

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
June 18, 2020

Members Present: Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun (left at 7:40 P.M.), Robert Nee (left at 7:40 P.M.), and Quinn Taylor.

Members Absent: Susan Peskin (excused).

Others Present: Thaddeus Soulé (Town Planner).

Chair Jeremy Callahan opened the hearing of the Zoning Board of Appeals at 6:03 P.M.

Town Planner Thaddeus Soulé introduced the virtual Public Hearing. Mr. Soulé, the moderator of the meeting, then explained the reason the Public Hearing was being held in this manner, detailing how the Board, the applicants, and the public could participate remotely, and the meeting protocol.

A. Work Session:

1) Pending Decisions:

ZBA 20-57 (Jeremy)

Application by **Meilli West, LLC**, on behalf of **Shank Painter Medical Bldg. Trust**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to develop 11 condominium units in a structure that will be greater than the neighborhood average scale on the property located at **30 Shank Painter Road (General Commercial Zone)**.

ZBA 20-66 (Jeremy)

Application by **Meili West, LLC**, on behalf of **Shank Painter Medical**, seeking a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish a building and replace it with a three-story multi-family development on the property located at **30 Shank Painter Road (General Commercial Zone)**. This decision was not ready.

ZBA 20-69 (Quinn)

Application by **Tom Thompson** seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to connect an existing accessory structure with a covered breezeway/shelter resulting in an increase in scale above the neighborhood average on the property located at **3 Fishburn Court (Residential 3 Zone)**. This decision was not ready.

2) Any other business that may properly come before the Board: The Board discussed starting Public Hearings at 6:00 P.M., followed by the Work Session. *Peter Okun moved to*

begin the ZBA Public Hearings at 6:00 P.M, followed by a Work Session, Steven Latasa-Nicks seconded and it was so voted unanimously by roll call.

The Board briefly discussed having a public comment item to the agenda. It was decided that public comment would be taken upon a request to the Chair. ***Steven Latasa-Nicks moved to allow the Chair to schedule a public input agenda item upon request, Peter Okun seconded and it was so voted, 6-0 by roll call.***

3) **Approval of minutes: May 28 and June 4, 2020.** No minutes were approved.

B. Public Hearings:

ZBA 20-43 (*postponed to the meeting of July 16th*)

Application by **Christine Barker** seeking Special Permit pursuant to Article 2, Section 2470, Parking Requirements, of the Zoning By-Laws to construct a building containing 31 hotel units, 4 condominium units, and a restaurant/bar, with a parking area beneath, on the property located at **227R Commercial Street (Town Center Commercial Zone)**.

ZBA 20-53 (*request to postpone to the meeting of July 2nd*)

Application by **Christopher Page**, on behalf of **The Pilgrim House**, seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to expand an existing full-service restaurant space, add a live music venue for entertainment and reconfigure seats at the property located at **336 Commercial Street (Town Center Commercial Zone)**. There was a request from the applicant to postpone ZBA 20-53 to the Public Hearing of July 2nd, 2020 at 6:00 P.M. ***Steven Latasa-Nicks moved to approve the request to postpone ZBA 20-53 to the Public Hearing of July 2, 2020 at 6:00 P.M., Peter Okun seconded and it was so voted by roll call, 6-0.***

ZBA 20-56 (*request to postpone to the meeting of July 2nd*)

Application by **Shank Painter Associates, Inc.** seeking a Special Permit pursuant to Article 2, Sections 2470, Parking Requirements, 2630, Roofs, and 2640, Building Scale, of the Zoning By-Laws to develop workforce housing, including requesting a waiver from parking requirements and to add a third story to, and allow an increase above the neighborhood average building scale of, the structure on the property located at **207 Route 6 (General Commercial Zone)**. There was a request from the applicant to continue ZBA 20-56 to the Public Hearing of July 2nd, 2020 at 6:00 P.M. ***Steven Latasa-Nicks moved to approve the request to continue ZBA 20-56 to the Public Hearing of July 2, 2020 at 6:00 P.M., Peter Okun seconded and it was so voted by roll call, 6-0.***

ZBA 20-65 (*request to postpone to the meeting of July 2nd*)

Application by **53 Commercial Provincetown, LLC** 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 a structure and replace it with two new structures, one of which will exceed the neighborhood average building scale and extend up and along a pre-existing, non-conforming east side yard setback on the property located at **53 Commercial Street (Residential 2 Zone)**. There was a

request from the applicant to postpone to the Public Hearing of July 2nd, 2020 at 6:00 P.M. ***Steven Latasa-Nicks moved to approve the request to postpone ZBA 20-65 to the Public Hearing of July 2, 2020 at 6:00 P.M., Peter Okun seconded and it was so voted 6-0 by roll call.***

ZBA 20-68 (continued from the meeting of June 4th)

Application by **Tri-T, LLC** seeking a Variance pursuant to Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws to allow for the construction of a new single-family dwelling with a 15' front yard setback, resulting in the creation of a non-conformancy on the property located at **4 Commercial Street (Residential 1 Zone)**. Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks, Peter Okun and Robert Nee sat on the case. Mr. Callahan said that the Board had received a copy of the Memorandum of Understanding related to the property and the ZBA Special Permit decision for 29 Point Street.

