

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
August 5, 2021**

Members Present: Steven Latasa-Nicks, Daniel Wagner (participating virtually), Peter Okun (participating virtually), Quinn Taylor (participating virtually).

Members Absent: Jeremy Callahan (excused), Susan Peskin (unexcused), Eric Borg (excused), and Robert Nee (unexcused).

Others Present: Thaddeus Soulé (Town Planner).

Vice Chair Steven Latasa-Nicks called the meeting to order at 6:00 P.M.

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.

Mr. Latasa-Nicks explained that only 4 members of the Board were present, therefore in order that a Special Permit be approved, a unanimous decision by the Board will be needed. At the request of the applicant, the Board can be polled before a vote is taken and the applicant will be allowed to postpone until 5 members are present.

A. Public Hearings:

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 from the applicant to postpone to the Public Hearing of September 2, 2021 at 6:00 P.M. **Daniel Wagner moved to grant the request to postpone ZBA 21-23 to the Public Hearing of September 2, 2021 at 6:00 P.M., Peter Okun seconded and it was so voted, 4-0 by roll call.**

ZBA 21-28

Application by **Lester J. Murphy, Esq.**, on behalf of **Timothy A. Maher**, seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions, or Alterations, of the Zoning By-Laws to renovate an existing one-story single-family structure by constructing a new flood zone compliant foundation and add a second story on the property located at **963 Commercial Street, U23 (Residential 1 Zone)**.

Presentation: Attorney Lester J. Murphy, representing the applicant, Timothy Maher, and Alan Cabral, a designer, appeared to present the application. Attorney Murphy said that the applicant seeks to alter a lawful, pre-existing, non-conforming single-family cottage structure up and along a non-conforming side yard setback in order to add a second story. He said that since the structure was a single-family dwelling, he requested that the Board hear the request pursuant to the findings made in the *Goldhirsh v. McNear* ruling. He said that the single-family, one-story cottage is just under a height of 13' and is located 10' off a side lot line. This location was previously a Residential 3 Zoning District, however it is currently in a Residential 1 Zoning District, which means that a 15' side yard setback is required. Therefore, the structure is now non-conforming as to that setback and an increase up and along that setback requires a Special Permit. In addition to finding if the increase is substantially more detrimental to the neighborhood, the Board must make a finding under Article 5, Section 5330, which states that the social, economic, or other benefits to the neighborhood outweigh any adverse impacts. The building plans submitted show no change in the footprint of the structure. The only change is in the height from 13' to 25' 9", which is still below the maximum height allowed by the Zoning By-Laws. It will remain a one-bedroom structure, so there is no increase in septic flow, no increase in vehicular traffic, and the structure will still conform to the 9' building separation requirement. The change in height will make the structure more comfortable and livable for the applicant, as he will be spending more time inhabiting it. The assessed value of the structure, and therefore the real estate tax revenue to the Town generated, will increase. The altered structure will comply with all up-to-date health, safety, energy, and building code requirements. These benefits will occur with no substantial detrimental impacts. The building will be raised in order to comply with flood zone requirements, which will make it safer for the neighborhood and reduce potential flooding. It is well below the neighborhood average building scale. A new foundation will be installed, as well as a new second floor addition, and will make the existing dwelling more attractive, functional, and safe. Mr. Cabral addressed a deck on the east elevation, which had to be extended slightly, and said a second means of egress was added to gain access to the new front door, as the building was being raised. Attorney Murphy said that the deck on the south elevation was staying the same. A new deck will be added on the west, rear elevation. This would be the only change in the footprint of the structure and is allowed pursuant to the Zoning By-Laws if a second means of egress is necessary from a structure that had to be raised.

Public Comment: Attorney Murphy said that 4 letters from abutters in the condominium association in support of the project had been submitted. He said that just today, however, another abutter had submitted a letter in objection to the proposal. He requested that he be able to respond to the contents of the letter or to his remarks if made publicly. Dean Madden, an abutter, had questions about the project and asked if dimensioned drawings had been submitted. He also asked if there was an overall plan for these condominium units to expand. The public comment portion of the hearing was kept open.

Board Discussion: Attorney Murphy addressed Mr. Madden's comments. The Board questioned Attorney Murphy. It requested a copy of the letter of approval for the project from the Trustees of the Condominium Association. Mr. Latasa-Nicks objected to the proposal to add a new deck on the west elevation of the structure and said it could be put on the south elevation. Mr. Okun agreed with that viewpoint. Mr. Latasa-Nicks also asked for clarification on the elevation plans as to where the framing of the structure will begin. Mr. Cabral said that all elevation drawings will be stamped and certified by a licensed engineering professional before construction began. Attorney Murphy requested a continuance to the September 2, 2021 Public Hearing at 6:00 P.M.

