

PLANNING BOARD
Meeting Minutes
Thursday, December 23, 2021
6:00 P.M.

PB Members Present: Paul Graves, Jeffrey Mulliken, Paul Kelly, Steven Azar (online), and Donna Walker (online).

Members Absent: Brandon Quesnell, Marianne Clements, and Mia Cliggott-Perlt.

Staff: Thaddeus Soulé (Town Planner).

Chair Paul Graves called the meeting to order at 6:00 P.M.

Mr. Soulé explained that the meeting was being held in person, however both the public and the Board members can participate either by dialing into the meeting or joining the Microsoft Teams application. Since a quorum was present, he said that the meeting would not be suspended or terminated even if there are technological problems interrupt the broadcast unless required by law. He gave the information that would be needed to call in by phone. The meeting is being broadcast live on PTV, Ch. 18, and will be posted online as soon as possible. He called the roll.

1. **Public Comment:** None.

2. **Public Hearings:**

PLN 21-14 *(continued to the meeting of January 13th)*

Application by **Lester J. Murphy, Jr., Esq.**, on behalf of **Dol-Fin Development**, seeks Site Plan Review pursuant to Article 2, Section 2320, High Elevation Protection District (A), of the Zoning By-Laws to construct 7 new residential units on the property located at **50 Nelson Avenue**.

PLN 21-15 *(continued to the meeting of January 13th)*

Application by **Lester J. Murphy, Jr., Esq.**, on behalf of **Dol-Fin Development**, seeks Site Plan Review by Special Permit pursuant to Article 4, Sections 4015, Site Plan Review by Special Permit, a. (1) for an increase in residential units resulting in three or more, and (5, for the excavation, land removal, or earth-moving of more than 750 cu. yds. that will alter the topography from natural grade, and 4180, Inclusionary and Incentive By-Law, of the Zoning By-Laws for the construction of 7 new residential units; 1 of which will be located on the site and deed-restricted as affordable, and 1 for which the Town will receive a payment in lieu on the property located at **50 Nelson Avenue**.

PLN 21-31

Application by **Ginny Binder**, on behalf of **Hal Winard**, seeking Site Plan Review by Special Permit pursuant to Article 4, Section 4015, a. (1), Site Plan Review by Special Permit, of the Zoning By-Laws to add a dwelling unit to a structure that will result in three or more residential units on the property located at **206 Commercial Street**.

Presentation: Ginny Binder was participating remotely and Hal Winard was in the room and they presented the application. Ms. Binder said there would be no changes to the site plan and

the project was consistent with the Local Comprehensive Plan in terms of being able to create year-round rental housing. Mr. Winard reviewed the project and said he owned a construction company that has employed between one hundred and two hundred people since its inception. He said he has had to move out of his rental unit because of an exorbitant increase in the monthly rental. He is proposing to take two offices in the building and convert them into a housing unit. The extent of the work will be in the building and no changes will occur on the exterior of the building. He said that there was plenty of parking on the site. Ms. Binder added that Mr. Winard had gone to the Select Board and obtained the additional gallonage needed for a residential use.

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

Board Discussion: The Board commented on the application.

There was a motion by Jeffrey Mulliken to grant the Special Permit pursuant to Article 4, Section 4015, a. (1), Site Plan Review by Special Permit, of the Zoning By-Laws to add a dwelling unit to a structure that will result in three or more residential units on the property located at 206 Commercial Street. Paul Kelly seconded. VOTE: 5-0-0 by roll call.

PLN 21-26

Application by **Wayne Tavares**, on behalf of **Michael J. Shuster**, seeking Site Plan Review pursuant to Article 2, Section 2320(B), High Elevation Protection District (B), of the Zoning By-Laws to construct retaining walls, stepped terraces (plateaus), a shed, and a swimming pool on the property located at **99 Bayberry Avenue**.

Presentation: Wayne Tavares presented the application remotely. He addressed the design of the plan and reviewed the finished site plan. He said that four registered professionals were involved in this project: a soil engineer, who analyzed the soil of the dune on the site, a surveyor, a landscape architect, and a professional structural engineer who designed the retaining walls. He said that the requisite ZBA setbacks are conforming, which are also the limit of work lines. He said that there is a large amount of Serviceberries on the site and the perimeter of the grove of these will be left untouched. He explained how access to the construction site would occur during the construction process. There are three Leyland cypresses on the property, which will be moved from this property to the neighbor's property when seasonally appropriate. They will be moved 3' into the abutting property located at 95 Bayberry Avenue. This will allow access into the back yard for heavy machinery and trucks.

