

**JOINT MEETING WITH THE ZONING BOARD OF APPEALS
&
PLANNING BOARD PUBLIC HEARING**

Meeting Minutes
Thursday, January 28, 2021
6:00 P.M.

PB Members Present: Brandon Quesnell, Jeffrey Mulliken, Monica Stubner, Paul Kelly, and Steven Azar.

Members Absent: Paul Graves, Ross Zachs, and Marianne Clements.

Staff: David Gardner (Assistant Town Manager and Thaddeus Soulé (Town Planner).

Chair Brandon Quesnell called the Joint Meeting with the Zoning Board of Appeals to order at 6:05 P.M.

1. Executive Session:

Executive Session under G.L. 30A, s. 21(a)(3) to discuss strategy with respect to litigation regarding Scott Ravelson, et al. v. Provincetown Planning Board, et al., Land Court No. 20 MISC 000168.

Mr. Soulé introduced the virtual Executive Session, explaining the reason it was being held virtually and added that the meeting would reconvene in Open Session after the Executive Session. He then did a roll call.

There was a motion by Brandon Quesnell that the Planning Board move into Executive Session under G.L. 30A, s. 21(a)(3) to discuss strategy with respect to litigation regarding Scott Ravelson, et al. v. Provincetown Planning Board, et al., Land Court No. 20 MISC 000168 and to reconvene in Regular Session after. Jeffrey Mulliken seconded. VOTE: 5-0-0 by roll call.

Chair Brandon Quesnell called the Planning Board Public Hearing to order at 7:00 P.M. and turned the meeting back over to Mr. Soulé, who then explained how the Board, the applicants and the public could participate remotely, and reviewed the meeting protocol.

2. Public Comment: None.

3. Consent Agenda: Approval without objection required for the following item: None.

4. Public Hearings:

PLN 20-2013 (continued from the meeting of January 14th)
Application by **Richard Figueroa**, on behalf of **Curaleaf**, seeking a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, B14, Marijuana Establishments, Retail, of the Zoning By-Laws to expand a retail marijuana establishment at the property located at **170**

Commercial Street (Town Center Commercial Zone). Brandon Quesnell, Jeff Mulliken, Paul Kelly, Monica Stubner, and Steven Azar sat on the case.

Presentation: Attorney Lester J. Murphy, Patrik Jonsson, and Ronnie Strunk were in the meeting to discuss the project. Attorney Murphy said that based upon feedback from neighbors at the last hearing of the proposal in early December, the applicant, in the interim, has sought to address the significant concerns that were raised and to make sure that the operation is a lot less disruptive to the neighborhood than it was last year. He said that this project has gone through a very detailed site plan review process with the Board, which resulted in a number of changes, conditions and helpful comments regarding the operation. The business opened last summer and one factor that had a negative effect on the neighborhood was that this was the only retail marijuana establishment that was open on Cape Cod. The nearest marijuana establishment was in Wareham. There arose a situation where people were driving to Provincetown from all over the Cape. This had a negative effect on the traffic in the neighborhood and the number of people gathered at the site at one time. The business was not geared up for the volume of business that was engendered because of this particular situation. Importantly, he said, there will be more marijuana establishments, up to 15, operating on the Cape this summer. There are also other sites in Town that should be operating by then, many which will be much more amenable to vehicular traffic. This site was much more geared for bicycle and foot traffic. He emphasized that there is no parking on the site or abutting the site and there was never a plan to have parking close by. The applicant had placed information to that effect on its website with instructions to potential customers on where parking was available in the vicinity. However, this past summer, he said many people did end up parking in front of the business thinking they could just run in and make a purchase and this then created a problem with too many vehicles and traffic in the neighborhood. He anticipates that this problem will be significantly reduced this coming summer. In addition to more sites opening up, the applicant has committed to having one person whose job is solely to police the parking situation. This employee will explain where parking is available and make sure the vehicles move along and do not remain in front of the business. Curaleaf originally had a business plan that had the establishment being located on Harry Kemp Way, which had several parking spaces and having come to an agreement with Riley's parking lot to provide parking. However, the Town changed the zoning requirements and disallowed marijuana establishments in that district. The TCC district in which it is now located does not require businesses to provide parking. The applicant saw this current location as ideal for foot and bicycle traffic, even installing more bicycle racks than were existing. Unfortunately, last summer, this business was not just the only game in Town, but the only game on Cape Cod. He anticipates that the traffic problems experienced last summer will not be repeated. He said that there was a misconception about the proposed expansion in that even though it will be about a 40% increase in area, the applicant is not looking to increase the number of patrons. The expansion will allow the business to serve more patrons at the same time, resulting in a decrease in queueing on the site, as people will be able to make transactions more quickly. The neighbors had identified the need for more and better security guard operations and had complained about the nature of the uniforms worn by the guards. The uniform design will be much more friendly going forward and there will be greeters at the site in the summer in order to allow security to pay more attention to the queueing and to make sure that customers do not trespass on private property in the vicinity. In addition, summer parking assistants, wearing vests and passing out parking instructions, will handle the vehicular traffic on both Commercial and Winthrop

