

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
May 6, 2021**

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

Others Present: Thaddeus Soulé (Town Planner) and Attorney Amy Kwesell (Town Counsel).

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, either via phone or a mobile Microsoft Teams app,

Mr. Callahan identified the ZBA members present and reviewed the protocol for public comment and encouraged members of the public to write letters or emails with comments about applications, which gives Board members time to read them before the hearing.

A. Stellwagen Bank Marine Sanctuary Visitor Center: Anne Marie Runfola, a program coordinator for the National Oceanic and Atmospheric Administration Stellwagen Bank Marine Sanctuary, and the project manager for the Stellwagen Bank Marine Sanctuary Visitor Center proposed for Provincetown, and Conrad Ello, of Oudens Ello Architecture, were in the meeting to present the project. Ms. Runfola reviewed the project, which has three partners: The Town of Provincetown, the Center for Coastal Studies, and NOAA headquarters and NOAA Stellwagen Bank Marine Sanctuary. She informed the Board that she is in charge of outreach for the Visitor Center and was not asking for a permit or a vote on the project at this time. She wanted to inform the Board about where the project was in the conceptual design process, answer any questions it may have, and to receive feedback. This Visitor Center has been a long-time goal of the three partners and the potential location was chosen due to the presence of the CCS, as well as the Town's being a major gateway out to the Sanctuary. In addition, the Town is known as a science, arts and culture, and whale watch corridor (the birthplace of east coast whale watching). The Sanctuary does not now have a visitor center, although it has an office and maintains exhibits up and down the east coast. She emphasized that there is no physical sense of place, a place where people can go to connect with the Sanctuary and the communities that helped to create it. There was a feasibility study conducted from 2016-2018, with a team from the project's partners and a community steering committee comprised of about 20-25 members of the community, including from local businesses and the Chamber of Commerce. Money was raised to start the conceptual

design phase of the project and in 2021, an architectural firm was hired. She turned the presentation over to Mr. Ello.

Mr. Ello said that the firm has been working on the 10,000 sq. ft. structure since last summer in close collaboration with the three partners. He said that the work that has been done has been built upon the results of the feasibility study. Everyone that he has spoken to, including the Select Board, the Conservation Commission and the Planning Board has been supportive of the project as presented and has encouraged the team to continue with its development. The project is early in its conception and design and there is still plenty of time to incorporate any feedback in future phases. He said that the aspirations for the Visitor Center include design elements and improvements that will benefit the Town and its residents. Included in the scope will be improvements to the transportation center and Ryder Street Extension. He said that the site was determined by the feasibility study, which indicated that the center of Town would be ideal. Included in the improvements to the transportation center are the installation of electric vehicle charging stations and an increase in green space. A vastly improved comfort station and public restroom facility will be incorporated into the proposed structure, a more pedestrian-friendly, expanded boardwalk will be configured, connecting Lopes Square to MacMillan Wharf, and new crosswalks that will make the entire area safer for pedestrians will be installed. As for the structure itself, it will be located parallel to the first leg of the MacMillan Wharf. He said that there are currently two options for the structure; one with the main floor level located 6.5', and the second for the main floor level located 9' above the existing boardwalk level. In both options, the reason for the raised first floor level is because of the FEMA V flood zone that the structure will be located in. The requirement is that the finished floor level be constructed above the base flood elevation and for the freeboard to be located above that. The 9' version is being presented this evening because it will be taller and bigger than the 6.5' version. The former version has a lot of advantages and provides options, such as allowing for parking underneath the structure, which will help mitigate for the lost parking spaces in the Municipal Parking Lot that would be impacted by the location of the Visitor Center. In addition to the parking, the space beneath the building will be activated with seasonal vendor stalls, which will stimulate the businesses that are in the existing trap sheds on MacMillan Wharf. He said that there is a hope that the comfort station can be located under the building on the boardwalk level as well. He reviewed images of the building plans. There will be two entrances to the structure; one for people coming off from ferries, charter boats, or excursion vessels, and one for people coming onto MacMillan Wharf from Lopes Square. Inside the structure, the main floor will have a generous information, exhibit, and retail space, and serve as an orientation area for visitors to learn about the Town and the Sanctuary. The second floor will feature a large exhibit hall, a deck looking out over Provincetown Harbor, and a new multi-purpose community room with an 80-person capacity and an option for the space to be sub-divided. This space will have a view of Lopes Square. He reviewed a diagrammatic building section with the raised main floor and the activated underbelly, which also will accommodate the flow of floodwaters in big storm events. He reviewed a diagram of the proposed structure, showing how its scale compared to other large buildings in Town. He said that the conceptual design was rendered in an attempt to be sensitive to the scale in the context of comparably sized buildings in the center of Town. The raising of the building will become a new model of resiliency and sustainability for the Town. He said that the building also aspires to be as close to net zero for energy as possible. It will have sustainability features, such as a favorable roofscape that faces southwest to feature solar panels for on-site energy production. He reviewed some aerial views of the proposed structure. He said that the