He said that there was an effort to sink the pool down as much as possible so it would not be visible from abutting properties and to hide it behind the perimeter of Serviceberries. This is why the amount of excavated soil is larger than it would be if the property was located in a flatter area. There is an 18' drop in elevation from the back deck to the south elevation of the property which will be divided into three sections, each representing a 6' drop. One section will support the existing structure, the pool will be separated down 5' 7", a top-of-wall grade, and a grade at the patio. The plateau grade of the lower level where the pool will be located will be at a grade of 52'. The upper portion is in an area with a grade of 58.5' and it varies because it is not level on top. The pool size is 800 sq. ft. and the size of the patio is about 1500 sq. ft. He pointed out that pool overflow will shed to the sides and will be handled by scuppers piped to two dry wells. He pointed out a utility shed. There will be a waterfall coming off of the pool, shedding water to a lower basin and there will be a 4' drop in elevation. Vaults will be placed inside an upper wall that will be countersunk and contain the pump, filter, heat, etc.

This will eliminate any noise emanating from the equipment. The vault design is shown on the engineering plan. He said that the third area will be a meditation garden. Steps will be located next to the shed, on the northwest elevation, and will lead to the garden area. Four trees, of a native species, will be planted in this area, which will also contain a lawn area. No paving will be located in this area. This will contribute greatly to groundwater recharge and there will be no need to gather the water as it will just infiltrate into the ground. There will be no shedding of water to the abutting properties and no collection of water will occur. He said the pool will have a cover and there is no need for enclosure fencing. Barrier fencing may be needed, as each wall has a drop of over 30". There will be hidden lighting located in the pool area and is very subtle in style. The concrete walls will be veneered with a granite ashlar pattern, with granite on the top of the wall. He reviewed a side drawing of the back yard, showing each proposed element of the project. Mr. Shuster responded to some of the public comments that were received regarding the project, the use of his property and noise issues.

Public Comment: Tariq Hassan and Joe Agostini, both abutters, spoke in opposition to the application. Attorney Lester J. Murphy, on behalf of several abutters, spoke of their concerns about the project and missing relevant material.

Board Discussion: The Board commented on the project. Mr. Mulliken reviewed the Zoning By-Law regarding the High Elevation Protection District and how the project did not conform to the letter and spirit of that By-Law. He said that there is certain information, missing in this instance, that should be submitted when reviewing a project that is located in these areas and he voiced his concern about the consequences of erosion. He is struggling with how the project will preserve a high elevation dune and how erosion will be controlled both during the construction phase and after. He reviewed some elements that are required to be submitted, such as the height and visible characteristics of any existing and proposed buildings and other structures, including retaining walls greater than 6' in height, on the site. He noted the fact that the site plan did not identify the elevations, top or bottom, of all of those structures and the characteristics of their construction. He said that measures to control erosion during the construction phase, which may be substantial, have not been identified. The By-Law requires that the height and visibility of all buildings and structures not detract from the site's scenic qualities and blend with the natural landscape. He doesn't understand how the project conforms with that requirement. He said that foundations of any structures should reflect to the natural slope of the terrain and excessive support structures and mechanical systems should be screened. He said it seemed like the latter has been proposed. But the cross-section that was reviewed varies from the natural grade. He said there was not enough detail on the contours to clarify what will happen at all of the intersections of the remaining grades around the perimeter of the construction area. He would like to see stormwater from impervious surfaces recharged on site and diverted into infiltration basins and that these be able to handle 25-year storm events. He would like to see the engineer's calculations regarding that. The By-Law references that no area totaling 2,000 sq. ft. or more shall have existing vegetation clear-stripped or be filled with 6" or more so as to destroy natural vegetation. He said that by his calculation an area of 4,000 sq. ft. of existing vegetation is being clear-stripped. He concluded that the plan was aggressive and did not preserve the dune and the proposed design did not address any of the concerns of the By-Law. He said that property owners have the right to develop their properties and he has seen examples of projects in the high elevation protection district where dunes have been protected and such elements as pools and other structures have been installed pursuant to the requirements of the By-Law without such a large disturbance.

Ms. Walker agreed with Mr. Mulliken and supported some of the public comments made by abutters.

Mr. Kelly said he had done a site visit and it seemed by the proposal that the site was being clear-cut and that the heavy machinery needed for the project would also destroy the existing vegetation located in the side and rear yard setbacks. He said there were ways to imagine the scope of the project in a different location on the site. He thought that the environmental disturbance of the proposed project was too costly for this large site and added that the spillover effect on the abutters would not be fair. He would like to see the team to re-think how to accomplish the most important elements of the proposal. He would also like to see the lower 50' of the property be left alone. He regarded the meditation garden as a nice idea, but as an afterthought, as it was located at the bottom of the hill and he didn't agree with disturbing that area for such a use. He suggested bringing the pool up the hill and leaving as much of the dune and its vegetation as now exists.

