

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
June 3, 2021

Members Present: Jeremy Callahan, Robert Nee, Susan Peskin, and Quinn Taylor.

Members Absent: Peter Okun (excused), Steven Latasa-Nicks (excused), Daniel Wagner (excused), and Erik Borg (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.

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 20-2045 (*request to withdraw without prejudice*)

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 withdraw without prejudice. *Robert Nee moved to grant the request to withdraw ZBA 20-2045 without prejudice, Quinn Taylor seconded and it was so voted, 4-0 by roll call.*

ZBA 21-21

Application by **Kenneth Hale** 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 rebuild a structure going up and along pre-existing, non-conforming east side yard and north front yard setbacks on the property located at **3 Kendall Lane, UA1 (Residential 3 Zone)**. Jeremy Callahan, Robert Nee, Susan Peskin, and Quinn Taylor sat on the case.

Presentation: Kenneth Hale was in the meeting to present the application. He said that the Historic District Commission had approved this project. He agreed with Mr. Soulé's draft findings. He reviewed the project, which involves demolishing and rebuilding an old cottage, which is in disrepair and was originally a garage and storage space. The building had been improved with bump-outs over the years. The proposed structure will be slightly larger in volume because of an increase in ceiling height in two bump-outs. He said that a basement

would be added during the reconstruction and the structure is already pre-existing, non-conforming as to its front yard setback, which will become slightly less non-conforming when rebuilt. He said the other setbacks are conforming. The structure will be 64 sq. ft. larger than what exists. The volume will increase to 5,200 cu. ft. He said that there will be no adverse effects and the project will result in benefits such as increase in the value of the property and in the Town's tax base. The building will be built in compliance with the state Building Code and be a safer structure.

Public Comment: There were 2 letters of concern from the same abutters.

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 Mr. Hale.

Robert Nee moved to grant 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 rebuild a structure going up and along pre-existing, non-conforming east side yard and north front yard setbacks on the property located at 3 Kendall Lane, UA1 (Res 3), Susan Peskin seconded and it was so voted, 4-0.

ZBA 21-22

Application by **William N. Rogers, II**, on behalf of **Christine Bernadis**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a 54' by 19' structure on a timber pile foundation on the property located at **24 Commodore Avenue (Residential 1 Zone)**. Jeremy Callahan, Robert Nee, Susan Peskin, and Quinn Taylor sat on the case.

Presentation: Attorney Lester J. Murphy, representing the applicant, Gary Locke, an engineer employed by William N. Rogers, II, Civil Engineers, and Peter Page, a brother of the applicant, were in the hearing to present the application. Attorney Murphy said that he was aware that he was dealing with a 4-member Board. He asked if he could take a poll of the Board before a final vote on the application. His request was granted.

He gave a brief explanation of the project, which is currently on a vacant lot containing 9,151 sq. ft. The proposal is to construct a 3-bedroom, single-family residence, as well as a detached 1-bedroom accessory dwelling unit. The main structure will be 2 stories and measure 54' by 19', with 2,052 sq. ft. of total interior area. The ADU will measure 21' by 19' and have 600 sq. ft. of total interior space on each of two floors. He said that the building scale assessment indicated that the maximum allowed volume without obtaining a Special Permit is 10,139 cu. ft. The applicant seeks a total of 21,960 cu. ft., which is 116% of the maximum allowed scale. Attorney Murphy said that he hoped the Board was able to review the 2017 building scale assessment that included visual representations of the structures within 250' of the subject property that were used to determine the neighborhood average scale, showing the location of those structures in relation to the proposed. He said what applicants get now for scale assessments is one page with scale numbers. He argued that the proposed main residence was not an unusually large structure and seemed bigger because it was surrounded by very small cottages.

Mr. Locke gave a brief overview of the proposed structure. He noted that there were a lot of design constraints on the project, including the 19' wide requirement in order to meet the setback requirements. He said that the latter requirement was mitigated by keeping the height down and locating it on the lowest point of the lot. The total height will be 29' but will be closer to 27' on a

grade hat represents an average for the lot. He reviewed the elevation drawings. The structure will be built on timber piles, as will the ADU, and have no cellar. The property is in a flood zone, so none of the natural grade on the site will be changed.