existing trap sheds would be moved to the east side of MacMillan Wharf and the area will become a more generous pedestrian area and a public promenade that will connect Lopes Square to MacMillan Wharf. He reviewed ground and aerial views from north and south elevations of the structure. The structure will serve to screen the parking lot as it guides visitors onto MacMillan Wharf and out to the water. The Board briefly questioned Mr. Ello and Ms. Runfola about potential zoning relief, the project's budget, and whether the design was created with a view towards the future and reimagining the whole area, including the MPL, whether the building will be open year-round, and what the potential construction schedule will be for the project.

B. Public Hearings:

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

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 to the meeting of May 20, 2021 at 6:00 P.M. Quinn Taylor seconded and it was so voted, 5-0 by roll call.**

ZBA 20-2045 (*request to continue to the meeting of June 3rd*)

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)**. There was a request from the applicant to continue to the meeting of June 3, 2021. **Erik Borg moved to postpone ZBA 20-2045 to the meeting of June 3, 2021 at 6:00 P.M. Quinn Taylor seconded and it was so voted, 5-0 by roll call.**

ZBA 21-14

Application by **Christine Barker** seeking a Special Permit pursuant to Article 2, Sections 2334, "V" Zones, 2440, Permitted Principal Uses, B3, Hotel, motel or inn, footnote 2, 2460, Special Permit Requirements, 2640, Building Scale, 2630, Roofs, Article 3, Sections 3110, Change, Extensions or Alterations, 3115, Demolition and Reconstruction, and 3433, Illumination Special Permit, of the Zoning By-Laws to allow the proposed redevelopment of a property, including demolishing a pre-existing, non-conforming condemned structure and reconstructing it as a new, mixed-use structure consisting of 31 hotel units, 4 residential condominium units, a restaurant/bar, a meeting space, and a ground-level parking area, as well as reconstructing a former pier serving the property located at **227R Commercial Street (Town Center Commercial Zone)**. Jeremy Callahan said that the next two cases concern a project that had been reduced in size due to an appeal of decisions, one for a Special Permit and one for a Variance, made by the Board in 2019. The result of the appeal is that the Court requested that project be remanded to the Board for reconsideration. He said that the Board was not discussing the previous approvals, but only hear the modifications made by the applicant. When the Board's decisions have been rendered, they will go back to the Court for its consideration. He reiterated a firm 3-minute public comment rule. He added that there was an original application regarding

the request for a Special Permit related to the parking requirements that the Board never deliberated upon.

Presentation: Attorney Eliza Cox, representing the applicant, Ginny Binder, a consultant on the project, Jeffry Burchard, an architect from Machado Silvetti, Architects, and Guy Busa, a transportation consultant with Howard Stein-Hudson Associates, Inc., were in the meeting to present the application. Attorney Cox said the relief requested was either the same or reduced from that requested on in 2019. She said that the team will give a brief overview with a focus on the changes made and will show how the Zoning By-Law modifications made at Annual Town Meeting affect the relief previously requested and granted.

Mr. Burchard reviewed the project, which is located in the center of Town and almost entirely in the VE zone of the FEMA flood maps. The property includes a right-of-way that extends to Commercial Street and a dilapidated pier field that will be rebuilt and extended out into the Harbor. There is a right-of-way located between 227 and 235 Commercial Street that gains access to Commercial Street and is deeded to this property. He briefly reviewed an aerial view of the property, stating that the dilapidated pier field will be reconstructed as part of the project and will have to have Chapter 91 approval by the Dept. of Environmental Protection. He noted that the now-dormant Old Reliable restaurant, part of the existing structure on the site, has apartments on the second floor and is in a state of extreme disrepair. He noted the Commercial Street entrance to the property and said that it was a little noticed feature on the streetscape. He reviewed images of old structures that supported the lives of fishermen who made their living on and from the water. The rich history of Provincetown, along with its many piers, most of which do not now exist, and life on the water as it was known throughout its history, had been taken into consideration when designing the project. He said that as that way of life declined, most of the business and activity of the Town moved on-shore. He then reviewed renderings of the proposed project from various points of view. The building will have two gabled ends and will be predominantly a hotel with 31 rooms and 4 condominiums, however a 500 sq. ft. meeting room will included, as well as a restaurant/bar. He presented before and after images of the reconstruction of the pier and pointed out that the building will be built about 10' farther back from the water than the existing structure, reducing its presence on the water's edge. An accessible ramp at the end of the right-of-way providing access up to the reconstructed pier will allow for a connection between the water and Commercial Street. There will be public passage beneath the pier for continued access along the beach. There will also be a public, covered sidewalk access to the beach on the right side of the ramp.