Mr. Azar agreed with Mr. Mulliken's and Mr. Kelly's comments. He mentioned requiring a tree plan be submitted to show more detail. He has concerns about the scale of the project, the buffering, and the stability of the dune. He thought that there were not enough natural buffers to protect the abutters. He would like to see engineering details for locating and stabilizing the pool on the slope of the dune.

Mr. Graves said that he was looking for engineering reports that were noted in the presentation, but not submitted. He suggested the applicant request a continuance as the Board was not ready to render a decision.

Mr. Tavares responded to the concerns of the Board. He said he did submit a soil engineering report to the Board. Mr. Soulé said that no soil engineering report had been uploaded. Mr. Tavares said that he would email that information to him. A fence would go up along the limit of work to hold erosion and make sure that heavy machinery does not go beyond it. He said a slight over-dig was necessary for installing and removing forms. He said this line was on the plan, but was not alluded to as a fence or a buffer and he would remedy that. He said he would also submit a depiction of the proposed shed on the upper level. He said that a pool contractor had not yet been chosen and that person would be providing the construction plans for the pool. These plans would include lateral support for the pool, which cannot sink, so additional footing material will have to be installed. The heights of the retaining walls are shown on the plan, as are the grades of the bottom of the walls. The limit of work will catch the erosion and the site will be cleaned up daily. He asked for a continuance to the meeting of January 13th.

Mr. Mulliken said he did not share Mr. Tavares' confidence in providing the information requested. He asked for a statement from the applicant explaining how the project will preserve the high elevation dune and how concerns regarding the consequences of erosion. He stated that he didn't see how the proposed project fit within the intent of the By-Law. He said that the By-Law specifically prohibits areas of 2,000 sq. ft. or more from being clear-stripped or be filled 6" or more so as to destroy existing vegetation unless special controls for runoff are

approved. He said based upon those issues, he could not vote for an approval of the project. He said that there are requirements for site plan review, which is incorporated into the review for the high elevation protection district, that have not been met, such as plans with a scale of 1" = 10' and existing and proposed plans that can be compared side by side. He said that it would be his preference that far less of an area of the dune is destroyed than has been proposed.

Ms. Walker commented on the moving of soil and the necessity that final contours are consistent with existing terrain on and adjacent to the site. She would like more clarity on the effect of the earth-moving and grading on the surrounding dunes as well.

Mr. Kelly wanted to make sure that his comments about the project regarding looking at the possibility of leaving a minimum of 50' and coming up with a different program for the pool area and patio were in the public record. Mr. Shuster asked a question about erosion mitigation and controls. He said that his reading of the By-Law was that removal of 2,000 sq. ft. of soil or vegetation was not proscribed, but that adequate erosion control and mitigation measures had to be installed in order to protect the dune and avoid runoff. Mr. Soulé said that it was up to the Board to make the determination of the extent of the controls. Mr. Shuster asked that the Board provide him with that information. Mr. Soulé said that the additional engineering information could be provided by his professional engineers upon his request and submitted to the Board. ***There was a motion by Jeffrey Mulliken to continue PLN 21-26 to the meeting of January 27, 2022 at 6:00 P.M. Paul Kelly seconded VOTE: 5-0-0 by roll call.***

PLN 21-27

Application by **William N. Rogers, II**, on behalf of **Elizabeth Athineos et al.**, seeking Site Plan Review by Special Permit pursuant to Article 4, Section 4015, a. (4), Site Plan Review by Special Permit, of the Zoning By-Laws to developments of commercial properties that have curb cuts greater than 25% of their existing or proposed street frontage to construct a first-floor addition over an existing basement roof/walkway and a 4.5' by 18' egress deck and stairs on the property located at **63 Shank Painter Road**.

Presentation: Gary Locke was on the line to present the application. Mr. Rogers was present in the meeting room. Mr. Locke said the proposal was for a one-story addition, 14' by 75' 2" over an existing roof deck that has a walkway on it. There will be no changes to the site except for adding an egress deck and stairs. All work will be contained within the existing footprint. The height of the addition is 9' 5.25". There will be 405 sq. ft. of new retail space added. New residential space will be added as well. Two dark sky compliant lighting fixtures will be installed, at the first floor egress, however they have not yet been chosen. He said the site will look nicer with the addition installed.

Public Comment: No public comment was solicited.

