

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
February 4, 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 18th*)

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 18, 2021 at 6:00 P.M., Susan Peskin seconded and it was so voted, 8-0 by roll call.*

ZBA 20-2045 (*continued 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, Sections 2440, Permitted Principal Uses, B5, Restaurant, bar and 2460, Special Permit Requirements, and 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)**.

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 was in the meeting to discuss the application. Attorney Murphy said that at the last hearing of the matter, the Board expressed their view that the proposed building was too large for it to justify an approval under the scale by-law. In addition, there was a discussion about the possibility of designating all four of the proposed residential units as workforce housing. Attorney Murphy said that the applicant conveyed to him that the latter suggestion was not feasible. Also at the previous meeting, Mr. Raber had suggested that by adding a small piece of land from the adjoining property, owned by the same entity, the land area would be enough to support two separate buildings, each with a scale of 36,000 cu. ft. He put together both site plans and elevation drawings showing the initial proposal of one large building and the new proposal of two buildings. Attorney Murphy said that the latter would give a view of more massing on the lot. Both financially and from a business operation aspect, the applicant would prefer to have one building. He concluded by stating that if the Board still could not approve the project as initially presented, the applicant would go forward with placing two buildings on the lot.

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

Board Discussion: The Board questioned Attorney Murphy who said that the applicant would agree to have one of the four residential unit designated as workforce. The Board did not waiver from its original sense that it could not approve the initial proposal. Attorney Murphy requested that the Board allow the applicant to withdraw without prejudice.

Jeremy Callahan moved to grant the request to withdraw ZBA 20-2046 without prejudice, Robert Nee seconded and it was so voted, 5-0 by roll call.

ZBA 21-1

Application by **Robin B. Reid, Esq.**, on behalf of **Victor's Restaurant**, seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions, or Alterations, of the Zoning By-Laws to extend a pre-existing, non-conforming structure by installing an awning over an outdoor restaurant service area on the property located at **175 Bradford Street Extension, UC1 (Residential 3 Zone)**. Jeremy Callahan, Daniel Wagner, Steven Lastasa-Nicks, Peter Okun, and Susan Peskin sat on the case.

Presentation: Attorney Reid and Victor DePaola, the owner of Victor's Restaurant, were in the meeting to present the application. Attorney Reid reviewed the request. She said that this project had originally been submitted as a request for a Variance, as it was assumed that the front yard setback was conforming. Upon further research, it was found that the lot is not conforming as to the front yard setback. She pointed out the non-conformancies on the site plan. She noted the line of awning bollards on an inset of the site plan. The center bollard is located on the lot line, and there are bollards 4.7' and 4.3' on the either end, which further encroach into the front yard setbacks. The awning will be secured to the building and attached to the five bollards along the landscaping. The bollards serve the purpose of fixing the awning as well as satisfying the Building Commissioner's request for a barrier between the restaurant guests and the street. The

applicant has already planted attractive landscaping and installed effective sound buffers around the outside seating area. The awning itself will serve as an effective sound buffer, a sunshade, and a rain barrier as well. There will be no adverse effects as a result of the installation of the awning. She argued that the extension or alteration will not be substantially more detrimental than the existing non-conformancy. She also argued that the social, economic, and other benefits of the proposal outweigh any adverse effects. In addition to the Board's previous approval of the addition of 18 seats to the outdoor service area, the awning will be a crucial improvement supporting the success of the restaurant and will also contribute to the quiet enjoyment of abutters in their homes. In addition, the functionality of the outside seating area will be improved, along with the sustainability of a small business, a significant benefit to the Town as well as the restaurant's employees. Further, the addition of the awning will increase real property valuation of and increase the Town's tax base. There will be no adverse effects generated.

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

Steven Lastasa-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 Reid. Anne Howard, the Building Commissioner, had a question about the permanency of the awning.

Peter Okun moved that the Board find pursuant to Article 5, Section 5330, Special Permit Consideration, the social, economic, and other benefits of the proposal for the neighborhood and Town outweigh any adverse effects such as hazard, congestion, or environmental degradation, and further move that the Board grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions, or Alterations, of the Zoning By-Laws to extend a pre-existing, non-conforming structure by installing an awning over an outdoor restaurant service area on the property located at 175 Bradford Street Extension, UC1 (Res 3), Susan Peskin seconded and it was so voted, 5-0 by roll call.

