

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
April 15, 2021**

Members Present: Jeremy Callahan, Daniel Wagner, Susan Peskin, Robert Nee (joined the meeting at 6:11 P.M.), and Quinn Taylor.

Members Absent Steven Latasa-Nicks (excused), Erik Borg (excused), and Peter Okun (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. He explained that at the moment, there were only 4 members of the Board present, however he was expecting a fifth shortly. In the meantime, an applicant would need a unanimous decision in order to be granted a Special Permit. The applicant would have the opportunity to choose if he or she would like to continue until 5 Board members were present or move forward with 4 Board members.

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 20-53 (*request to postpone to the meeting of May 6th*)

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)**. *Daniel Wagner moved to postpone ZBA 20-53, Quinn Taylor seconded and it was so voted, 4-0 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 21-9 (*postponed from the meeting of April 1st*)

Application by **Susan Packard** seeking a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G12, Swimming pool, of the Zoning By-Laws to install a swimming pool on the property located at **71 Bayberry Avenue (Residential 1 Zone)**. Jeremy Callahan, Daniel Wagner, Susan Peskin, and Quinn Taylor sat on the case.

Presentation: Susan Packard and Stacy Kanaga, of Coastal Engineering Co., were in the meeting to present the application. Ms. Kanaga reviewed the proposed project. She said that the long and narrow lot is developed and wooded with a two-and-a half story structure situated on it. She reviewed the existing site improvements, including a driveway, located north of the structure and connects the garage to Bayberry Avenue. The rear of the lot is developed with a paver patio and deck, utilizing a flat portion of the site directly behind the structure. The remainder of the developed portion of the site consists of pea stone, stone, and asphalt walkways, timber retaining walls and stairs, and wooden decks and stairs. The portion of the developed site that is nearest the structure contains a mix of naturalized vegetation. The proposed conditions will include a 16' by 32' pool with a powered safety cover in the backyard with a surrounding paver patio. The pool will be located as close to the structure as possible, given the flat topography of the land and to avoid the need for further grading. A new stone retaining wall will be constructed on the west side of the structure. An existing wooden retaining wall will be removed to allow access to the pool for maintenance and pumping out. A new timber landscape wall will be constructed downslope of the pool that will minimize grading on the site. A 4' high fence will enclose both the backyard, the pool, and the pool patio, with gates located on the east and west sides. Landscaping consisting of native vegetation will screen the pool and patio area from the neighbors and stabilize the site. The pool will be outside the lot's setbacks and the fence will be 4' high and does not need zoning approval. The lot is large enough so the pool and the patio will still allow the site to be within the requirements for lot coverage and green area. Ms. Packard said the water will be trucked into the site and the decibel level of the pool equipment is 45, well within the requirements of the by-laws. She added that there will be no exterior speakers in the pool area.

Public Comment: None. There was 1 letter in support of the application.

Quinn Taylor moved to close the public portion of the hearing, Susan Peskin seconded and it was so voted, 4-0 by roll call.

Board Discussion: The Board had no questions for Ms. Kanaga and Ms. Packard.

Jeremy Callahan moved that the Board find pursuant to Article 5, Section 5330, Special Permit Consideration, that the social, economic or 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 the Board vote to approve a Special Permit pursuant to Article 2, Section 2540, Permitted Accessory Uses, G12, Swimming Pool, to install a swimming pool on the property located at 71 Bayberry Avenue (Res 1), with the following conditions: all water for the pool will be from off-site delivered by tanker truck; any water removed from the pool will be by tanker truck; and the noise levels generated by the pool equipment will meet or be below 65 decibels, Quinn Taylor seconded and it was so voted, 4-0 by roll call.

ZBA 595

Application by **Lester J. Murphy, Esq.** seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws for the service of alcohol on the

property located at **198 Commercial Street (Town Center Commercial Zone)**. Jeremy Callahan, Daniel Wagner, Susan Peskin, Robert Nee, and Quinn Taylor sat on the case.