Board Discussion: Ms. Walker asked if the storage containers along the pathway in the back would remain. She asked about the architectural reasoning behind the shed roof addition and why a more cohesive roof alignment that would balance the increased building volume symmetrically across the entire building was not proposed, which raises the issue of the hip-style roof. She said that there was only one other building fronting Shank Painter Road with this style of roof. She asked if there was any consideration for creating a gable-style roof for historical accuracy. She inquired as to the projects impact on the drainage and flooding issues on Court Street and what mitigation is being proposed to handle roof runoff from the addition

to allay potential flooding concerns. She asked if gutters and downspouts emptying into dry wells capable of handling a 25-year storm event are proposed. She asked if the applicant would be submitting stormwater calculations demonstrating the latter capability.

Mr. Kelly had questions about the history of the site. He said that the Dept. of Public Works had an issue with a sign and a timber planting bed located in the Town right-of-way. He asked if the issue had been resolved and if it is related to this submission. He mentioned a letter from Richard Waldo, DPW Director, regarding the Shank Painter Road master plan, which states that the Town would not do specific things on this property until that master plan was complete and ready to be implemented. He wanted to know the status of this issue. He asked why a two-story addition had not been proposed given the Town's on-going discussions around increasing the density of dwelling units allowed on a parcel located on Shank Painter Road. He asked about the 43' by 14' "living room" on the interior floor plans that shows no windows. He asked for more information regarding the gutters and the stairs down.

Mr. Azar echoed previous Board comments, including dissatisfaction with the style of the roof.

Mr. Mulliken asked about concentrating runoff from the new roof along the eave of the new addition. He would like to see how the drainage off of the new roof will be handled, including the use of gutters, downspouts and dry well installation.

Mr. Rogers commented that a project for a two-story addition was previously approved, however that proposal did and will not happen. He said that this project has nothing to do with the previous project and that the property owner will be doing a work on the structure in the future. Mr. Locke said that the roof runoff will be handled by the subsurface drain locations shown on the plans. They are on the upper righthand side corner of the building, which is where the ground is higher. He said there would be no increase in water on Court Street from this site. The addition will be built consistent with the state Building Code and will handle runoff pursuant to that Code. The roof will be a shed roof because the applicant does not want to replace the existing roof at this time. He said this project was like a phase 1, with more to follow. A second story will be proposed at a later date, in phase 2. This is being done for monetary and permitting purposes. He said the design was due to keeping the impact of the addition minimal and the attempt was to blend in with the existing hip roof. The gutter system will be directed toward the higher ground on the site. The storage containers will not be removed at this time, but will be in the future. He said he has not heard anything from the DPW. He added that the window locations in the "living room" has not been finalized and added that those location do not have to be at this stage of the permitting process.

Mr. Mulliken requested that revised plans indicate how the runoff is proposed to get from the gutters on the new addition to the proposed drain locations. Mr. Locke said that piping will be used and used discreetly. He agreed to add that feature to the plan. Based upon a concern about phasing by the Board, Mr. Locke offered to show the Board plans for the next phase of the project. The issue was discussed. Mr. Locke said that these plans should be considered on their own merits and without regard to phasing. Mr. Graves said the Board would not be making a decision. Ms. Athineos provided some context about the proposed project and its timeline, the storage containers, and the planting bed and sign on Shank Painter Road.

Mr. Kelly suggested a more dominant horizontal line in place of a shed roof. Mr. Locke responded and said once it is built, no one will notice its configuration. He said he would work with the DPW regarding the Shank Painter Road master plan at the appropriate time. Mr. Azar suggested that a parapet be installed on the front and side to hide the hip roof, such as many buildings have on Commercial Street. He added that it would be inexpensive. Mr. Locke was confused and requested a drawing of what Mr. Azar was talking about. Mr. Mulliken and Mr. Kelly were not in favor of the parapet.

There was a motion by Jeffrey Mulliken to continue PLN 21-27 to the meeting of January 13, 2022 at 6:00 P.M. Paul Kelly seconded. VOTE: 5-0-0 by roll call.

3. Work Session:

a) **Decision:**

PLN 21-25

Application by **Ted Smith** seeking Site Plan Review pursuant to Article 2, Section 2320(A), High Elevation Protection District (A), of the Zoning By-Laws to revise a previously approved Site Plan Review (PLN 20-2012) involving a dormer, roof decks, and an access stair on the structure located at **41 Bradford Street Extension**. There were no corrections to the decision.

c) **Minutes of December 9, 2021:** The minutes were not ready.

d) **Any other business that may properly come before the Board:** Mr. Mulliken asked for a status on the PB lawsuits. Mr. Soulé will let the Board know when he finds out. Mr. Mulliken said he was proud to be on the PB and that he thought the Board had good discussions and rendered good decisions and he has enjoyed being a member.

There was a motion by Paul Kelly to adjourn the meeting at 8:29 P.M. Jeffrey Mulliken seconded. VOTE: Unanimous by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2022
Paul Graves, Chair