

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

Members Present: Jeremy Callahan (left at 7:17 P.M.), Daniel Wagner (participating virtually), Peter Okun, Quinn Taylor (participating virtually), and Erik Borg.

Members Absent: Susan Peskin (excused), Steven Latasa-Nicks (excused), and Robert Nee (excused).

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

Mr. Soulé introduced the in-person meeting and explained how applicants and the public could participate in the meeting remotely, either via phone or Microsoft Teams.

Chair Jeremy Callahan called the meeting to order at 6:00 P.M.

A. Public Hearings:

ZBA 21-22 *(continued from the meeting of June 17th)*

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, Daniel Wagner, Peter Okun, and Quinn Taylor sat on the case. Mr. Wagner and Mr. Okun both invoked the Mullin Rule and attested to the fact that they had reviewed a video recording of the previous hearing of the matter. 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 by the Board was taken on the application. His request was granted.

Presentation: Attorney Murphy reviewed the revisions to the plan. He reminded the Board that the property was in the Residential 1 Zone, the strictest of the zoning districts. This lot is large, about 10,000 sq. ft. The area was re-zoned in the 1980s to a Res 1 designation, however the neighborhood is still comprised of many small cottages, cottage colonies, and motels as a result of its previous designation as a Residential W Zone. This affects the neighborhood average scale, as this neighborhood has both large and small structures. The maximum allowed scale in the neighborhood is 10,139 cu. ft. and the proposed structure is seeking a scale of 21,960 cu. ft. Attorney Murphy said that several Board members at the last hearing were concerned about the extent of the scale deviation being requested. The applicant has since redesigned, thus reducing the size of the structure. The revised proposed scale is now 15,580 cu. ft., about a 30% reduction, 3' lower than the original proposal. In addition, the second story has been cut back and does not run the entire length of the structure's first floor. This results in a lower building scale and a significantly lower appearance of structural mass from the streetscape. As to the separate, detached accessory dwelling unit proposed for the site, he reiterated that it is a benefit to the Town. He argued that the main structure is not over-sized for a single-family, three-bedroom residence. He said that it was not fair to penalize an applicant with a single-family lot because of

many pre-existing, non-conforming smaller structures, which can no longer be built, comprise the neighborhood. Many of these structures, however, determine and serve to reduce the neighborhood average scale. He said that the new proposal is in keeping with subparagraph 5 of Article 2, Section 2640E of the Zoning By-Laws, as the appearance of massing has been significantly reduced from the previous design. He said that the property was one lot removed from Commercial Street and was therefore not highly visible. He reminded the Board that letters from immediate abutters wanted to make sure that the structure would not become bigger. He surmised that the neighbors would now approve of a structure that was reduced in size.

Public Comment: The only letter in the file was discussed at the previous hearing of the matter and expressed that some neighbors did not want to see any further increase in size of the structure. There was no other public comment.

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

Board Discussion: The Board commented positively on the revised plans.

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 move that the Board find pursuant to Article 2, Section 2640, Building 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 (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); and (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 on the property located at 24 Commodore Avenue (Res 1),Jeremy Callahan seconded and it was so voted, 4-0 by roll call.

ZBA 21-23 (*request to postpone to the meeting of September 2nd*)

Application by **Ted Smith**, on behalf of **Howard Burchman**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to renovate, by adding and expanding, two structures operating as a guesthouse, including converting the front building to three residential units by constructing a one-story bay on the south elevation and increasing an existing one-story appendage on the north elevation to two stories, thereby increasing its building scale above the neighborhood average, and to go up and along pre-existing, non-conforming side and rear yard setbacks to add a second story to the rear building on the property located at **12 Center Street (Residential 3 Zone)**. There was a request to continue ZBA 21-23 to the September 2, 2021 Public Hearing. ***Peter Okun moved to postpone ZBA to the Public Hearing of September 2, 2021 at 6:00 P.M., Erik Borg seconded and it was so voted, 5-0 by roll call.***

ZBA 21-26

Application by **Attorney Lester J. Murphy**, on behalf of **Crown & Anchor, LLC**, seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to authorize entertainment in an outdoor courtyard area previously approved for food

and alcoholic beverage service on the property located at **243-249 Commercial Street (Town Center Commercial Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, Quinn Taylor, and Erik Borg sat on the case.

Presentation: Attorney Lester J. Murphy, representing the applicant, Rick Murray, the principal of the applicant LLC, and William N. Rogers, II, a civil engineer, appeared to present the application. Attorney Murphy said that this was being looked at as a comprehensive permit to quantify, qualify, and confirm the areas on the site that have been, over the years, permitted. As part of the application material, all previous permits for various venues on the property have been included. Also included in the applicant's submission is a list, in table-form, of all the venues, their occupancy, and the types of activities that occur in each. He said that the only additional request is for courtyard entertainment. Mr. Murray said that about two years ago, there was a complaint lodged for entertainment in the courtyard and, at that time, Town Counsel suggested that a comprehensive permit be applied for, which would encompass all uses in all venues on the property, save the actual hotel space. He said that all entertainment will be enclosed on the property, and he would be happy to hear the concerns of residential abutters in the neighborhood. Town Counsel Amy Kwesell reiterated Mr. Murray's comments about the comprehensive permit. The numerous Special Permits related to the property for entertainment were confusing, so in order to memorialize the approvals, she suggested that one comprehensive permit be issued by the Board. She questioned Mr. Murray about the plan showing the seating areas submitted. Mr. Murray confirmed that there are 166 seats in total. Attorney Kwesell suggested that the valid Chapter 91 plan for the area be incorporated as a finding in the decision.