He reviewed the height of the building and said that since it is located in the V flood zone, where the base flood elevation is 13' above sea level. The site is about 8' above sea level. He reviewed images of what would be allowed pursuant to the Zoning By-Laws, in terms of height, for a two-and-a-half story building sitting on average grade, on the property. However, FEMA requires a 13' base flood plus the state Building Code requires 2' of freeboard to the bottom of the structure. This would require the first-floor level of the building to be 17' above sea level. In consultation with environmental experts and coastal engineers, including reading various studies, it was decided that the building should be constructed 2' higher to take future sea level rise into consideration. This would put the building about 9-10' above the finished grade, or 19' above sea level. The building's ridges will be 38' above the first-floor line with some extensions for such things as an elevator towers and a lookout tower. He said that the most significant change in the project has been on the northwest corner of the building. He reviewed an image that

highlighted that section. He said that a 10' deep by 28.5' wide by three stories high section of the building has been eliminated. That was the impetus for a series of other changes as the interior was reconfigured to accommodate this removal of mass. An access ramp, a convenient way to deal with egress, has been removed from the west side of the building. This ramp has been removed in its entirety and it relieves the 5' required side yard setback at grade. The accessible ramp on the east side of the building is located in the setback, but that is an allowed use if the ramp is for access. With these changes, many of the requests for relief have improved. The setback on the northwest corner will now be 22' 3" instead of 12' 3", the gross square footage of the building has been decreased slightly, the lot coverage has also been reduced slightly, from 63% to 61%, and the total green area has been increased, 13% instead of 11%. He noted that about 80% of the site is permeable because the building will be lifted. There will be parking spaces located under the building sitting on a permeable gravel bed. The proposed parking spots have been reduced from 14 to 13 because of the reconfiguration of the building footprint. He said the scale of the structure has been reduced by about 3,000 cu. ft. He reviewed an image comparing the scale with surrounding building scales. The proposed structure will have a scale of 231,000 cu. ft., Whaler's Wharf has a scale of 430, 000 cu. ft., and the building at 227 Commercial Street has a scale of 144,000 cu. ft. He explained that part of the scale of the proposed structure is due to the lifting of the building and the requirement that the calculation include the space beneath the building.

Attorney Cox reviewed the Special Permit requests. There is one for relief from Article 2, Section 2334 a., which is related to development in the V zone, and was approved at the previous hearing. She said that the project is entirely landward of the reach of the mean high tide line and there will be no alteration of a dune. And, in fact, the location of the proposed building will increase the distance from that line.

As to Article 2, Section 2440, B3, footnote 2, this request has not changed and was granted in 2019. Hotels are allowed by right in this zoning district, however a Special Permit is needed for the addition of food and other ancillary services associated with hotels. The Board in 2019 determined that this was an appropriate site for a restaurant, that this use is consistent with the surrounding uses and with the proposed hotel use, that there is adequate sewer capacity for the proposed restaurant use, that it is economically beneficial to the Town and that it advances Provincetown's identity as a culinary destination.

The request for relief under Article 2, Section 2460 is related to the service of food and alcohol and to provide entertainment. She said that there were no changes to this request, which the Board granted in 2019. Attorney Cox said that Section 2460 of the Zoning By-Laws was recently deleted at the Annual Town Meeting, however the request remains part of this application in case the Attorney General does not approve the deletion. If the deletion is approved by the Attorney General, the need for this relief is moot.

The next request, under Article 2, Section 2471, is a request for a reduction in the parking requirements and was the part of the previous application that was not considered by the Board in 2019. It was subsequently withdrawn without prejudice. As the building is located in the TCC zone, it is exempted, as a restaurant, from having to meet parking requirements. An application for relief pursuant to Section 2472, would require the site to have 39 parking spaces. She said that the current proposal is for 13 on-site spaces; 4 of which will be designated for the 4

residential units, and 2 of which will be designated for the hotel shuttle service, and 7 of which will be designated for use by hotel guests. There will be bicycle racks located on the site, which will be available to all guests and visitors. The parking reduction can be granted by the Board if there are special circumstances that apply to the site, such as proximity to off-street municipal parking lots. There are several that would qualify in this situation, including the Municipal Parking Lot at MacMillan Wharf, located within .25 miles, the Ryder Street lot, and the Shank Painter Road lot. There are metered spaces, also located within .25 miles of the site. All of these would be considered within close proximity to the site. Granting the relief for this request is consistent with the purposes of the TCC district in that it is zoned for dense, commercial development in the downtown area and is consistent with a pedestrian environment. She referred to a transportation memo that was submitted stating that the applicant will implement access mitigation measures that will reduce the need for on-site parking spaces and benefit the neighborhood by reducing the use of private automobiles in the area and encourage alternate transportation modes, such as walking and biking, to and from the site. In addition, a proposed shuttle to transport hotel guests around Town will be implemented. To encourage and facilitate these options, hotel guests will be informed of the parking situation on the property before they arrive and given information on how to contact the shuttle service.

