

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
November 4, 2021**

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

Members Absent Susan Peskin (excused).

Others Present: Thaddeus Soulé (Town Planner).

Mr. Soulé introduced the hybrid meeting, explaining how applicants and the public could participate in the meeting remotely, either via phone or Microsoft Teams. Since there is a quorum in the meeting room, if there are technical difficulties, the meeting will not be stopped. He announced the information, phone number and conference ID needed to call into the meeting. He explained how public comment would work and asked that the public keep their electronic devices on mute until they are recognized by the Chair. The meeting is being broadcast live by PTV.gov, Channel 18, and will be posted on its website as soon as possible.

Chair Jeremy Callahan called the meeting to order at 6:01 P.M.

A. Public Hearings:

ZBA 21-23 (*re-advertised and re-noticed to the meeting of November 18th*)

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)**.

ZBA 21-40 (*request to postpone to the meeting of November 18th*)

Application by **Ted Smith**, on behalf of **Gregory Whitehead et vir.**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, Article 3, Section 3110, Change, Extensions, or Alterations, and Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish a garage and construct a one-story addition with a shed dormer on the northwest corner of an existing structure, to be partially located in the demolished garage's footprint, and going up and along a pre-existing, non-conforming northwest side yard setback, to infill a southwest corner, adding a new second-floor dormer, and to add a new shed dormer on the southeast corner of the structure, all of which will result in an increase in the building scale of the existing structure above the neighborhood average scale on the property located at **24**

Standish Street (Residential 3 Zone). There was a request from the applicant to postpone ZBA 21-40 to the Public Hearing of November 18, 2021 at 6:00 P.M. *Daniel Wagner moved to grant the request to postpone ZBA 21-40 to the Public Hearing of November 18, 2021 at 6:00 P.M., Eric Borg seconded and it was so voted, 6-0 by roll call.*

The Board took a 15-minute break to remedy technical problems. Peter Okun joined the meeting in person.

ZBA 21-44

Application by **Ted Smith**, on behalf of **Richard A. Keyes et al.**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions, and Alterations, of the Zoning By-Laws to add dormers along a pre-existing, non-conforming east side yard setback and a west elevation on the property located at **442 Commercial Street, U4 (Residential 3 Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, Steven Latasa-Nicks, and Eric Borg sat on the case.

Presentation: Ted Smith appeared to present the application. He reviewed the photographs of the property. One of the dormers is being proposed for the west elevation, which has a pre-existing, non-conforming side yard setback. A dormer will also be installed on the east elevation. Each will be placed on one side of the main gable. He said if you were looking down Santos Court, you would not be able to see the dormer on the east elevation. Moving farther down Santos Court, you would see the dormer. This dormer can also be seen from Bangs Street. If you know where to look from Bradford Street, through a fence, other structures in the neighborhood, and some vegetation, you would be able to see the dormers. Despite the visibility, the inclusion of the dormers is in keeping with the style of the structure and is subtle. The dormers are not symmetrical, as neither is the structure. The most visibility is from the west elevation. He said the existing building scale is already greater than the average neighborhood scale. The dormer volume has been minimized and will only add 680 cu. ft. of volume to the existing structure. The bedroom count in the attic will be reduced by one. The dormer does not meet the threshold of 50% or more of the floor area directly below the contiguous roof in which the dormer will be located, and thus is in conformity with the Zoning By-Laws. The Historic District Commission approved the changes

Public Comment: None.

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

Board Discussion: The Board questioned Mr. Smith, raising the issue of lowering the bedroom count, decreasing the livable space, of the unit while increasing the scale of the structure. Mr. Smith said that the bedroom that is being given up could be moved to another unit in the structure.

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 that the Board find pursuant to Article 2, Section 2640, Scale, Subsection E that the applicant has demonstrated that the deviation is appropriate and meets one or more of the following criteria: That the proposed building or addition is in keeping with the goals and objectives of the Local Comprehensive Plan. (Economic Development GOAL 2: To locate development so as to preserve Provincetown's environmental and cultural heritage, minimize adverse impacts and enhance the quality

of life) and That 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 that the Board vote to approve a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, to go up and along pre-existing, non-conforming setbacks to add dormers on the east and west sides of the structure located at 442 Commercial Street, Unit 4 (Res 3) with the condition that the applicant will pursue with the Town a re-assignment of the housing unit within the property, Steven Latasa-Nicks seconded and it was so voted, 5-0.

