

**TOWN OF PROVINCETOWN**  
**ZONING BOARD OF APPEALS**  
**MEETING MINUTES OF**  
**September 2, 2021**

**Members Present:** Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun (participating virtually), Robert Nee (participating virtually), and Erik Borg.

**Members Absent:** Susan Peskin (excused) and Quinn Taylor (excused).

**Others Present:** Thaddeus Soulé (Town Planner).

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

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

**A. Public Hearings:**

**ZBA 21-23** (*request to postpone to the meeting of October 7<sup>th</sup>*)

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 October 7, 2021 at 6:00 P.M. **Steven Latasa-Nicks moved to grant the request to postpone ZBA 21-23 to the Public Hearing of October 7, 2021 at 6:00 P.M., Daniel Wagner seconded and it was so voted, 5-0 by roll call.**

**ZBA 21-28** (*continued from the meeting of August 5<sup>th</sup>*)

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)**. Both Eric Borg and Jeremy Callahan invoked the Mullin Rule, attesting to the fact that they have viewed a recording of the meeting of August 5, 2021 when the matter was last heard. Jeremy Callahan, Steven Latasa-Nicks, Peter Okun, Daniel Wagner, and Erik Borg sat on the case.

**Presentation:** Attorney Lester J. Murphy, representing the applicant, Timothy Maher, and Alan Cabral, the designer of the project, appeared to discuss the application. Attorney Murphy said that at the previous hearing, members of the Board had concerns regarding the fact that the major non-conformity is the rear of the building, which is actually the sideline of the property. The

property is adjacent to Cleveland Street, which is a paper road and has never been developed. The distance from that sideline to the building does not meet the required setback for the Residential 1 Zone. This makes the building non-conforming as to that dimension. The original plans had proposed a rear door coming out of the back of the unit and onto a deck with stairs going down and wrapping around to where the existing patio is located. The Board was concerned about a further encroachment of the deck and stairway into the setback. As a result, the location of the door from the rear of the structure was rotated to the left side of the building (as you face it) and the deck and stairs were moved from the rear of the building. Now the front door is an entryway, and the exit is off the left-side rear of the building, as opposed to out the back. There were some interior modifications made because of this revision. Attorney Murphy said that now there is no issue as to the structure being closer to the sideline setback. A new narrative was submitted to describe the change.

**Public Comment:** None. There were 3 additional letters in support of the project.

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

**Board Discussion:** The Board commented on the revisions.

*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 vote to approve a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, to renovate an existing one-story single-family structure by constructing a new flood zone compliant foundation and adding a second story on the property located at 963 Commercial Street, U23, Steven Latasa-Nicks seconded and it was so voted, 5-0 by roll call.*

## **ZBA 21-32**

Application by **Dan Gallagher**, on behalf of the **Lynn A. Kappelman Trust et al.**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to add 145 sq. ft. of indoor space to the upper floor of a structure, to remove a tower and two dormers, and to create an 8' eave line resulting in an increase in the building scale that is already in excess of the neighborhood average scale on the property located at **3 Harbour Drive (Residential 1 Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun, and Erik Borg sat on the case.

**Presentation:** Dan Gallagher, representing the applicants, and Lynn A. Kappelman and Katherine E. Perrelli, the applicants, were in the meeting to present the application. Mr. Gallagher said that the project would make the interior of the building more functional by raising the eave line. This would combine with the exterior of the building in a more cohesive and aesthetic way. He said that the project also included removing a tower, which is unusable, and 2 dormers. Given the removal of these elements, a total of 145 sq. ft. will be added to the top floor where the primary bedroom and home office are located. He described the existing and proposed elevation drawings shown on the screen. He said that the house was hidden by landscaping elements from Commercial Street. He also submitted photographs showing how the building was viewed from Mayflower Avenue. The only visible element of the building that sticks up in the viewscape from Mayflower Avenue was the tower. An existing weathervane will be placed on top of a new ornamental cupola, which will be placed on the new roof. He emphasized that most of the work is located below the tower sightline.