Presentation: Attorney Lester J. Murphy and Tom Tannariello, the principal of Tri-T, LLC, and Cliff Schorer, the owner and developer of the former Murchison property, were present in the meeting to discuss the application. Attorney Murphy reiterated the background of, and the parties involved in, the negotiating process that created the MOU. Those parties included several Town Boards and the Cape Cod Commission. He reviewed the new material that had been submitted to the Board, including the MOU, which was an agreement between the Town and Mr. Schorer to limit the development of this property and that would protect the view shed, making sure that any houses built on the site were built at such a height that the views to and from the Murchison House would not be obstructed. It was agreed by the participants in the negotiating process that any project to build a structure on any of the properties would be subject to Historic District Commission review, even though the property is not in the Historic District, and to restrictions if the development area were on a lot facing Province Lands Road pursuant to a concern of the Conservation Commission to protect the hill on that side of the property. The Planning Board, during the negotiations, had concerns regarding the layout of the subdivision and access to the lots in it. Also provided to the Board was documentation, in the form of a Variance decision, from the 29 Point Street property. It was a situation that, Attorney Murphy said, was analogous to the one being discussed. Both the application and the plan in that case show a flat area on a portion of the lot, as on 4 Commercial Street, including a steep hill rising up towards the rear of the property with a house located at the top of that hill. The ZBA had granted a Variance allowing a front yard setback of 10' on Point Street. Every effort was made to reduce the amount of the Variance, but the Board decided that a hardship had been demonstrated and granted relief. Many houses on Point Street had front yard setbacks that were less than 30' because, as Attorney Murphy had stated, this Zoning District was a Residential 3 up until the late 1980s. In addition, he said that based upon the Board's concerns, the applicant has submitted a revised the plan, dated 6/15/20, relocating the house to a more northerly location on the lot, pulling the house back. He said that in this iteration, only the porch, at 16.3', would be less than 20' off Commercial Street. The applicant had also provided a quote for labor and materials to install sheathing and build a concrete wall to hold back and stabilize the slope if the house were to be built farther back and maintain a 30' setback. That quote came in at \$330,000. Attorney Murphy argued that all of the evidence presented supported his argument that a financial hardship had been created owing to the sandy soil conditions and topography of the lot and the Board should grant a Variance. He again said that the house's location would be in keeping with other structures in the neighborhood, there would be no detrimental impact on the neighborhood, and

granting the approval would not derogate from the Zoning By-Laws. Mr. Tannariello reiterated that the steep 14' incline of the slope would need to remain as is and not be disturbed.

Board Discussion: The Board questioned Attorney Murphy about the MOU and the siting of the buildings on the lots in the subdivision. Mr. Schorer commented on the question and the building envelopes on the lots. It was understood that Variances would have to be obtained on some of the lots, even though that was not mentioned in the MOU, which indicated only that the lots were buildable. Attorney Murphy said that the exhibit plans in the MOU showed what the buildable portions of the lot would be based upon the Zoning By-Laws at the time that it was negotiated, with the exception of the lots on Province Lands Road, which would include a 40' buffer due to the concern of the Conservation Commission and the stability of the slope on that portion of the property. He said that the applicant would be willing to approach the Select Board for an approval to authorize the location of the structure on the lot. The Board discussed the issue. The Board requested Town Counsel opinion about the MOU, its failure to mention the possibility that some lots would have to seek Variances from the ZBA and how the MOU generally applied to the site. The Board was concerned about the MOU plans showing the building envelope on this property as being located farther up on the hill. The Board discussed whether the requirements for the granting of a Variance had been met or not. It was still unclear to the Board that the third requirement had been met. The Board also had further questions about the MOU, and whether it was being followed, and discussed asking the Select Board to revise the MOU. Mr. Callahan said that staff would refer its questions to Town Counsel, and if necessary, to the Select Board. He reminded Attorney Murphy that no one had yet provided a written response to the questions contained in the staff report as requested by the Board at the last hearing.