Attorney Cox said that the relief requested pursuant to Article 2, Section 2630E, allows for an alternate roof configuration. The request is for a flat roof above the second story. There is no change to this request that the Board granted in 2019. The flat portions of the roof will be hidden from view by the gabled roofs. There is a function to the flat roof form in that a vegetable garden to service the restaurant will be planted.

The request for relief pursuant to Article 2, Section 2640E, is for building scale. The extent of the relief for the new design is less than for the original design of the building. The initial request in 2019 was for 234,438 cu. ft. and now it is for 225,768 cu. ft. of scale. In 2019, the Board noted that this site is disadvantaged as to its location in comparison to other sites in that it abuts the Harbor, the location and proposed design of the building minimizes any impact of the proposed scale, and the mass is hidden from Commercial Street, largely due to the buildings located closer to Commercial Street and to the building's significant setback, about 165', from Commercial Street. The project also appears as though it is two buildings, which lessens the appearance of mass from the streetscape.

She noted the requested relief from Article 3, Sections 3110 and 3115, stating that this remains the same as originally presented and granted by the Board.

She mentioned the relief from Article 3, Section 3430 related to illumination requirement, and explained that this had been omitted from the previous application. She said that the height and nature of the illumination is remaining the same as proposed. The Zoning By-Laws require that exterior lighting fixtures be mounted no higher than 15', assuming that it is measured from average natural grade, thus the project would require relief for some lighting to be higher than that due to the need to elevate the structure pursuant to the state Building Code. There are downlights proposed to be installed on the second-floor decks. All the performance standards related to light overspill cited in Section 3431 will be fully complied with given the lighting design proposed. She noted that the new Illumination By-Law passed at the Annual Town

Meeting, if approved by the Attorney General, will require fewer reliefs pursuant to these standards in that only the downlights on the second-floor decks would require relief.

Attorney Cox addressed the Variance request. The changes to the project do not affect the height relief granted by the Board in 2019. She said that the Board's detailed, thorough findings in support of the Variance are still applicable. Mr. Callahan requested that the Variance presentation continue after the Board had a chance to question Attorney Cox about the Special Permit requests.

Public Comment: There were 6 letters in opposition and 7 letters in support of the project. Michael Kelly spoke on behalf of himself and his partner Mark Berryhill, in support of the project. Attorney Greg Boucher, representing abutters Patrick Patrick and Scott Ravelson, stated that his clients are still challenging the project and have not come to a resolution with the applicant and requested that the property be cleaned up and rendered safe for the public before the Board renders a decision. Scott Ravelson, an abutter, spoke in support of the development of the site, however he disputed the right of the public to use the easement on his property. Rick Holland spoke in support of the project.

Board Discussion: The Board questioned the team about the Special Permit and the Variance requests and commented on the project. Attorney Kwesell commented that the relief is the same as was previously applied for in 2019, but of a lesser scale because the building has been reduced. The conditions were based upon the use and those would not change from the 2019 approvals. Mr. Busa responded to a question about the emergency access capability and reviewed the findings in the traffic assessment memo, including a review of proposed signage. He concluded that more pedestrians and bicycles would be entering the site than private vehicles and an effort has been made to limit the latter on the shared entryway.

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

Attorney Kwesell briefly reviewed the history of the litigation regarding this project, which was remanded to the Board. The applicant had agreed to reduce the size of the project and due to the Zoning By-Laws approved at Annual Town Meeting, some of the relief sought is not needed if the Attorney General approves the new amendments to the Zoning By-Laws. However, the applicant is seeking the relief anyway. She said that all the relief sought is the same as the relief initially sought and received in 2019, but the magnitude of the relief has been reduced because the size of the project has been reduced.

There was a Board question about whether it would be possible to move the building back. Mr. Burchard responded to the question and said the design of the building was done to reduce the appearance of mass, including staggering the buildings. Also, the Zoning By-Laws do not address how buildings should be setback on lots and only address such elements as the building footprint and extrusion. Ms. Barker responded to why the size of the structure needed to be what it is proposed to be, including the financial viability of the project.