ZBA 21-46

Application by **Seth Kaplowitz** seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws, for the extension of an existing dormer by 8'4" on both the east and west elevations, adding volume to the building scale, which is already above the neighborhood average scale, on the property located at **457-459 Commercial Street, U1 (Residential 3 Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, Steven Latasa-Nicks, and Erik Borg sat on the case.

Presentation: Seth Kaplowitz was on the line to present the application. He seeks to extend a dormer on the south elevation of the structure, which currently has a volume above the neighborhood average. The existing 15'-2" wide dormer on the rear elevation seeks is to be extended 8'-4" on each side and remain centered on the rear elevation. The slope and profile of the dormer will remain the same, thereby adding a modest additional amount of volume to the rear elevation. The additional volume will add 850 cu. ft. to the existing scale.

Public Comment: Ted Jones, an abutter, spoke in support of the project. There were 3 letters in the file all in support of the project.

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

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

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, Scale, Subsection E that the applicant has demonstrated that the deviation is appropriate and meets one or more of the following criteria, that the proposed building or addition is in keeping with the goals and objectives of the Local Comprehensive Plan. (Economic Development GOAL, to locate development so as to preserve Provincetown's environmental and cultural heritage, minimize adverse impacts and enhance the quality of life., 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, and that 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 at the property located at 457-459 Commercial Street, U1 (Res 3), Eric Borg seconded and it was so voted, 5-0.

ZBA 21-47

Application by **Lynn Mogell**, on behalf of **Sarah K. Peake et ux.**, seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions, or Alterations, of the Zoning By-Laws to extend up and along a pre-existing, non-conforming lot line on a southeast corner to add a second floor on the structure located at **21 Dewey Avenue, U8 (Residential 1 Zone)**. Daniel Wagner recused himself because of a conflict of interest. Jeremy Callahan, Peter Okun, Steven Latasa-Nicks, Robert Nee, and Erik Borg sat on the case.

Presentation: Sarah Peake and Lynn Mogell, the property owners, and Tom Thompson, a designer, appeared to present the application. Ms. Peake said they seek to put a second floor on the cottage. The cottage used to be a garage for a cottage colony and his no front yard setback.

Public Comment: None. There were no letters in the file.

Robert Nee moved to close the public portion of the hearing, Erik Borg seconded and it was so voted, 5-0.

Board Discussion: The Board questioned Ms. Peake and Ms. Mogell.

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 extend up and along pre-existing, non-conforming setbacks to add a second floor on the structure located at 21 Dewey Avenue, Unit 8 (Res 1), Erik Borg seconded and it was so voted, 5-0.

ZBA 21-48

Application by **Ted Smith**, on behalf of **Harbor Hill Condominium Trust**, 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 revise a previously approved Special Permit by altering a dormer and a roof deck, including an access stairway to the roof deck, and a deck cut into a roof gable on the southwest corner up and along pre-existing, non-conforming front and side yard setbacks, thereby increasing the building scale of the structure located at **41 Bradford Street Extension (Residential 1 Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, Steven Latasa-Nicks, and Erik Borg sat on the case.

Presentation: Ted Smith appeared to present the application. He reviewed the revisions to the project and the revised elevation drawings. The revisions include expanding the previously approved dormer and associated deck on the east elevation, changing the spiral stair to a straight run stairway, and adding a deck on the southwest corner cut into the gabled roof. He said that after receiving a current scale calculation, the project no longer needs relief for scale.

Public Comment: None.

Daniel Wagner moved to close the public portion of the hearing, Erik Borg seconded and it was so voted, 5-0.

Board Discussion: The Board questioned Mr. Smith.

Peter Okun move 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 approve a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, to revise a previously approved Special Permit by altering a dormer and a roof deck, including an access

stairway to the roof deck, and a deck cut into a roof gable on the southwest corner up and along pre-existing, non-conforming setbacks of the structure located at 41 Bradford Street Extension (Res 1), Steven Latasa-Nicks seconded and it was so voted, 5-0.