Steven Latasa-Nicks moved to continue ZBA 20-68 to the Public Hearing of July 16, 2020 at 6:00 P.M., Peter Okun seconded and it was so voted, 5-0 by roll call.

ZBA 20-70

Application by **Sharon Callahan**, seeking a Special Permit pursuant to Article 3, Section 3230, Sign Size, and Section 3214, Relief from these regulations, of the Zoning By-Laws to install a sign that is 8.75 sq. ft. on the property located at **5-15 Bradford Street Extension (Residential 1 Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun, and Quinn Taylor sat on the case.

Presentation: Sharon Callahan was in the meeting to present the application. She reviewed the request, stating that the condominium owns 3 parcels in the area. The condominium seeks to replace an old tin sign, which is unattractive and virtually unreadable, including missing letters, identifying the property. She said that the property is often used as a turnaround and a more prominent sign would discourage that activity. The larger sign would also be more noticeable if emergency vehicles had to respond to the site.

Public Comment: None.

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

Board Discussion: The Board questioned Ms. Callahan. Mr. Callahan said that the Board was proposing conditions, including that no illumination or exterior lighting will be allowed and that a site plan showing the location of the proposed sign after the approval be submitted.

Steven Latasa-Nicks move to grant a Special Permit pursuant to Article 3, Section 3230, Sign Size, and Section 3214, Relief from these regulations, of the Zoning By-Laws to install a sign that is 8.75 sq. ft. on the property located at 5-15 Bradford Street Extension (Res 1), with the

following condition; that there be no illumination or exterior lighting of the sign and that the site plan provided will be incorporated into the finding, Peter Okun seconded and it was so voted, 5-0 by roll call. Steven Latasa-Nicks will write the decision.

ZBA 20-71

Application by **Nancyann Meads** seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the existing 81 restaurant seats to run with the property located at **333 Commercial Street, Unit 1B (Town Center Commercial Zone)**. Peter Okun and Robert Nee recused themselves because of conflicts of interest. Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks, and Quinn Taylor sat on the case. Mr. Callahan explained that since there were only 4 members available to sit on the matter, necessitating a unanimous decision on the part of the Board for approval of a Special Permit, and that the applicant had the choice of postponing until 5 members were present or proceeding with 4 members. The applicant can request that the Board be polled before a vote is taken. The applicant chose to proceed.

Presentation: Nancyann Meads was present in the hearing to present the application. She requested that the Board approve a Special Permit for the 81 seats that she has to run with the property and not with the business owner.

Public Comment: None.

Steven Latasa-Nicks 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 had no questions from Ms. Meads and agreed that the Special Permit should run with the property.

Steven Latasa-Nicks moved that pursuant to Article 5, Section 5330, Special Permit Consideration, of the Zoning By-Laws, the social, economic or other benefits of the request to the neighborhood or Town outweigh any adverse effects such as hazard, congestion, or environmental degradation, Quinn Taylor seconded and it was so voted, 4-0 by roll call.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the existing 81 restaurant seats to run with the property located at 333 Commercial Street, Unit 1B (TCC) with the conditions as stated in the application, Quinn Taylor seconded and it was so voted, 4-0 by roll call. Jeremy Callahan will write the decision.

ZBA 20-72

Application by **Paul Melanson** seeking a Special Permit pursuant to Article 2, Section 2440, F7, Temporary Commercial Structure, of the Zoning By-Laws to erect a 15' wide by 30' long temporary tent over the outdoor seating area on the property located at **269 Commercial Street (Town Center Commercial Zone)**. Mr. Soulé said he had tried to contact the applicant and was unable to do so. He explained that the applicant would not need a Special Permit for a temporary tent because of the Governor's June 1st order. A temporary tent would be allowed until Nov. 1 or until the Governor's order ceased, whichever occurred earlier. He has been trying to contact the applicant to submit a request to withdraw the application and has been unsuccessful. The Board decided to postpone the matter until the next hearing. *Steven Latasa-Nicks moved to postpone ZBA 20-72 until the July 2, 2020 Public Hearing at 6:00 P.M., Quinn Taylor seconded and it was so voted, 4-0 by roll call.*

NEXT MEETING: The next virtual meeting will take place on Thursday, July 2, 2020. It will consist of a virtual Public Hearing at 6:00 P.M. followed by a Work Session.

ADJOURNMENT: *Steven Latasa-Nicks moved to adjourn the meeting at 7:50 P.M. Quinn Taylor seconded and it was so voted unanimously by roll call.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2020
Thaddeus Soulé on behalf of the Zoning Board of Appeals,