Peter Okun 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 find pursuant to Article 2, Section 2334 "V" Zones, that the applicant demonstrated the non-water dependent uses of the Project are located landward of the reach of the mean high tide and the Project will not increase the potential for flood damage, and further

Moved that the Board find pursuant to Article 2, Section 2440, Permitted Principal Uses, B3, Hotel, motel or inn, footnote 2, to allow food service, retail and other ancillary services commonly associated with a hotel, motel or inn, and further

Moved that the Board find pursuant to Article 2, Section 2460, Special Permit Requirements, allow for the service of food and alcohol for a total of 100 seats within the restaurant, dining areas, and bar as depicted on the plan entitled "Proposed First Floor Plan" Sheet A1.01 prepared by Machado and Silvetti Associates, LLC, dated March 2021, and further

Moved that the Board find pursuant to Article 2, Section 2470, that relief from the parking requirements may be granted where the Project is proposing 13 onsite gravel parking spaces and the remaining 37 required parking spaces are proposed to be in an off-site location with electric-powered valet shuttles proposed to transfer guests to the off-site parking; that employees and workers will not be allowed to arrive by car; that bicycle racks/storage will be provided; and that the Property is located approximately 700± ft. from the Ryder Street Parking Area; 800± ft. from the Grace Hall Parking Area; and 1,000± ft. from the MPL Parking Area; such that special circumstances, including proximity to municipal off-street parking lots, renders a lesser provision adequate for all parking needs, and further

Moved that the Board find pursuant to Article 2, Section 2630 to allow a deviation from the roof standard where the deviation is in keeping with Article 5, Section 5330 (as previously described) and the objectives of the Local Comprehensive Plan (which will be described under scale relief), and is appropriate for one of the following reasons:

- 1. The function of the structure or the structure's importance to the community as a whole justifies a different roof configuration.***
- 2. Other features of the proposed design are such that the deviation of the roof configuration is not disruptive to the character of the area, and further***

Move that the Board find pursuant to Article 2, Section 2640, Scale, Subsection E that the applicant has demonstrated that the deviation is appropriate and meets one or more of the following criteria:

1. The proposed building or addition is in keeping with the goals and objectives of the Local Comprehensive Plan. Specifically:

- LAND USE AND GROWTH MANAGEMENT GOAL 4: To protect the Harbor and waterfront while continuing to provide public access to the waterfront for traditional Town uses such as commercial fishing and whale watching, for public use, and tourist-related activities.***
- HISTORIC PRESERVATION AND COMMUNITY CHARACTER GOAL 2: To encourage redevelopment of existing structures as an alternative to new***

- construction, and to ensure that future development and redevelopment respects the traditions and character of historic architecture and settlement patterns to protect and improve Provincetown's visual character.*
- *ECONOMIC DEVELOPMENT GOAL 1: To promote businesses that are compatible with Provincetown's environmental, cultural, and economic strengths to ensure balanced economic development.*
 - *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.*
 - *ECONOMIC DEVELOPMENT GOAL 3: To encourage the creation and diversification of year-round employment opportunities.*
 - *ECONOMIC DEVELOPMENT GOAL 5: To better utilize existing resources, structures, and commercially zoned space for economic development activities.*
 - *ECONOMIC DEVELOPMENT GOAL 6: To strengthen local partnerships between businesses and Town government that promote, encourage, and support year-round economic activities and which lead to improvements in the local infrastructure that contributes to Provincetown's industries.*

And in addition:

3. The proposed building or addition by necessity must be large and that the location is suited for that larger scale use, and further

Moved that the Board find pursuant to Article 3, Section 3110, Change, Extensions or Alterations, and Section 3115, Demolition and Reconstruction, to allow the demolition of the existing building and reconstruct a new building in an altered and expanded footprint that will be up and along pre-existing, non-conforming setbacks, and further

Moved that the Board find pursuant to Article 3, Section 3433, Illumination Standards, that the overspill performance standards will still be met, and that the Applicant provided evidence that the brightness of any sign or building element will not exceed 50-foot lamberts,

Such that the Board may grant the Special Permits requested for the property located at 227R Commercial Street, with the following conditions:

- *Locate a fire hydrant at the end of the right-of-way and in front of the proposed structure.*
- *The Applicant agreed to request, in writing, that the Select Board create a fire lane by using the parking spaces across from Seamen's Bank (221-223 Commercial Street, Parcel ID: 11-1-1-0).*
- *There is no parking allowed on the right-of-way from Commercial Street to the proposed structure.*
- *Since the Board considers the proposed pier as a public benefit associated with the project, the Applicant shall submit a written application to the Massachusetts Department of Environmental Protection, Chapter 91, prior to obtaining a certificate of occupancy.*

- *A G.L. c. 41 sec. 81X Plan must be recorded depicting the property as 12,783± sq. ft. prior to obtaining a building permit.*
Quinn Taylor seconded and it was so voted, 5-0 by roll call.