Public Comment: Thanassi Kuliopulos, Vasso Trellis, Herbret Acevedo, Robin Shalom, Kevin Miller, all abutters, spoke in opposition to, or with concerns about, the request.

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

Board Discussion: Mr. Murray addressed the abutters and said he didn't want to upset his neighbors' quality of life or their businesses. He reiterated that entertainment is an allowed use in this zoning district and explained what types of entertainment were taking place on the site and how he has, and will, do his best to mitigate the noise on behalf of his neighbors. Mitigations that have been done already include moving a piano from the front bar and closing venues early. He would like to continue working with his neighbors and offered to monitor/minimize the volume of the noise. He said that the amplification was located inside the building. He wants to work with his neighbors to make sure their quality of life is maintained. Attorney Murphy said he was confident that Mr. Murray would be able to control the amount of amplification of the music and work with his neighbors to address the issue. Mr. Callahan reviewed possible conditions. Board members commented on the application. Mr. Murray commented on the proposed conditions, including monitoring the decibel level of the music. He reiterated that the Town does have a noise by-law that can be implemented if abutters are disturbed by noise. Attorney Kwesell suggested that the decibel level of the music in the courtyard on Sunday and/or at night be checked several times during the summer. Mr. Murray said he would abide by all Town by-laws. The Board discussed conditions and Attorney Kwesell weighed in and made suggestions. The Board discussed restricting hours of entertainment with Mr. Murray.

Peter Okun moved that the Board grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, to allow entertainment in the outdoor courtyard on the property located at 243-249 Commercial Street (TCC), as depicted on the plans entitled, "Site Plan of Land in Provincetown", dated May 2021, and "Floor Plan of the Crown & Anchor in

Provincetown”, dated June 2021, prepared and certified by William N. Rogers, II, Registered Land Surveyor and Registered Professional Engineer, with the following condition that the owner of the property shall adhere to General By-Law 13-2-6 and any other by-law or regulation regarding noise within the Town of Provincetown, Erik Borg seconded and it was so voted, 5-0 by roll call.

ZBA 21-27

Application by **Chris Dittrich**, on behalf of **Karl David Weidner Trust et. al.**, seeking a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G12, Swimming pool, of the Zoning By-Laws to install an inground pool on the property located at **19 Blueberry Avenue (Residential 1 Zone)**. Jeremy Callahan recused himself because of a conflict of interest. Peter Okun, Daniel Wagner, Quinn Taylor, and Erik Borg sat on the case. Mr. Okun explained to the applicant that there were only 4 members of the Board present, which would necessitate that the vote be unanimous in order to be granted a Special Permit. The applicant would have the option to poll the Board before a vote would be taken.

Presentation: David Weidner, the property owner, and Chris Dittrich, of Shoreline Pools, appeared to present the application. Mr. Weidner reviewed the project, which he said conforms to all Zoning By-Law setbacks, in addition to current safety and environmental considerations. He addressed concerns about noise and child safety from two neighbors who wrote a letter to the Board. He said that Mr. Dittrich met with the neighbors, and their representative, to address those concerns. A trip was made to 5 Dyer Street, where Shoreline had installed a pool, to speak to that property owner and to view the pool equipment and assess the noise mitigation measures. Mr. Weidner and his husband said that the neighborhood concerns had been taken into consideration and that they wanted to continue to contribute to the positive economic growth of the Town and the residential community. They have spent a considerable amount of money in restoring the property and its structure. He said the project will not have a negative impact on the neighborhood. He said the concerns regarding the installation of the pool were noise abatement, safety, and the environment. He said that Mr. Dittrich has provided the decibel levels of the pool equipment to be utilized and the same equipment has been installed on other sites in Provincetown. He said the pool pump has a noise level of 52.2 decibels and would not disturb this quiet Blueberry Avenue neighborhood. He reviewed the specifications of the pool pump. Some sound attenuation would be supplied via an enclosure that will house the pool equipment and which will not hinder its performance. He reviewed the safety features of the proposed automatic pool cover. The proposed pool will be a saltwater system and the water will be trucked in and out. He concluded that he would conform with all zoning regulations and will maintain a safe environment for his household, his guests and the neighborhood.

Public Comment: There were 4 letters in support of the application and 1 letter from two addresses with concerns. Simon Reese, an abutter, spoke about the concerns regarding safety and noise written about in the letter, which he said had been addressed in the presentation. John Shee spoke in support of the application.

Erik Borg 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 questioned Mr. Weidner and Mr. Dittrich.

Erik Borg 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 move that the Board grant a Special Permit pursuant

to Article 2, Section 2450, Permitted Accessory Uses, G12, Swimming pool, of the Zoning By-Laws to install an inground pool on the property located at 19 Blueberry Avenue (Res 1) with the following conditions; that all water for the pool will be from off-site delivered by tanker truck and 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.

B. Work Session:

- 1) **Pending Decision:** None.
- 2) **Approval of minutes: June 17, 2021:**

June 17, 2021: *Quinn Taylor moved to approve the language as written, Erik Borg seconded and it was so voted, 4-0 by roll call.*

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

NEXT MEETING: The next meeting will take place on Thursday, August 5, 2021. It will consist of a hybrid (either in-person or remote) Public Hearing at 6:00 P.M. followed by a Work Session.

ADJOURNMENT: *Erik Borg moved to adjourn the meeting at 7:35 P.M., Quinn Taylor seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

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