Streets. Employee smoking will be better handled with a dedicated smoking area for them. He said that there were problems with the operation last summer and resulted in legitimate objections from the neighbors. He addressed a letter from the Police Chief that mistakenly stated that the expansion would be by 100%. Only a portion of the upstairs, a 40% increase, will be available for retail sales. Everyone will still enter via the downstairs entrance. Those customers in the basement will exit via the basement. Those customers on the first floor will exit via the first floor. Only about 40% of the customers will be exiting via the first floor. The owner of Joe's Coffee, the immediate abutter, has written a letter in support of the expansion. He reviewed the Special Permit requirements pursuant to Article 5, s. 5330, and said that there are significant benefits in that the business is popular and there is a significant demand for the products that are sold both by citizens of the Town, as well as tourists. Expanding the retail area will allow the customers to be served more quickly, reducing wait times and outdoor queueing. There will also be a significant increase in seasonal and year-round employment opportunities. Currently there are 24 year-round and 8 seasonal employees. If the expansion is allowed, the business will move to 30 year-round and 28 seasonal employees. A large number of the employees are year-round residents. As to social impacts, he said that already, significant payments to various non-profits in Town have been made pursuant to the Host Agreement. Further, employees have been giving back to the Town, including donating their time in helping the Town during the election season and volunteering at the Soup Kitchen. He reiterated that the adverse impacts will be significantly reduced this summer as argued previously. He added that the Chamber of Commerce has supported the expansion. The applicant would be willing to come back in July to reassess the changes and to determine if more conditions were needed to mitigate any problems. He said that the Board could oversee the business in this respect.

Mr. Jonsson reviewed the proposed expansion and how the neighbors' concerns were being addressed. He narrated a PowerPoint presentation showing what the expanded space would look like and how customers would be moving through the space. He reiterated the proposed parking mitigation measures, taken from the recommendation of the Police Chief, in order to avoid the problems that manifested last summer. Additional 'No Parking' signs will be erected on Winthrop and Commercial Streets. He said that he anticipates that most of the customers will be people already in Town, who are arriving by foot or bicycle, as more marijuana establishments will be opening on the Cape. He showed what the proposed friendlier security guards' clothing would look like. He addressed the littering and smoking by employees and how that would be mitigated through a designated smoking area. He noted Curaleaf's contributions to the Town pursuant to the Host Agreement and the volunteer work that is done by his staff, which he said has exceeded the number of hours required. Mr. Strunk enumerated the tasks that had been undertaken voluntarily by the staff.

Public Comment: None. There were 11 letters in opposition or opposed and 24 letters in support of the application.

Board Discussion: The Board questioned Attorney Murphy, Mr. Jonsson, and Mr. Strunk and discussed the proposal. The Chair polled the Board and there was not enough support for the application for an approval. Attorney Murphy asked the Board if there was any information that could be provided to sway the three Board members that were not in support of the expansion. The three Board members voiced their reasons for opposing. The gist of the opposition is that the proposed mitigation measures should be implemented and that then the

applicant could reapply for the expansion. Attorney Murphy requested to withdraw without prejudice.

There was a motion by Brandon Quesnell to grant the request to withdraw without prejudice of PLN 20-2013. Jeffrey Mulliken seconded. VOTE: 5-0.

PLN 20-2030 *(continued to the meeting of February 11th)*

Application by **Jay Abbiuso** seeking a Site Plan Review by Special Permit pursuant to Article 4, Section 4015 a., 1), Site Plan Review by Special Permit, and Article 4, Section 4180, Inclusionary and Incentive Zoning By-Law, to develop vacant land by constructing a total of 12 dwellings, 2 of which will be community housing units, in 4 duplex units and 4 cottages on the property located at **286.5 Bradford Street**.

4. Work Session:

a) Proposed Zoning By-Law Amendments for Annual Town Meeting: Mr. Gardner reviewed how and where Spring Town Meeting will be held. He is anticipating that the warrant will be kept short and straight forward. He said that the Town was looking to package the by-laws in into a consent agenda and they will be placed at the end of the warrant. Any remaining articles that are not considered because of time constraints will be postponed indefinitely. He recommended that the Board not recommend any that may be controversial. Those by-laws that may be controversial will be determined as such tonight. He said that the one priority will be the flood zone by-law. This is a by-law that is going to make the local by-laws consistent with state regulations. He said that priorities will be determined by the discussion of the Board.

