

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
December 16, 2021

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

Members Absent: Susan Peskin (excused) and Quinn Taylor (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 6:02 P.M. and called the roll.

A. Public Hearings:

1) **ZBA 21-55** (*postponed from the meeting of December 2nd*)

Application by **Paul Muldoon**, on behalf of **TMW Properties, LLC Provincetown Series**, seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions, or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to remove and replace retaining walls and a stair structure up and along pre-existing, non-conforming front and side yard setbacks on the property located at **28 Bradford Street (Residential 3 Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun, and Robert Nee sat on the case.

Presentation: Paul Muldoon was on the phone to present the application. He reviewed the project via photographs. The masonry stairs next to the street are spalling and the blocks are deteriorating. As a result, the concrete retaining wall next to the stairs has a large vertical crack and it is slipping and moving. That situation occurs further down the wall as well. The project includes improving the aesthetics of the system, which sits right on the property line, improving the existing life safety issues, and decreasing the mass of it. He said the wall will be removed completely tiered retaining walls will be installed. The walls along the property line will be lower and an area of vegetation will be planted to the north and then a second wall, about 2' tall, will be installed. The result of this will be less mass visibility adjacent to Bradford Street. He reviewed the drawings for the proposed tiered walls. The parking area will be pushed back so a car can fit perpendicularly to the new lower wall.

Public Comment: None.

Peter Okun moved to close the public portion of the meeting, Robert Nee seconded and it was so voted, 5-0 by roll call.

Board Discussion: The Board questioned Mr. Muldoon. He briefly explained what the construction process would be given the proximity of a busy street and said he had consulted with the Department of Public Works about the procedure. In addition, he had contacted the Provincetown Police Department to discuss having a detail on site during construction. He identified the dimensional non-conformancies on the site, which included the front yard and the side yard setbacks.

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 moved that the Board vote to approve a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations and Section 3115, Demolition and Reconstruction, to remove and replace retaining walls and a stair structure up and along pre-existing, non-conforming front and side yard setbacks on the property located at 28 Bradford Street (Res 3), Robert Nee seconded and it was so voted, 5-0 by roll call.

2) ZBA 21-56

Application by **Mark Kinnane**, of **Cape Associates, Inc.**, on behalf of **Christine Steinwand et al.**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to increase the volume of a structure above the allowed neighborhood average scale by enclosing a roof deck on the property located at **18 Atkins Mayo Road (Residential 3 Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun, and Erik Borg sat on the case.

Presentation: Mark Kinnane was on the phone to present the application. He explained that the addition will be built around an existing roof deck on the structure. It is referred to as ‘Option 1’ on the plans. He said that the existing scale was 18,080 cu. ft and the proposed addition is 1,320 cu. ft., for a total of 19,400 cu. ft. The maximum allowable scale is 18,522 cu. ft. The addition will be over the maximum allowable scale by 878 cu. ft., or 4%. He argued that the addition will not be substantially more detrimental to the neighborhood than the existing situation. The addition would increase the value of the structure and the Town’s tax base.

Public Comment: None.

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

Board Discussion: The Board questioned Mr. Kinnane.

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 moved 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.), 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 18 Atkins Mayo Road (Res 3), Erik Borg seconded and it was so voted, 5-0 by roll call.

3) **ZBA 21-57**

Application by **Robin B. Reid, Esq.**, on behalf of **361 Commercial Holdings, LLC**, seeking a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, B, Business, 5, Restaurant, bar, of the Zoning By-Laws to add liquor service to an existing 20-seat coffee and espresso bar and to add 10 exterior seats as part of a new flex-seating plan on the property located at **361 Commercial Street (Town Center Commercial Zone)**. Robert Nee recused himself because of a conflict of interest. Jeremy Callahan, Daniel Wagner, Peter Okun, Steven Latasa-Nicks, and Erik Borg sat on the case.

Presentation: Attorney Robin B. Reid and Richard Collins were on the phone to present the application. She reviewed the request for flex-seating. She clarified that this is an existing 20-seat establishment, and the request is to flex the existing 20 seats, allowing 10 seats to go outside. No additional seats are being requested. The service of alcohol and the use of the establishment as a coffee and espresso bar are allowed by right in the TCC Zone, except to the extent that the proposal includes exterior service, as defined by footnote 6 in Article 2, Section 2440, B5, which requires a Special Permit. She noted where the property was located in the neighborhood and reviewed the floor plan, which showed 4 exterior seats existing. She reviewed the summer plan, showing 10 exterior and 10 interior seats and the winter plan where all seating will be interior. The front area where the exterior seating will be located will be enclosed by an existing railing. A partial hedge that is located on one side of the property will be extended the full length of the front, with an egress opening, which will fully contain the patio area. The proposal will allow the business to be more sustainable, as will the addition of alcohol and new small-plate food offerings, the improvement of the indoor space and furnishings, and the exterior improvements to the property. These additions will also help the business retain employees, which was an issue in the business' attempt to be a year-round operation. Year-round amenities for residents and their visitors are of value and a benefit to the Town. She argued that there will be no adverse effects to the neighborhood or Town with the addition of the exterior flex seats and the service of alcohol.

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

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

Board Discussion: The Board questioned Attorney Reid and commented on the proposal.

