.

ZBA 20-2048 (*request to withdraw without prejudice relief for Article 2, Section 2630D, Building Height*)

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)**. Jeremy Callahan, Steven Latasa-Nicks, Peter Okun, Robert Nee, and Susan Peskin sat on the case.

Presentation: Ms. Binder said that a structural engineer had evaluated the structure and determined that the structure is structurally deficient, therefore the applicant is seeking to withdraw without prejudice the relief sought for Article 2, Section 2630D, Building Height, of the Zoning By-Laws. The only request is to change the use from a three-family to a two-family residence.

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 briefly briefly discussed the request.

Steven Latasa-Nicks moved to grant the request to withdraw the request for relief pursuant to Article 2, Section 2630D of the Zoning By-Laws, Peter Okun seconded and it was so voted, 5-0 by roll call.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to 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, Robert Nee seconded and it was so voted, 5-0 by roll call.

Peter Okun moved to find that pursuant to Article 5, Section 5330, Special Permit Consideration, the social, economic and other benefits of the proposal for the neighborhood or Town 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.

ZBA 20-2050 (continued from the meeting of January 7th)

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 was in the meeting to present the application. Mr. Smith said that there were two locations that could be used for the shed that would meet the criteria of the Zoning By-Laws. One location was on a south and one was on a north portion of the site. The original location proposed was as far as possible from resource areas in the vicinity, such as dunes and wetlands, on a northeast portion of the site. He had a discussion with the Conservation Agent, Tim Famulare, about the siting of the shed. Mr. Famulare said that the Commission would prefer that the shed be sited as initially proposed, as far away as possible from resource areas in the vicinity of the property. Other neighbors joined the discussion with the Agent at a site visit and one of those has written a letter of support. In addition, Mr. Famulare wrote a letter in support of the location as originally proposed in the northeast corner. If the location were in the southeast corner, the applicant would have to make an additional filing with the Commission in order to get an Order of Conditions for the project.

Public Comment: There was 1 new letter in support of the project.

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

Board Discussion: The Board briefly questioned Mr. Smith.

Jeremy Callahan moved to find that pursuant to Article 5, Section 5330, Special Permit Consideration, the social, economic and other benefits of the proposal for the neighborhood or Town outweigh any adverse effects, such as hazard, congestion or environmental degradation, and further moved that 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 not to exceed 96 sq. ft. that meets at least 50% of the side and/or rear yard setback requirements of the district (Res 1) in which the property is located where the installation of said shed cannot meet the current front, side and/or rear yard setbacks or building separation requirements and where the doors and windows shall not face or open into an area of the standard side and rear yard setbacks for the property located at 6 Winston Avenue with the condition 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 a substantial use thereof or construction has not sooner commenced, except for good cause as determined by the Board of Appeals, Robert Nee seconded and it was so voted, 5-0 by roll call.

ZBA 20-2051

Application by **Jay Abbiuso** seeking a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish a structure on the property located at **19 Central Street, U4 (Residential 3 Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Peter Okun, Daniel Wagner, and Susan Peskin sat on the case.

Presentation: Jay Abbiuso was in the meeting to present the application. He said that over the past summer, he had renovated 19 Central Street, which was in a state of disrepair. The artist studio on the property, known as Unit 4, is the final phase of the renovation process. He is seeking to demolish and rebuild the studio in the same footprint and size as the existing. The existing setbacks for the studio will be maintained and the use will remain the same.

Public Comment: There were 2 letters from abutters in support of the project. There was no other public comment.

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 briefly questioned Mr. Abbiuso.

Peter Okun moved to find that pursuant to Article 5, Section 5330, Special Permit Consideration, the social, economic and other benefits of the proposal for the neighborhood or Town outweigh any adverse effects, such as hazard, congestion or environmental degradation, and further that the Board grant a

Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish a structure on the property located at 19 Central Street, U4 (Res 3) with the condition that reconstruction of said premises shall commence within 2 years after demolition 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 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.

B. Work Session:

1) Pending Decisions:

ZBA 20-2043

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)**. *Peter Okun moved to approve the language as written, Robert Nee seconded and it was so voted, 5-0 by roll call.*

2) **Approval of minutes:** The minutes were not available.

3) **Any other business that may properly come before the Board:** Mr. Callahan said he was working on the Annual Report.

Mr. Soulé said that the Stellwagen Bank Maritime Sanctuary/Visitor's Center to be located in the Ryder Street parking area, has 2 proposed conceptual designs and members of regulatory Boards have an opportunity to weigh in on them and submit input. The Board briefly commented on the project.

Mr. Latasa-Nicks reiterated his issue about the tendency of the Board to give less time to a member of the public for comment on a project versus an attorney representing a member of the public. He would like the Board to be aware of how much time is given to each. It should be equal for those represented or not represented by an attorney. A time of 3 minutes was suggested.

NEXT MEETING: There is a Joint Executive Session with the Planning Board scheduled for January 28, 2021 at 6:00 P.M. The next virtual Public Hearing will take place on Thursday,

February 4, 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 7:14 P.M., Peter Okun 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