ZBA 21-15

Application by **Christine Barker** seeking a Variance pursuant to Article 5, Section 5222, of the Zoning By-Laws to allow the gabled ridge height of a proposed structure at 38 feet above the first floor (48.7 feet above average existing grade) and to allow the flat portion of the roof at 35 feet above the first floor (45.7 feet above average existing grade) on the property located at **227R Commercial Street (Town Center Commercial Zone)**. Jeremy Callahan, Peter Okun, Daniel Wagner, Quinn Taylor, and Erik Borg sat on the case.

Attorney Cox continued her review of the request for a Variance. All the Board's previous findings regarding this request apply to the reconfigured project. These include finding that unique structural circumstances exist due to the soil and topography of the property, specifically the site is uniquely, almost entirely, within a FEMA velocity zone and the overall topography of the site slopes down toward the Harbor. In addition, the Board noted and found that there are unique circumstances relating to the existing structure on the property, as it has been condemned, is in poor condition, and is not structurally sound such that it could be elevated and renovated. Because of these unique conditions, a literal enforcement of the By-Law would dramatically reduce the usable space and result in the loss of a proposed floor. In addition, the Board found that the unique condition of the structure on the property is a substantial hardship because the Zoning By-Law does provide for a height allowance in its definition of building height, but which cannot be used because of the dilapidated condition of the existing building. The Board also found that there is no substantial detriment in granting the relief being requested and the granting of the relief provides valuable public benefits consistent with the Zoning By-Law, such as the elimination of a dangerous building on the property, the revitalization of an underutilized property by adding needed hotel units, and the creation of year-round employment opportunities. The Board also found that the project is consistent with the purposes and intent of the By-Law in terms of improved coastal resiliency and public safety. Attorney Cox said that there are numerous other benefits of the project, such as increasing room occupancy taxes for the Town, providing a new conference/meeting space, implementing substantial public safety enhancements, improving coastal resiliency due to the elevation of the proposed structure, and the elimination of the existing structures on the property, which do not meet any FEMA requirements. The latter will also benefit the Town's National Flood Insurance Community rating and improve environmental and sustainability features that have been incorporated into the design of the project as described in the application materials. Attorney Cox concluded that the Board made the right decision in 2019 to grant a height Variance to the project.

Attorney Cox added that an easement document related to a question by an abutter had been submitted. The document confirms that the subject property has rights within the right-of-way and that those rights are broad and exclusive easement rights over the right-of-way for use by the applicant for all purposes in connection with her business and the use of the pier. These rights include pedestrian and vehicular access to the project and she noted that the proposed use does not constitute a more intensive use of the right-of-way than what has occurred in the past. Ms. Barker added that the Town was looking to create a Harbor loop to try and relieve traffic and congestion on Commercial Street and the project would be consistent with that goal.

Where the Zoning Board of Appeals finds the following:

- 1. That the Property has unique structural circumstances for the neighborhood due to soil and topography. Specifically, the Property is uniquely almost entirely within a FEMA velocity zone with a base flood elevation of 13 feet above sea level and slopes down toward water.***
- 2. That there are unique circumstances relating to the structure on the property as it was condemned, is in poor condition, and not structurally sound such that it could feasibly be elevated and renovated.***
- 3. That the unique soil conditions (land that is subject to velocity zone flooding), a literal enforcement of the Bylaw (i.e. calculating the height at the average grade) would dramatically reduce the amount of useable space and would result in the loss of a floor thereby creating a hardship.***
- 4. That the unique condition of the building and its location also results in a substantial hardship because the By-Law does provide for a height allowance for existing developed sites, like this property, wherein it allows existing buildings to be elevated and the height measured from the BFE. Because of the poor condition of the building, it cannot be elevated.***
- 5. That granting the height variance will not create a substantial detriment to the Town and/or surrounding area as the proposed building is set back approximately 170 feet from Commercial Street and slopes down to the water, such that the elevation at Commercial Street is higher than at the subject property which slopes toward the water.***
- 6. That the proposed building's distance from Commercial Street and the slope, together with the surrounding buildings which front on Commercial Street minimizes the visibility of the proposed building from Commercial Street.***
- 7. In addition, the granting the variance would provide valuable public benefits and be consistent with the purpose of the By-Law such as the elimination of a dangerous structure, revitalizing an existing under-utilized commercial property by adding needed hotel rooms and year-round employment opportunities.***
- 8. That the Project reflects the intent and purpose of the Bylaw as the Bylaw allows the elevation of buildings that existed as of April 2015. Accordingly, a variance that allows a reconstructed building to be elevated to protect the structure and surrounding structures from coastal flooding and damage is in harmony with the intent and purpose of the By-Law.***
- 9. That the literal enforcement of the provisions of this By-Law would involve a substantial hardship, financial or otherwise, to the petitioner or appellant. The ZBA further finds the hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located. Finally, the ZBA finds desirable relief may be granted without either a substantial detriment to***

the public good; or nullifying or substantially derogating from the intent or purpose of this By-Law.