Attorney Murphy argued that the project met the criteria of Article 5, Section 5330 in that the social, economic, and other benefits outweigh any adverse effects. The lot is presently vacant, but will be improved with a single-family residence, as well as an ADU, which will provide reasonably priced, much-needed year-round housing. The structures will be connected to the Town sewer system so there will be no environmental pollution and both structures will be built in compliance with construction codes for structures located in a flood zone. There will be no damage to abutting structures if there is a flood event, as the water will flow beneath the new buildings. The tax revenues collected by the Town will increase. The lot coverage will be 18% with green space covering 72% of the lot. ADUs are not only highly desirable, but a goal and objective of the Local Comprehensive Plan. He also argued that the project met subparagraph 5 of Section 2640E in that it integrates successfully into its surroundings and is sited in such a manner that it minimizes the appearance of mass from the streetscape and does not negatively impact the natural light to, or views from, abutting structures. He said that the Board should consider several factors that will justify the scale relief. He said that the room sizes were modest and the structure itself was not large. He added that it was comparable to the size of other structures in the neighborhood. Unfortunately, he said that the scale calculation was thrown off by the number of cottage colonies in the vicinity that were included in the scale assessment. He said that the primary and only allowed use is single-family houses in the Res 1 zone and that many of the houses were built when the zone was a Res 3, which was up until the mid-1980s. There are areas of mixed use and include motels and cottage colonies. These were developed before it was re-zoned. Now it is more difficult to build a reasonably sized single-family residence in a zone that has larger setbacks than it did previously. He argued that the Board had the discretion to look at this situation and has the flexibility to grant relief for areas where the By-Law doesn't make sense. He said that the By-Law had been amended to do just that. He added that the design was done carefully to break up the massing from Commercial Street. He argued that the residence would not be disruptive to, and fits into, the character of the neighborhood.

Public Comment: There was 1 letter from an abutting condominium association with concerns about the scale and height of the proposed main structure. Joanne McBrien, who signed the aforementioned letter, spoke about the project and specified her concerns.

Board Discussion: The Board questioned Attorney Murphy and Mr. Locke. Mr. Callahan took a poll of the Board members. He, Mr. Taylor and Mr. Nee were all inclined to approve the project. Ms. Peskin was opposed to the project. Attorney Murphy requested a continuance until the Public Hearing of June 17, 2021.

Robert Nee moved to continue ZBA 21-22 to the Public Hearing of June 17, 2021, at 6:00 P.M., Quinn Taylor seconded and it was so voted, 4-0 by roll call.

B. Work Session:

1) **Minor Modification** – **ZBA 21-24: 6 Winston Court:** The request is to increase the size of a previously approved shed to 8x10 feet. The additional 2 ft on the width will fit in the driveway on the property. There is no change in location. The side yard setbacks will be honored. Mr. Lampert was in the meeting to discuss the request. He explained that he

underestimated the need and wanted to increase the size of the shed. He said that the additional 2' will impinge on his driveway only. He has spoken to his neighbor about the new location and that neighbor was supportive of the change. Mo Siegel, the abutter in question, spoke in support of the application and had questions.

Jeremy Callahan moved that the Board find pursuant to Article 5, Section 5350, Amendments and Minor Modifications of the Zoning By-Laws, that the proposed modification to the approved Special Permit does not represent a substantive change of the findings or conditions of approval of the project and may be administered by a notation to the file, Robert Nee seconded and it was so voted, 4-0.

2) **Pending Decisions:**

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 Board had no amendments to the decision.

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 Board had no amendments to the decision.

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 (Town Commercial Center Zone)**. The Board had no amendments to the decision.

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)**. The Board had no amendments to the decision.

3) **Approval of minutes: May 5 and May 20, 2021:**

May 5, 2021: *Jeremy Callahan moved to approve the language as written, Robert Nee seconded and it was so voted, 4-0.*

May 20, 2021: *Jeremy Callahan moved to approve the language as written, Robert Nee seconded and it was so voted, 4-0.*

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

NEXT MEETING: The next meeting will take place on Thursday, June 17, 2021. It will consist of an in-person Public Hearing at 6:00 P.M. followed by a Work Session.

ADJOURNMENT: *Robert Nee moved to adjourn the meeting at 7:30 P.M., Susan Peskin seconded and it was so voted unanimously by roll call.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2021.
Jeremy Callahan, Chair