Mr. Soulé reviewed the proposed changes. He said the amendment to the High Elevation Protection District By-Law clarifies and consolidates the standards for the Board to review projects in these locations and eliminates the consideration of ground-level decks from the high elevation by-law. Slope stabilization and exterior illumination standards have been added. Those requirements that are not applicable to the project have been eliminated, such as curb radii, curb cuts, intersections, and other criteria from Administrative Site Plan review. The Board recommended that this be placed on a consent agenda.

He next reviewed the proposed flood zone by-law. This amendment adopts language from the Massachusetts 2020 Model Floodplain Bylaw that includes all current National Flood Insurance Program (NFIP) requirements. Congress created the NFIP in 1968 to offer flood disaster relief in the form of insurance that is available to residents of communities that voluntarily adopt and enforce floodplain management ordinances that meet the minimum NFIP requirements. For homeowners and businesses in Provincetown to secure and maintain flood insurance, the Town must adopt these federally required changes per the NFIP. The Massachusetts 2020 Model Floodplain Bylaw language simplifies the bylaw's language and adds clarifying definitions. This language does not modify or change the application of the current Massachusetts Building Code. Anne Howard, the Building Commissioner, commented on the proposed amendment explaining why this was being proposed and how it will help residents who have flood insurance save money. The Board recommended that this be placed on a consent agenda.

The next amendment is a proposed amendment for Permitted Principal Uses related to what types of housing are allowed in each zoning district, correcting an existing error. The amendment corrects an error where the intent is to allow multi-family dwellings in the Res3/ResB, TCC and GC zoning districts, including two-family dwellings in districts that allow three-family homes. Adding two or more units would continue to require applicants to obtain a special permit under the Inclusionary and Incentive By-Law. The Board recommended that this be put on a consent agenda.

The next proposed amendment moves the Green Area requirement from Article 4, Section 4150 to Article 2 and integrates it with the other dimensional requirements. It also recognizes that development patterns on Commercial Street make the 30% minimum green area requirement difficult to attain within the TCC District. The Board recommended that this be placed on the consent agenda.

The next amendment is a new illumination by-law. The explanation of the proposal is that technological advancements in lighting, including widespread use of LED lights, necessitates updating the illumination requirements to match current industry standards. This amendment recognizes that the welfare and enjoyment of Provincetown is associated with both its natural coastal environment and its vibrant nightlife. Light pollution negatively impacts resident and visitor comfort, degrades the natural environment, and contributes to the loss of our night-sky heritage. Light trespass negatively affects the enjoyment of property and can disrupt the natural sleep rhythms of humans and wildlife. Minimizing light pollution and light trespass enhances the general well-being of residents and visitors, and the use and enjoyment of property. This amendment also protects existing light fixtures and allows decorative lighting that enhances Provincetown's nightlife.

In summary, the changes include:

- Clarifying that existing lighting may continue to be used and maintained including replacing lightbulbs;
- Simplifying the requirements for lighting plans and only requiring detailed lighting plans for developments with large areas of lighting, such as parking areas and service stations;
- Removing outdated wattage requirements by replacing them with lumens and correlated color temperature. Both lumens and temperature can be easily determined by reading the label on the packaging for the lighting fixture or lightbulb;
- Replacing dark sky compliant with the definition of "fully shielded" in order to provide clear guidance for selecting light fixtures that avoid light pollution and glare; and
- Maintaining the existing standards for light trespass, glare, externally illuminated sign, and lighting fixture height.

The Board briefly reviewed the proposed by-law and whether it should be put on the consent agenda. The Board decided that if the discussion gets too involved, the article get indefinitely postponed. The article will be brought back and presented with more material at a later date.

This amendment has been suggested as a proposed change to site plan requirements and clarifies the criteria for a lighting plan to be included in a Site Plan review application, as this information is often not submitted in a timely manner and can result in applications being

continued to multiple hearings and delayed decisions. The Board decided to put this on the consent agenda.

In regard to the commercial design standard by-law, this amendment clarifies the role of the Planning Board in reviewing site plan applications. Removal of language that references the purview of the Historic District Commission and the Zoning Board of Appeals avoids potential conflict between multiple boards on an interpretation considering that the Planning Board has no standards by which to make findings for “historic character” or “scale of buildings”. It also removes a reference to Section 3300, which does not exist.