Jeremy Callahan moved that the Board vote to approve a Variance pursuant to Article 5, Section 5222 for the property located at 227R Commercial Street, Peter Okun seconded and it was so voted, 5-0 by roll call.

ZBA 21-16 (*request to withdraw without prejudice*)

Application by **William N. Rogers, II**, on behalf of **Kelly Bocuzzo**, seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a 12' by 12' one-story, wood-framed screened porch with a concrete pier foundation on the property located at **11 Johnson Street (Residential 3 Zone)**. **Erik Borg moved to grant the request to withdraw ZBA 21-16 without prejudice, Peter Okun seconded and it was so voted, 5-0 by roll call.**

ZBA 21-17

Application by **Lester J. Murphy, Esq.**, on behalf of **Shank Painter Associates, Inc.**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to amend a previously approved Special Permit, ZBA 20-56, to increase the scale deviation to provide for 3 additional exterior decks at the property located at **207 Route 6 (General Commercial Zone)**. Jeremy Callahan, Peter Okun, Daniel Wagner, Quinn Taylor, and Erik Borg sat on the case.

Presentation: Attorney Lester J. Murphy, Stacy Kanaga, of Coastal Engineering, Co., Alison Alessi, of A3 Architects, Inc., and Patrick Patrick, the owner of the property, were in the meeting to present the application. Attorney Murphy reviewed the request for additional exterior decks. He said that the Board had approved the entire project in 2020, including relief for a significant deviation from scale and other Special Permits for the development of workforce housing units. The scale allowed then was 203,192 cu. ft. where the neighborhood average scale is 27,041 cu. ft. He said this request is for an increase in scale to 211,230 cu. ft. The increase is not related to an increase in the size or internal volume of the structure. Rather the changes requested have to do with the addition of 3 decks to the structure. The area under the deck must be included in the scale calculation. Proposed is a wrap-around deck on the first floor at the northeast and northwest sides of the structure. This deck will provide an exterior open-air area for use by residents that is adjacent to the interior common kitchen, dining, and lounge areas. The additional balconies that are proposed will provide 30 sq. ft. of exterior area and provide an open space for the small apartments on the third floor. All but one of the proposed additional decks will face away from the residential neighbors on Ship's Way Road, towards the warehouse and an abutting business. He noted the location of the proposed decks on elevation drawings shown on the screen.

Attorney Murphy argued that under Article 5, Section 5330, the Board could approve the request and that the social, economic, and other benefits to the Town and neighborhood of the proposal outweigh any detrimental effects. The most substantial benefit of the project is providing workforce housing for employees. The Select Board has granted a significant number of gallons, over 9,000, for this development. He also argued that 4 of the criteria for relief under Article 2, Section 2640E will be met, including meeting the goals and objectives of the Local Comprehensive Plan in supporting workforce housing, that the structure is important to the economic vitality of the Town and has to be large by economic necessity, that the building is proposed for an area of existing large structures, and that every effort has been taken in the

design and siting of the building and with landscaping screening to successfully integrate it into its surroundings in a manner that minimizes the appearance of mass, which is accomplished by constructing a variety of roof configurations, setbacks and facades. Extensive vegetative view screening will be planted on the site to shield the building from Route 6 and from residential neighbors on Ship's Way Road.

Public Comment: There were 2 letters from abutters in opposition to the project. Scott Ravelson spoke in favor of the application. Sonia Vallianos, an abutter, asked if the applicant could change the location of the balconies, from the south side to the north side of the structure. John Crowley, an abutter, spoke in opposition to the project.

Peter Okun 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 questioned Attorney Murphy.

Peter Okun 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 find pursuant to Article 2, Section 2640, Scale, Subsection E that the applicant has demonstrated that the deviation is appropriate and meets one or more of the following criteria:

1. The proposed building or addition is in keeping with the goals and objectives of the Local Comprehensive Plan. Specifically:

- ***ECONOMIC DEVELOPMENT GOAL 7: To provide housing that is affordable to the year-round and seasonal workforce... and***
- ***AFFORDABLE HOUSING GOAL 1: To promote the provision of fair, decent, safe, affordable housing for rental or purchase that meets the needs of present and future Provincetown residents.***

In addition:

3. The proposed building or addition by necessity must be large and that the location is suited for that larger scale use.