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 moved 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 20 seats, 10 Indoor Seats and 10 Outdoor Seats, with a Flex Seating Option to have all 20 Indoor Seats during the off-season seating on the property located at 361 Commercial Street (TCC), as depicted on the plans entitled "361 Commercial Street" showing layout with 10 outside seats and 10 inside seats and a layout showing 20 inside seats in 2 sheets, Erik Borg seconded and it was so voted, 5-0 by roll call.

4) **ZBA 21-58**

Application **Mark Kinnane**, of **Cape Associates, Inc.**, on behalf of **Lisa F. Shea Trust et al.**, 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 a portion of a structure located in a pre-existing, non-conforming west side yard setback, raise the entire structure, install helical piers, and frame a new floor system, then lower the structure onto the new floor system and rebuild the portion of the structure that was removed on the property located at **613 Commercial Street (Residential 2 Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, Steven Latasa-Nicks, and Kenneth Sutton sat on the case.

Presentation: Mark Kinnane was on the phone to present the application. He reviewed the project, which will increase the front yard setback from 8' to 17', due to the addition of entry stairs. The project includes the demolition of an ell on the west side of the structure along with the decks, which will be cut back so as not to encroach over the property line. The building will be lifted about 4', not the required 9' pursuant to FEMA regulations. He said that this exemption was allowed due to the historic nature of the structure, as it is considered a contributing structure in the Historic District. The building scale is well below the neighborhood average. The lot coverage including the decks will increase by 81 sq. ft. and the lot coverage of the building only will remain the same. A front entry porch will be added due to the elevation of the building, which will also slightly decrease the green space on the property. The renovation will increase the value of the structure and the Town's tax base. It will also enhance the neighborhood and the restoration of an historic structure is in keeping with the Local Comprehensive Plan, Goal 1.

Public Comment: Jonathan Sinaiko, an abutter, spoke of his concerns about a Chapter 91 pathway, the need to access the abutter's property to work on the project, and he said that a fire hazard would be created as a result of decreasing the means of access to the property and structure. Elia Sinaiko, an abutter, had a concern about the lack of access on the east side of the property. There were no letters in the file.

Kenneth Sutton moved to close the public portion of the meeting, Peter Okun seconded and it was so voted, 5-0 by roll call.

Board Discussion: The Board questioned Mr. Kinnane and commented on 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 moved that the Board vote to approve a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, and Section 3115 Demolition and Reconstruction, to demolish a portion of a structure located in a pre-existing, non-conforming west side yard setback, raise the entire structure, install helical piers, and frame a new floor system, then lower the structure onto the new floor system and rebuild the portion of the structure that was removed on the property located at 613 Commercial Street (Res 2), Kenneth Sutton seconded and it was so voted, 5-0 by roll call.

B. Work Session:

1) **Pending Decisions:**

ZBA 21-23

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 (Town Center Commercial Zone)**. The decision was not ready.

ZBA 21-50

Application by **Ginny Binder**, on behalf of the **Richard R. Bankhead Revocable Trust, Richard R. Bankhead, Trustee**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to create an artist studio/room by enclosing a second-floor porch on a west elevation, thereby increasing the scale of a structure located at **586 Commercial Street, U11 (Residential 3 Zone)**. There were no revisions to the decision.

ZBA 21-51

Application by **Leif Hamnquist**, of **Hammer Architects**, on behalf of **Daniel K. O'Donnell et al.**, 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 replace and expand an existing deck up and along a pre-existing, non-conforming south rear yard setback on the property located at **135 Commercial Street, UA (Town Center Commercial Zone)**. There were no revisions to the decision.

ZBA 21-52

Application by **Robin B. Reid, Esq.**, on behalf of **Brian R. Faidell et al.**, 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 increase the building scale of a structure by adding a shed dormer to a gable roof and slightly increasing the footprint of an existing single-story sunroom with a second-story addition extending up and along a pre-existing, non-conforming front yard setback on the property located at **78 Bayberry Avenue (Residential 1 Zone)**. There were no revisions to the decision.

ZBA 21-53

Application by **Ted Smith**, on behalf of **Whitney Kelly**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to remove an exterior stair and add a portico, thereby increasing the building scale of a structure located at **5 Fishburn Court (Residential 3 Zone)**. The decision was not ready.

ZBA 21-54

Application by **Jeffrey Mulliken** seeking a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G14, Utility/Garden Shed (96 sq. ft. max.), of the Zoning By-Laws to install a shed on the property located at **34A Pearl Street, U1 (Residential B Zone)**. The decision was not ready.

2) Approval of minutes: December 2, 2021:

December 2, 2021: Peter Okun moved to approve the language as written, Eric Borg seconded and it was so voted, 6-0-1 (Steven Latasa-Nicks abstaining) by roll call.

4) **Any other business that may properly come before the Board:** Mr. Okun requested that the policy regarding letters of comment from the public be put on an agenda for discussion. The Board briefly discussed the issue. The topic was tabled until another meeting.

NEXT MEETING: The next meeting will take place on Thursday, January 6, 2022. It will consist of a hybrid Public Hearing at 6:00 P.M. followed by a Work Session.

ADJOURNMENT: Robert Nee moved to adjourn the meeting at 7:07 P.M., Erik Borg seconded, and it was so voted unanimously by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2022.
Jeremy Callahan, Chair