ZBA 21-2

Application by **Casey Clark**, on behalf of **Mischa & Dolly Richter**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a structure that exceeds the neighborhood average scale on the property located at **216B Bradford Street (Residential 3 Zone)**. Jeremy Callahan, Daniel Wagner, Steven Lastasa-Nicks, Peter Okun, and Susan Peskin sat on the case.

Presentation: Casey Clark, Mischa Richter, Nathan McKean and Sibel Asantugrul were in the meeting to present the application. Ms. Asantugrul described the project and reviewed the photographs shown in the meeting. She said the structure is in great disrepair and needs to be renovated and brought into conformance with the standards of the state Building Code. Pursuant to the latter, there will be a requirement to raise the structure because it is located in a flood zone. She said Mr. Richter wants to keep a similar footprint as the existing building, design the new structure to be appropriate for the neighborhood, and be able to utilize the basement and the first-floor space. In addition, she said that he would like to orient the building to take advantage of the sun for solar gain. The building is located against a steep grade in the rear and is set back from the street. She noted that there are buildings of greater height abutting the property and in the rest of the neighborhood. The proposed structure will be two stories. She reviewed the elevation drawings and explained the intent behind the design of the structure. She described what the neighbors would see from their respective vantage points and said that the applicant has spoken to his neighbors about the proposed design.

Public Comment: There were 7 letters, several from abutters, in support of the application. There was no other public comment.

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. Casey, Mr. Richter, Mr. McKean and Ms. Asantugul. Mr. Clark said that parts of the existing structure will be used in the reconstruction of the new structure.

Peter Okun moved to find pursuant to Article 5, Section 5330, Special Permit Consideration, that 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 move to find pursuant to Article 2, Section 2640, Building Scale, subsection E, that the applicant has demonstrated that the deviation is appropriate and meets one or more of the following criteria: the proposed building or addition is in keeping with the goals and objectives of the Local Comprehensive Plan (Economic Development Goal 2: to locate development so as to preserve Provincetown's environmental and cultural heritage, minimize adverse impacts and enhance the quality of life); and the proposed building or addition 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 on the property located at 216B Bradford Street, Steven Latasa-Nicks seconded and it was so voted, 5-0 by roll call.

ZBA 21-3

Application by **Brandon Motta**, on behalf of the **Town of Provincetown**, seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to remove and replace fencing along pre-existing, non-conforming side and rear yard setbacks on the property located at **1 Bradford Street (Residential 3 Zone)**. Jeremy Callahan, Daniel Wagner, Steven Lastasa-Nicks, Peter Okun, and Susan Peskin sat on the case.

Presentation: Brandon Motta was in the meeting to present the application. He reviewed the scope of the project. The existing fence was installed in 1981. The project will include milling of the existing asphalt and paving a new surface onto the basketball courts. One basketball and two pickleball courts will be painted on the new asphalt surface. The replacement of sections of fencing and added supports will also be included. He said that neighbors were contacted for suggestions about the project. He reviewed photographs of the existing fencing and reviewed each of the proposed elevation.

Public Comment: None.

Steven Latasa-Nicks 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 had no questions for Mr. Motta.

Peter Okun moved to find pursuant to Article 5, Section 5330, Special Permit Consideration, that 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 3110, Change, Extensions or Alterations, of the Zoning By-Laws to remove and replace fencing along pre-existing, non-conforming side and rear yard setbacks on the property located at 1 Bradford Street (Res 3), Susan Peskin seconded and it was so voted, 5-0 by roll call.

B. Work Session:

1) Pending Decisions:

ZBA 20-2048

Application by **Ginny Binder**, on behalf of **419 Commercial St. Partners, LLC**, seeking 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 on the property located at **419 Commercial Street (Residential 3 Zone)**. *Peter Okun moved to approve the language as written, Robert Nee seconded and it was so voted, 5-0 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)**. *Robert Nee moved to approve the language as written, Erik Borg 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)**. *Steven Latasa-Nicks moved to approve the language as written, Peter Okun seconded and it was so voted, 5-0 by roll call.*

2) Approval of minutes: January 7 and 21, 2021:

January 7, 2021: *Steven Latasa-Nicks moved to approve the language as written, Susan Peskin seconded and it was so voted, 8-0 by roll call.*

January 21, 2021: *Steven Latasa-Nicks moved to approve the language as written, Susan Peskin seconded and it was so voted, 8-0 by roll call.*

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

NEXT MEETING: The next virtual Public Hearing will take place on Thursday, February 18, 2021. It will consist of a virtual Public Hearing at 6:00 P.M. followed by a Work Session.

ADJOURNMENT: *Susan Peskin moved to adjourn the meeting at 7:08 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