5. 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.

Such that the Board may grant the Special Permit for the property located at 207 Route 6. Quinn Taylor seconded and it was so voted, 5-0 by roll call.

ZBA 21-18

Application by **Eliot Parkhurst, Esq.**, on behalf of **Five Star Pet Services, LLC**, seeking a Special Permit pursuant to Article 2, Section 2470, Parking Requirements, of the Zoning By-Laws for a waiver from the parking requirements for employee housing on the property located

at **79 Shank Painter Road (General Commercial Zone)**. Jeremy Callahan, Peter Okun, Daniel Wagner, Quinn Taylor, and Erik Borg sat on the case.

Presentation: Attorney Eliot Parkhurst and Tom Walter, the owner of the property, were in the meeting to present the application. He reviewed the request to repurpose some existing interior space and create 1 dormitory-style employee housing unit. This will be created by converting an underutilized area of commercial space in the basement of the existing structure. No additional Title 5 septic flow is required. It will be a three-bedroom residential unit for occupation by unrelated individuals on a seasonal, year-round basis, which is a permitted use in the GC Zoning District. Two additional parking spaces on-site would be required for this change in use. All current commercial and residential spaces have the requisite on-site parking, but the lot size and configuration does not allow for any more parking spaces to be created. The property is in close proximity, within 2 blocks, of the Grace Hall public parking lot, which has 354 spaces available. He said that there is a great need for employee housing and its in-Town creation is one of the stated goals of the Select Board and reduces the need for personal vehicles. To the extent that employers must look to hiring workers from out of Town, those individuals must commute, which is counter-productive and leads to an increase in traffic congestion, noise, pollution, and other potential adverse incidents. This site is within walking and biking distance to most employers in the center of Town. A high percentage of the staff do not have private vehicles and their housing must be within walking or biking distance of the job. Most visa-related seasonal employees do not own vehicles and can only accept work if they can rely on public transportation from other Towns or use other means to get to work, particularly at night. There is no reliable public transportation available in Town at night. Employee housing is the only solution to these issues. Attorney Parkhurst noted that the property already has multiple bike racks to support any reasonable demand. He pointed them out on the site plan. He argued that the social, economic, and other benefits of the request outweigh any detrimental effects. Mr. Soulé commented on the parking at the site, which has been thoroughly vetted, and said that the workforce housing unit shall be deed-restricted until such time as the unit is converted to another use and that the parking relief granted will continue unconditioned upon the inclusionary fee being paid at the time of the conversion.

Public Comment: None. There were no letters in the file.

Quinn Taylor 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 Mr. Walter and Attorney Parkhurst.

Peter Okun 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

Peter Okun moved that the Board vote to approve a Special Permit pursuant to Article 2, Section 2470, to grant relief from the parking requirements where the Project is proposing employee housing for individuals anticipated to use bicycles or other alternative modes of transportation that do not require vehicle parking; that bicycle racks/storage will be provided for all onsite units; and that the Property is located approximately 1,000± ft. from the Grace Hall Public Parking Area, and 1,100± ft. from the Jerome Smith Public and the Fire Station Public Parking Areas; such that special circumstances, including providing workforce housing and proximity to municipal off-street parking lots, renders a lesser provision adequate for all parking needs for the

property located at 79 Shank Painter Road with the following condition: That a deed restriction be recorded for the workforce housing unit such that if the unit is ever converted to a use other than workforce housing or other commercial use permitted by the Zoning By-Laws, the parking relief granted will continue conditioned upon the inclusionary fee being paid at the time of the conversion, Quinn Taylor and it was so voted, 5-0 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 21-9

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)**. *Daniel Wagner moved to approve the language as written, Quinn Taylor seconded and it was so voted, 3-0 by roll call.*

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 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)**. A quorum was not available for the approval.

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)**. A quorum was not available for the approval.

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)**. A quorum was not available for the approval.

2) **Approval of minutes: April 15, 2021:**

April 15, 2021: Quinn Taylor moved to approve the language as written, Erik Borg seconded and it was so voted, 4-0-1 (Peter Okun abstaining) by roll call.

3) **Any other business that may properly come before the Board:** Mr. Callahan reminded Board members to let Mr. Soulé know if they cannot attend the next hearing on May 20th and encouraged every Board member to attend, as there are many decisions that need approving.

NEXT MEETING: The next virtual Public Hearing will take place on Thursday, May 20, 2021. It will consist of a virtual Public Hearing at 6:00 P.M. followed by a Work Session.

ADJOURNMENT: *Peter Okun 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