Peter Okun moved to grant the continuance to the September 2, 2021 Public Hearing at 6:00 P.M., Quinn Taylor seconded and it was so voted, 4-0 by roll call.

ZBA 21-29

Application by **Don DiRocco**, of **Hammer Architects**, on behalf of **Christopher T. Brown et al.**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Sections 3110, Change, Extensions, or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish an existing structure that is greater than the neighborhood average scale and replace it with a structure that is 150 cu. ft. but still in excess of the neighborhood average scale, and in a different location on the property located at **25 Pilgrim Heights Road (Residential 1 Zone)**.

Presentation: Don DiRocco and Leif Hamnquist, both of Hammer Architects, appeared to present the application. Mr. DiRocco reviewed the project. The existing house is in disrepair and contains an abandoned interior swimming pool. The property owners want to demolish the house and rebuild it. It is conforming in all aspects except building scale. The proposal is to rebuild a conforming structure that is still non-conforming as to building scale, but has a smaller scale than the existing. A screened porch is part of the proposed structure and is part of the calculation of building scale. In addition, the new structure will be farther from the road than the existing. This will make it less visible from the road and to better integrate the structure into the lot. Mr. Hamnquist said that the mass of the structure will be minimized from the streetscape and that this location is a neighborhood of large single-family structures. Mr. DiRocco said that native plantings will further shield the visibility of the structure from the street and will make the new structure less detrimental to the neighborhood than the existing. The elevation drawings were reviewed, and Mr. DiRocco said that the proposed structure will be broken up into two off-set, attached sections to soften its visual mass.

Public Comment: There was one letter in the file from the president of the Highland Moors Homeowner's Association with no objections to the project.

Peter Okun 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. DiRocco and Mr. Hamnquist. Mr. Latasa-Nicks polled the Board and the consensus was to approve 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 that the Board grant a Special Permit pursuant to Article 2, Section 2640E, Building Scale, demonstrating that the deviation is appropriate and meets one or more of the following criteria: the proposed building or addition is in keeping with the goals and objectives of the Local Comprehensive Plan; the building is an important structure to the community as a whole. Public buildings are logical candidates for this type of conditional approval; the proposed building or addition by necessity must be large and that the location is suited for that larger scale use; the building scale deviation is warranted due to the size of the parcel of land involved so as to discourage subdivision into smaller parcels and the proposed building or addition will not result in a structure that will disrupt the character of the neighborhood in which it is located; 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; or the property is located in the Provincetown

Historic District and the addition is consistent with the Historic District Guidelines and approval of the deviation would further the purpose and intent of the bylaw, and Article 3, Sections 3110, Change, Extensions, or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish, relocate, and replace an existing structure on the property located at 25 Pilgrim Heights Road (Res 1), Quinn Taylor seconded and it was so voted, 4-0 by roll call.

B. Work Session:

1) **Sign discussion:** Mr. Latasa-Nicks proposed that this subject be tabled until the Chair, Jeremy Callahan, was present. He briefly reviewed his impetus for putting the issue on the agenda.

2) **Pending Decisions:**

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)**. There were no corrections to the decision.

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)**. There were no corrections to the decision.

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)**. There were no corrections to the decision.

3) **Approval of minutes: July 15, 2021:**

July 15, 2021: *Peter Okun moved to approve the language as written, Quinn Taylor seconded and it was so voted, 3-0-1 by roll call. (Steven Latasa-Nicks abstaining).*

4) **Any other business that may properly come before the Board:** Peter Okun noted that 25 Pilgrim Heights Road had no narrative, which Board policy requires applicants to submit. Mr. Soulé said that the applicant had submitted a narrative in the electronic application, and he would make sure it gets into a document and upload it to the online application system. Mr. Okun also commented on last minute public comment letters regarding a project. He would prefer to have more time to read letters, and if they are late, he would like them attached to an email or some other notification that they have come in. Mr. Soulé said that the Board's policy is that public

comment letters need to be received by staff at least 24 hours before the meeting, however the Board has the discretion as to whether those letters will be considered if they do not arrive in a timely manner.

NEXT MEETING: The next meeting will take place on Thursday, September 2, 2021. It will consist of a hybrid Public Hearing at 6:00 P.M. followed by a Work Session.

ADJOURNMENT: *Quinn Taylor moved to adjourn the meeting at 6:55 P.M., Peter Okun seconded and it was so voted unanimously by roll call.*

Respectfully submitted,

Ellen C. Battaglini

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