**Public Comment:** There were 13 letters in support and 7 letters in opposition to the project. Mr. Gallagher said that 5 of the latter were from abutters on Mayflower Avenue and 2 were from abutters on Commercial Street. Several letters of support were from direct abutters to the property.

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

**Board Discussion:** The Board questioned Mr. Gallagher about his justification for scale relief. He cited Article 2, Section 2640E, subparagraph 5 that states: “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.” The Board discussed the building scale of the house and the immediate neighborhood, which contains many large structures. Attorney Murphy, who was still in the meeting, explained why the neighborhood average building scale was so large and that it involved a negotiation between the developer and the Town. The Board discussed the proposed cupola and whether it would request its removal. Mr. Gallagher said that the cupola was secondary, but the weathervane was an architectural element that the applicants would like to keep. He said the applicants would find a new location for the weathervane.

***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 move that the Board find pursuant to Article 2, Section 2640E, Building Scale, that the applicant had demonstrated that the deviation is appropriate and meets one or more of the following criteria: that 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 3 Harbour Drive (Res 1), with the condition that the cupola be removed from the proposed plans, Erik Borg seconded, and it was so voted, 5-0 by roll call.***

### **ZBA 21-33**

Application by **Ted Smith**, on behalf of the **Michael T. Careno Revocable Trust**, 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 remove, rebuild, and reconfigure a pre-existing, non-conforming exterior stair and a deck at grade on the property located at **43 Commercial Street, UA (Residential 2 Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Peter Okun, Daniel Wagner, and Robert Nee sat on the case.

**Presentation:** Ted Smith was in the meeting to present the application. Mr. Smith reviewed the project, which includes the removal of planters, brick pavers, a deck on grade, and a hot tub located in a courtyard between 2 buildings. The area will be cleaned up and re-configured and become more permeable as a result. The stair up to the second-floor deck is a means of egress and, as it is attached to the structure, is required to meet zoning setbacks. The proposal seeks to remove the exterior wood stair from grade to the second floor, as well as the on-grade deck, the hot tub, planters, and brick pavers. The stair will be rebuilt and re-configured to better conform to the site. The re-located stair will continue to require relief for the pre-existing, non-conforming east side yard setback. A ground floor deck is proposed as an extension of an existing deck, as well as re-configured walkways, landscaping and new stone pavers.

**Public Comment:** None.

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

**Board Discussion:** The Board questioned Mr. Smith.

*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 move 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 remove, rebuild, and reconfigure a pre-existing, non-conforming exterior stair and a deck at grade on the property located at 43 Commercial Street, UA (Res 2), seconded and it was so voted, 5-0 by roll call.*

**B. Work Session:**

1) **Pending Decisions:**

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

2) **Sign Discussion:** Mr. Latasa-Nicks explained why he had asked that the topic be put on the agenda for discussion. He said it was prompted by the “Expedition Blue” signs, advertising the blue economy, that had been installed around Town. He was concerned that no abutters’ notices or public meeting was held to discuss the proposed location of the signs. Mr. Soulé said that there were exemptions in the Definitions section of the Zoning By-Laws that allowed the Select Board to bypass the normal sign approval process. Mr. Latasa-Nicks suggested that the Board recommend to the Planning Board that it look at that portion of the by-law to determine if it was appropriate or whether it should be amended at Town Meeting to require ZBA approval, as he believes that the placement of the signs should have had regulatory review. The Board briefly discussed the topic. Mr. Soule will do some research on the topic and the Planning Board will be notified of the Board’s discussion.

3) **Approval of minutes: August 5, 2021:** Approval of the minutes was postponed.

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

**NEXT MEETING:** The next meeting will take place on Thursday, September 16, 2021. It will consist of a hybrid Public Hearing at 6:00 P.M. followed by a Work Session.

**ADJOURNMENT:** *Erik Borg 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.  
Jeremy Callahan, Chair