Presentation: Attorney Lester J. Murphy and Stewart Jackson, the principal of the LLC that will operate the business on the property, were in the meeting to present the application. Attorney Murphy reviewed the request to authorize the service of alcohol on the premises and said that this guesthouse has operated on the property for many years. He said that Mr. Jackson is in the process of upgrading both the property and the business. The service of alcohol is part of the business plan to provide a more up-scale vacation experience for guests. Mr. Jackson has already received his TIPS certification for the on-premises service of alcohol and understands the importance of managing and overseeing a liquor sales business. Mr. Jackson seeks to serve alcohol from 5:00 P.M. until midnight, seven days a week. Attorney Murphy noted the location of the small bar on the floor plan. He added that no food service is proposed. Signage indicating that no alcohol will be allowed to leave the premises will be placed inside the patio area near the exit to Commercial Street. He said that activity on the patio can be monitored from the bar area inside. He argued that the social, economic, or other benefits of the proposal to the neighborhood or Town outweigh any adverse effects. A benefit is that the business is able to provide an amenity to guests of the premises, similar to what is done at other guesthouses in Town and it is limited to guests and not the general public. Depending upon the service each night, he said that the bar could close earlier than midnight. Attorney Murphy emphasized that guesthouse businesses are a vital and important part of the local economy. It is crucial that these businesses be given the opportunity to continue to be commercially viable, as there have been guesthouses in the past that have been converted into single-family dwellings. He related that he has not heard of any other guesthouses that currently provide alcohol service having any significant licensing issues or problems with neighbors. A fence and retaining wall protect the patio from Carver Street. The building blocks the patio from the abutting building in the rear. Mr. Jackson introduced himself and reviewed his intent on rehabilitating the building and the patio. He wants to use the funds from the sale of alcohol to fund the repairs of the building.

Public Comment: There were 3 letters in support of the application. There was no other public comment.

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 had no questions for Attorney Murphy or Mr. Jackson.

Jeremy Callahan moved that the Board find pursuant to Article 5, Section 5330, Special Permit Consideration, that the social, economic or other benefits of the proposal for the neighborhood or town outweigh any adverse effects such as hazard, congestion or environmental degradation and further moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws for the service of alcohol for a total of 24 seats; 10 indoor seats and 14 outdoor seat in the lounge area, hallway, washroom, porch and patio area of a guesthouse on the property located at 198 Commercial Street (TCC) as depicted and highlighted in yellow on a plan entitled, "Crews Quarter Guesthouse", shown on one sheet, Robert Nee seconded and it was so voted, 5-0 by roll call.

ZBA 21-12

Application by **Robin B. Reid, Esq.**, on behalf of **The Red Inn, LLC**, seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to add 20 seats to an existing 74-seat restaurant on the property located at **15 Commercial Street**

(Residential 1 Zone). Jeremy Callahan, Daniel Wagner, Susan Peskin, Robert Nee, and Quinn Taylor sat on the case.

Presentation: Robin B. Reid, Esq., and Sean Burke and Phillip Mossey, principals of the applicant LLC, were in the meeting to present the application. Attorney Reid said that gallons from an Economic Development Permit would be applied for if this Special Permit was approved. She reviewed an existing seating plan for the restaurant. 16 seats will be added to the existing deck and a 4-seat picnic table placed in the garden. The proposal is to add food-service seats to existing service areas. She clarified that this is not the pandemic seating plan that the restaurant operated under last summer, and under which it will most likely operate again this summer. That plan included food service seats on the east deck and under a tent on the property. The present proposal does not include food service seats on the east deck. She argued that the social, economic, or other benefits for the neighborhood or Town outweigh any adverse effects. The benefits of this proposal for the Town include supporting the sustainability of this historic inn and restaurant. It employs over 50 people during a long season and generates significant rooms and meals taxes for the Town. An approval will allow for an increase in employees and in taxes, including property taxes, and allow this iconic business to remain viable. There will be no adverse effects as a result of the addition of seats, as they will be in existing service areas. Many customers walk or bike to the premises and there is a small parking lot across the street and parking along the street west of the restaurant. The location of the proposed 16 seats on the south deck will eliminate any noise impact on the neighbors. This property is on the sewer, so the proposal will not generate any waste challenges.