Mr. Gardner explained the next amendment proposed is related to the growth management by-law and its allocations. This amendment updates the Growth Management Bylaw based on our adoption of the Inclusionary Housing and Incentive Bylaw. The Inclusionary Bylaw has dramatically changed the way we apply Growth Management to multi-family housing developments. It provides the Housing Council and Select Board greater flexibility in allocating gallons for affordable and community housing projects. The gallons would be allocated from within the appropriate categories based on need to ensure that there will be gallons available. This will not be on the consent agenda.

The Inclusionary and Incentive Zoning By-Law amendment is intended to clean up, clarify and simplify a complicated by-law. Since its adoption in 2017, the Inclusionary By-Law has been applied on several occasions and each application requires a great deal of input from Town Counsel along with many staff hours in an effort to interpret and apply the By-Law standards as well as its incentives. The intent was not to fundamentally change the intent or result of the By-Law, but rather to simplify the approach to assist everyone in its implementation, including the housing developer, staff and Planning Board members. In summary, the changes include:

- Clarifying that all inclusionary projects provide a minimum of 1/6th or 16.67% inclusionary contribution whether it be through the provisions of units in the overall development or in the payment of an in-lieu fee to the housing fund;
- Simplifying the payment-in-lieu fee process;
- Simplifying the density bonus by removing the complicated reference to incrementally adding density units; and
- Removing references to density bonus within the Residential 1 Zoning District, which is a single-family residential zone.

The Board discussed the amendment with Mr. Gardner and whether to present it to this Town Meeting. Mr. Quesnell suggested that the discussion be tabled until the next PB meeting when members can digest the amendment and come back with questions.

An amendment has been suggested to the by-law related to restaurants and bars in the Permitted Principal Use table proposes to add entertainment and permit indoor restaurants, bars and entertainment without a special permit within the Town Center Commercial and General Commercial Zones. Outdoor service, outdoor dining and outdoor entertainment would still require a Special Permit from the Zoning Board of Appeals. Restaurants, bars, and entertainment will still require Licensing Board approval at a public hearing where abutter concerns can still be addressed at the level most appropriate. The Health Department will still

need to approve Title 5 flow related to seating or occupancy. This amendment would eliminate Article 2, Section 2460. The Board discussed the amendment.

The next proposed amendment would transfer responsibility of outdoor displays from the Zoning Board to the Zoning Enforcement Officer. The General Bylaw Section 8-11 (Article ___) has been amended to make this zoning section obsolete. The Board agreed to put this on the consent agenda.

The proposed residential design standard amendment would reduce driveway curb radii at street intersections to a more appropriate size for most residential properties. The existing 25 ft. minimum radii is recommended for arterial streets with a substantial volume of turning buses and/or trucks. Smaller radii can improve pedestrian safety by requiring motorists to reduce vehicle speed by making sharper turns, and shortening pedestrian crossing distances. Smaller radii also provide larger pedestrian waiting areas at corners and improve sight distances. The Planning Board retains the ability to require larger curb radii where appropriate for a specific property's driveway intersection. The Board discussed the amendment. The Board decided to put this on the consent agenda.

b) Pending Decisions:

PLN 20-2031

Application by **Lester J. Murphy** requesting Site Plan Review pursuant to Article 2, Section 2320(A), High Elevation Protection District A, of the Zoning By-Laws to renovate an existing single family residence, including constructing an addition and a detached garage/artist's studio on the property located at **32 Point Street**. *There was a motion by Jeffrey Mulliken to approve the language as amended. Monica Stubner seconded. VOTE: 5-0-0.*

PLN 20-2032

Application by **William N. Rogers, II** requesting Site Plan Review by Special Permit pursuant to Article 4, Section 4015, Site Plan Review by Special Permit a. (4), of the Zoning By-Laws to renovate a structure whose curb cut is 25% larger than the existing or proposed street frontage, including adding dormers on the south elevation, extending a deck and adding stairs on the east elevation, and constructing a one-story addition over an existing kitchen and storage area, replacing stairs and an entryway and enclosing an elevator on the north elevation of the property located at **429 Commercial Street** with requested waivers from Article 4, Sections 4035 (b), 4035 (c), 4053 (1)(b) and 2(d), and 4600. *There was a motion by Jeffrey Mulliken to approve the language as amended. Marianne Clements seconded. VOTE: 5-0-0.*

c) **Minutes of January 14, 2021:** The minutes are postponed.

d) **Any other business that may properly come before the Board:**

There was a motion by Jeffrey Mulliken to adjourn the meeting at 9:38 P.M. Paul Kelly seconded. VOTE: unanimous by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2021
Thaddeus Soulé, Town Planner,
on behalf of the Planning Board