

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
May 20, 2021**

Members Present: Jeremy Callahan, Peter Okun, Daniel Wagner, Robert Nee, Steven Latasa-Nicks, Susan Peskin, Quinn Taylor (joined at 6:03 P.M.), and Erik Borg.

Members Absent: None.

Others Present: Thaddeus Soulé (Town Planner)

Town Planner Thaddeus Soulé, the moderator of the meeting, introduced the virtual Public Hearing at 6:00 P.M. He then called the roll.

Chair Jeremy Callahan called the meeting to order.

Mr. Soulé then explained the reason the Public Hearing was being held in this manner, detailing how the Board, the applicants, and the public could participate remotely, either via phone or Microsoft Teams.

A. Public Hearings:

ZBA 20-53 (*request to withdraw without prejudice*)

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)**. There was a request by the applicant to withdraw ZBA 20-53 without prejudice. **Robert Nee moved to grant the request to withdraw without prejudice, Steven Latasa-Nicks seconded and it was so voted, 6-0-1 by roll call. (Peter Okun abstaining)**

ZBA 20-2045 (*continued 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)**.

ZBA 21-19

Application by **John Culver** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions, or Alterations of the Zoning By-Laws to extend an existing mudroom from 8' 9" to 15' up and along a pre-existing, non-conforming side yard setback on the property

located at **288C Commercial Street**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.

Presentation: John Culver was in the meeting to present the application. Mr. Culver said that there would be no drainage issues because of the project. He said the addition cannot be seen from any public way and it was important in these times to expand the kitchen. He added that some windows that allowed them to see into an abutting house would be eliminated. He briefly reviewed the floor plans.

Public Comment: There was 1 letter in support of the application. There were no other public comments.

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

Board Discussion: The Board had no questions for Mr. Culver.

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 vote to approve a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, to extend an existing mudroom from approximately 8 ft. 9 in. to 15 ft. up and along a pre-existing, non-conforming side yard setback on the property located at 288C Commercial Street (TCC), Susan Peskin seconded and it was so voted, 5-0 by roll call.

ZBA 21-20

Application by **Robin B. Reid, Esq.**, on behalf of **Jimmy's Hideaway**, seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to add 25 seats on a rear patio to an existing 50-seat restaurant on the property located at **179**

Commercial Street, U1 (Town Commercial Center Street). Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.

Presentation: Attorney Robin B. Reid, Jim McNulty and Raife Menold, principals of RMJM, LLC, the owners of the unit and the operators of the restaurant, were in the meeting to present the application. Attorney Reid reviewed the request, saying the seats require an Economic Development Permit for additional gallons to accommodate the new seats. She reviewed a site plan that includes the brick patio. She said there is a fence in the rear, on the other side of which there is picnic table seating. This arrangement was part of the COVID-19 seating rules and is not the subject of this request. The brick patio immediately behind the restaurant is where the requested seats will be located. She argued that the economic, social, or other benefits of the project for the neighborhood or Town will outweigh any adverse effects. The benefits include supporting the sustainability of a year-round restaurant business, maintaining employment for 25 people, as well as an additional 5-10 employees because of the increase in seats, and increasing property and meals taxes that the Town receives. She said that there would be no adverse effects because of the addition of seating. Restaurants on both the east and west sides of Jimmy's have extensive exterior seating. Most of the customers of the restaurant walk or bike to the site and there are public parking lots within walking distance. The restaurant is already connected to the Town's sewer system, so there will not be any waste challenges that cannot be handled in accordance with Jimmy's very high standards of practice. Attorney Reid then spoke of concerns raised in a letter written to the Board, stating that the restaurant has all the necessary insurance coverage in more than sufficient amounts and the patio area that is the subject of this application is part of the exclusive use area appurtenant to this condominium unit. The applicants have never

had a problem with condominium pets and the patio area is cleaned before service every day and kept in immaculate condition. She indicated that Mr. McNulty and Mr. Menold have spoken to other unit owners and tenants about this seating since last fall. Noise complaints from a previous tenant who vacated unit #3 were due not to the restaurant but to other residential units in the building.

Public Comment: There was 1 letter in opposition to the application. Michael Camardello and Rick Bartl, unit owners in the condominium, spoke in support of the application
Steven Latasa-Nicks moved to close the public portion of the hearing, Peter Okun seconded and it was so voted, 5-0 by roll call.

Board Discussion: The Board questioned Attorney Reid.

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 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 75 seats (50 indoor and 25 outdoor) on the property located at 179 Commercial Street, Unit 1 (TCC) as depicted on the plan entitled "Site Plan ~ Showing Existing Conditions" prepared for Jimmy's Hideaway, prepared by Ryder & Wilcox, Inc. dated February 26, 2021 in 1 sheet, Susan Peskin seconded and it was so voted, 5-0 by roll call.

B. Work Session: Mr. Soulé gave an update of the Governor's Emergency Order, including when it will expire and what the public meeting process might look like going forward.

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)**.

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)**.

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)**.

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)**.

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)**.

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)**.

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)**. The decision was not ready.

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)**. The decision was not ready.

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)**.

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 moved to approve ZBA 21-4, ZBA 21-5, ZBA 595, ZBA 21-12, ZBA 21-13, ZBA 21-17, and ZBA 21-18 as written, Daniel Wagner seconded, and it was so voted, 5-0 by roll call.

Jeremy Callahan moved to approve ZBA 21-10 as written, Peter Okun seconded and it was so voted, 5-0 by roll call.

2) **Election of Officers:** *Quinn Taylor moved to nominate Jeremy Callahan as Chair, Steven Latasa-Nicks as Vice-Chair and Peter Okun as Clerk, Robert Nee seconded and it was so voted unanimously.*

3) **Approval of minutes: May 5, 2021:** Tabled.

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

NEXT MEETING: The next meeting will take place on Thursday, June 3, 2021. It will consist of a virtual Public Hearing at 6:00 P.M. followed by a Work Session.

ADJOURNMENT: *Steven Latasa-Nicks moved to adjourn the meeting at 7:00 P.M., Robert Nee 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