ZBA 21-45

Application by **Steven Latasa-Nicks**, on behalf of **Latasa-Nicks Properties, LLC**, seeking a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, B5, Restaurants, Bars, Entertainment, of the Zoning By-Laws, to add 20 outdoor restaurant seats on the property located at **404 Commercial Street. (Town Center Commercial Zone)**. Steven Latasa-Nicks recused himself because of a conflict of interest. Jeremy Callahan, Daniel Wagner, Peter Okun, Quinn Taylor, and Erik Borg sat on the case.

Presentation: Fred Latasa-Nicks appeared to present the application. He thanked the 20 abutters who wrote letters and emails in support of the application. He reviewed the request and the seating plan for the exterior seats. He said the restaurant has a 2017 Special Permit allowing the restaurant 24 exterior seats. They have two approved exterior seating plans for flex-seating; one plan allows for 24 seats on the front patio, and the other allows for 12 seats on the front patio and 12 seats in the rear of the property. He said that since the pandemic the public's dining behavior has changed, and he speculates that the demand for exterior seating is here to stay, and the restaurant's financial viability depends upon this model. Since the pandemic, the restaurant has been operating according to a temporary seating plan, which was submitted to the Board, and he is asking to approve that plan and grant a Special Permit. He said the restaurant has had no noise complaints filed with the Provincetown Police Dept. for the last two years or calls from neighbors about noise. He reviewed the seating plan for 24 seats on the front patio. The existing Special Permit allows for 56 interior seats in the dining room. They have moved 20 of those seats to a rear covered porch under temporary pandemic approval. He is seeking approval to allow these seats to remain inside the rear covered porch permanently, thereby reducing the number of interior seats by 20, for a total of 36 seats. He said the proof that the restaurant is able to manage the seats in these locations without any disruption to the neighborhood is the absence of noise complaints and the 20 letters of support from neighbors. He reviewed the seating in the rear patio. The plan shows 12 flex-seats in that area. These seats would come from the interior dining room and the intent is to use them occasionally, mainly when social distancing is required. He argued that the social and economic benefits for this approval include increased safety for staff and patrons when there are COVID flare-ups, the ability to better meet the outside dining demands of tourists, who are vital to the Town's economy, the addition of more seats in service for more parts of the year, increasing employment of staff for longer periods of time during the year, and an increase in tax revenue for the Town. He said that there would be no adverse effects and will reduce hazard and congestion and the rear covered patio has improved the environment surrounding the property.

Public Comment: There were 34 letters in the file; 20 from abutters in support and 5 letters from abutters in opposition, and 8 letters in support from non-abutters in support and 1 letter from a non-abutter in opposition. J.C. Spece, an employee of the restaurant, and Meg Stewart, Robert Nee, Brandon Quesnell, all abutters, spoke in support of the application. Dawn McCall and Gail Williams, abutters, spoke in opposition to the application.

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

Board Discussion: The Board questioned Mr. Latasa-Nicks. He said that he would work with the abutters who were opposed, and all the neighbors, in order to mitigate noise and light coming from the restaurant.

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 vote to approve a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, B5, Footnote 6, to allow for the service of food and alcohol for a total of 80 seats (36 Indoor Seats [40 indoor when the front patio is closed] and 44 Outdoor Seats [24 Front Patio Seats and 20 Covered Porch Seats] with a Flex Seating Option to move 12 Indoor Seats to the Rear Patio) on the property located at 404 Commercial Street (TCC) as depicted on the plan entitled "Strangers & Saints Proposed Plan (TCC)" dated October 4, 2021 in 1 sheet labeled Page 3, Erik Borg seconded and it was so voted, 6-0.

B. Work Session:

1) **Pending Decision:**

ZBA 21-42

Application by **Meryl Cohn** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions, or Alterations, of the Zoning By-Laws to construct an 8' by 9.5' addition behind an existing garage and connecting it via a breezeway up and along a pre-existing, non-conforming northwest side yard setback on the property located at **148 Commercial Street, U5 (Town Center Commercial Zone)**. There were no revisions to the decision.

2) **Approval of minutes: October 21, 2021:**

October 21, 2021: *Peter Okun moved to approve the language as written, Daniel Wagner seconded and it was so voted, 6-0 by roll call.*

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

NEXT MEETING: The next meeting will take place on Thursday, November 18, 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 7:30 P.M., Quinn Taylor seconded, and it was so voted unanimously by roll call.*

Respectfully submitted,

Ellen C. Battaglini

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