Public Comment: There were 2 letters of support of the application. Attorney Ben Zehnder and his client Brian Stevens, an abutter, had a concern about the noise issue with the 16-seat addition on an existing deck. Attorney Zehndere asked for conditions that any windows on the east side of the building be kept closed and that the SP be granted for only a year.

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 had no questions for Attorney Reid.

Jeremy Callahan moved that the Board find pursuant to Article 5, Section 5330, Special Permit Consideration, that the social, economic or 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 the Board vote to approve a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, allow for the service of food and alcohol for a total of 94 seats (74 indoor and 20 outdoor) on the property located at 15 Commercial Street (Res 1) as depicted on the plan entitled "First Floor Plan" for the Red Inn prepared by Ted Smith Architect, LLC, dated June 1, 2020 in 1 sheet labeled A1.1., Robert Nee seconded and it was so voted, 5-0 by roll call.

ZBA 21-13

Application by **Raina Stefani** seeking a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, B4, Retail sales or service, of the Zoning By-Laws for a change in use from a gallery to a retail space at the property located at **437-439 Commercial Street (Residential 3 Zone)**. Susan Peskin recused herself because of a conflict of interest. Jeremy Callahan, Daniel Wagner, Robert Nee, and Quinn Taylor sat on the case.

Presentation: Raina Stefani was in the meeting to present the application. She said that she would like to add shelf-stable local pantry items for retail sale to an existing gallery. This would

allow local chefs who may be unemployed, such as herself, to develop shelf-stable items, such as olive oil and crackers, and she would also like to sell local art.

Public Comment: There was no public comment or letters in the file.

Robert Nee moved to close the public portion of the hearing, Quinn Taylor seconded and it was so voted, 4-0 by roll call.

Board Discussion: The Board had no questions for Ms. Stefani.

Jeremy Callahan moved that the Board find pursuant to Article 5, Section 5330, Special Permit Consideration, that the social, economic or 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 the Board vote to approve a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, B4, Retail sales or service, a. neighborhood, to allow neighborhood retail sales or service use within the area depicted on the plan entitled, “437 Commercial St Gallery” showing the approximately 12 ft. by 21.5 ft. existing space on the property located at 437-439 Commercial Street (Res 3), Robert Nee seconded and it was so voted, 4-0 by roll call.

B. Work Session:

1) Pending Decisions:

ZBA 21-4

Application by **Nancy Lockwood** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to add a second floor and deck up and along pre-existing, non-conforming front and side yard setbacks on the property located at **1 Holway Avenue, U1A (Residential 3 Zone)**. A quorum was not available for the approval.

ZBA 21-5

Application by **Ted Smith**, on behalf of **Bernard Ahearn**, seeking a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and reconstruct a set of stairs along a pre-existing, non-conforming side yard setback on the property located at **213 Commercial Street, U1 (Town Center Commercial Zone)**. A quorum was not available for the approval.

ZBA 21-10

Application by **Lester J. Murphy, Esq.**, on behalf of **Robert B Sieban, Jr.**, seeking a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G12, Swimming pool, of the Zoning By-Laws to install a swimming pool on the property located at **9 Willow Drive (Residential B Zone)**. A quorum was not available for the approval.

ZBA 21-11

Application by **KerenShemesh Auxley** seeking a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place a sandwich board on the driveway/slope of the property located at **353 Commercial Street, #AU5 (Town Center Commercial Zone)**. *Daniel Wagner moved that the language be approved as written, Quinn Taylor seconded and it was so voted, 4-0.*

2) **Approval of minutes: March 18, 2021:**

March 18, 2021: *Robert Nee moved to approve the language as written, Susan Peskin seconded and it was so voted, 5-0-0 by roll call.*

3) **Any other business that may properly come before the Board:** Mr. Soulé said that the Planning Board is having a Public Hearing on Zoning By-Law amendments on April 22nd. The ZBA is invited to attend and comment on the amendments.

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

ADJOURNMENT: *Robert Nee moved to adjourn the meeting at 7:00 P.M., Quinn Taylor 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