

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
July 16, 2020**

Members Present: Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks (left at 6:45 P.M.), Peter Okun, Robert Nee, and Quinn Taylor.

Members Absent: Susan Peskin (excused).

Others Present: Thaddeus Soulé (Town Planner).

Town Planner Thaddeus Soulé, the moderator of the meeting, introduced the virtual Public Hearing at 6:00 P.M. He then called the roll.

Chair Jeremy Callahan called the meeting to order.

Mr. Soulé 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. Public Hearings:

ZBA 20-43 (*request to postpone to the meeting of August 6th*)

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)**. *Peter Okun moved to postpone ZBA 20-43 to the Public Hearing of August 6, 2020 at 6:00 P.M., Steven Latasa-Nicks seconded and it was so voted, 6-0 by roll call.*

ZBA 20-53 (*request to postpone to the meeting of August 6th*)

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)**. *Peter Okun moved to postpone ZBA 20-53 to the Public Hearing of August 6, 2020 at 6:00 P.M., Steven Latasa-Nicks seconded and it was so voted, 6-0 by roll call.*

ZBA 20-56 (*request to postpone to the meeting of August 6th*)

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)**. *Peter*

Okun moved to postpone ZBA 20-56 to the Public Hearing of August 6, 2020 at 6:00 P.M., Steven Latasa-Nicks seconded and it was so voted, 6-0 by roll call.

ZBA 20-65 (request to postpone to the meeting of August 20th)

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 ZBA 20-65 to the Public Hearing of August 20, 2020 at 6:00 P.M. ***Peter Okun moved to approve the request to postpone ZBA 20-65 to the Public Hearing of August 20, 2020 at 6:00 P.M., Robert Nee seconded and it was so voted, 6-0 by roll call.***

ZBA 20-68 (continued from the meeting of June 18th)

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)**. Mr. Callahan said that several documents had been submitted to the Board by the applicant and that the Board had sought guidance from Town Counsel and the Select Board, however as of now has only received it from the former. He asked the Board if it would like to proceed with the information received from Town Counsel or continue until the Select Board had weighed in.

Presentation: Attorney Lester J. Murphy interjected that the operative instrument in this matter is the Declaration of Restrictions (DR). The Memorandum of Understanding (MOU) was drawn up to set forth a procedure to permit the lots on the Murchison property when it was subdivided. The DR was executed by Cliff Schorer and the Town and is the operative document, which provides that the Select Board with the ability to modify or amend its provisions. The applicant seeks a Variance to authorize the construction of a building closer to the front lot line than would be allowed pursuant to the Zoning By-Laws. Attorney Murphy argued that approaching the Select Board at this point in the process would be premature, as it has no ability to vary the Zoning By-Laws requirements. The building envelopes on the map shown in the DR conform to the zoning setback lines in the district. The Select Board cannot give permission for the applicant to build closer to the front lot line than what the Zoning By-Laws require. And it could not do that unless and until the ZBA granted a Variance to authorize that to happen. He said that it was for this reason that the ZBA was not a party to the MOU. It is the ZBA that decides, on a regulatory basis, whether something can be varied from what is otherwise authorized. He indicated that Town Counsel said that the ZBA had the authority to act in regard to the Variance request. Obviously, he stated, before the applicant could proceed further, he would have to go to the Select Board seeking to modify or amend that one part of the DR. However, the applicant cannot go before the Select Board asking for the modification or amendment until the ZBA has granted the Variance.

Board Discussion: Mr. Latasa-Nicks weighed in on the issue, suggesting that the granting of a Variance would conflict with the MOU and referred to the lot as 'unbuildable'. Attorney Murphy corrected him by stating that this lot is not an unbuildable one and that all lots proposed on the

Murchison property were buildable when the subdivision was being developed by Mr. Schorer. He added that the MOU and the DR were created to protect the viewshed of the Murchison house. As to the lot being discussed, it would be prohibitively expensive, thereby creating a financial hardship, and have a negative impact on the slope and the viewshed of the Murchison house to build according to the envelope that was shown in the DR. Mr. Lastasa-Nicks noted that the Board had not received a copy of the DR. Mr. Soulé said that he had provided it to Town Counsel and not to the Board. Attorney Murphy said that he had intended for it to be sent to the Board as well as Town Counsel.

Attorney Murphy provided some history of the process, including the proposed subdivision's initial referral to the Cape Cod Commission, as a Development of Regional Impact. It was ultimately referred back to the Town to proceed in accordance with the MOU, which set forth a pathway by which the subdivision process would proceed with input from various Town Boards, and their approval, before it would become finalized. What the MOU specifically envisioned was a subdivision plan and a set of restrictions that would be imposed on the property and enforceable by the Town that would become the operative instrument between it and the developer to ensure that it was complied with. He said that there were then meetings with the Historic District Commission, the Conservation Commission, the Planning Board and the Select Board, all of which resulted in the final endorsement of an Approval Not Required subdivision plan by the Planning Board and the execution of the DR with the Select Board. He said that the DR mirrors almost word for word most of the MOU, but, more importantly, also specifically confers upon the Town the ability to enforce the restrictions in it and sets up a mechanism to amend or modify those restrictions. It also states that the Select Board is the Board that has the authority to do this. There was more discussion with Mr. Lastasa-Nicks about whether the ZBA should grant a Variance first or whether the Select Board should be approached to modify the restrictions first. The rest of the Board weighed in on the discussion. Mr. Okun suggested that the matter be continued until the Select Board weighed in. The Board discussed Town Counsel's opinion and case citation. Attorney Murphy said that Town Counsel's citation described a situation that was not the same as that being discussed in this matter. Mr. Callahan suggested further clarification from Town Counsel as to her opinion and citation. The Board decided to continue the matter. Attorney Murphy requested that he be allowed to talk directly with Town Counsel. Mr. Soulé said he would facilitate that and distribute a copy of the DR to the Board. ***Steven Lastasa-Nicks moved that the Board instruct the Town Planner to speak with the acting Town Manager to contact Town Counsel to ask for further clarification on the matters discussed, to share the responses the Board had received from Attorney Murphy, to authorize direct conversation or communication between Town Counsel and Attorney Murphy and to continue ZBA 20-68 to the Public Hearing of August 6, 2020 at 6:00 P.M., Robert Nee seconded and it was so voted, 6-0 by roll call.***

ZBA 20-73

Application by **Ted Smith, Architect, LLC**, on behalf of **Michael Fullen**, requesting 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 an existing structure by adding new dormers and new porches with decks above up and along pre-existing, non-conforming front, side and rear elevations and to increase the building scale of a structure located at **3 Soper**

Street (Residential 2 Zone). Jeremy Callahan, Daniel Wagner, Peter Okun, Robert Nee, and Quinn Taylor sat on the case.

Presentation: Ted Smith was present to discuss the application. He said that the Board should be looking at elevation plans dated July 7, 2020. He reviewed the project and its status with the HDC. He said that the initial plans had encountered some disapproving comments from the HDC, so the matter was continued. He had revised the plans, which are those dated July 7, 2020, however they were not received by the HDC before its most recent meeting, so the matter was again continued. He anticipates that these revised plans, when reviewed by the HDC, will receive its approval, as the project has been scaled down and the suggestions of the HDC were taken into consideration in the redesign. He said that the Board was looking now at a scaled back version of the project's description, which showed much less than what was initially proposed. He reviewed a photograph that was submitted, showing the existing shed in relation to a window on an abutting property located at 76 Commercial Street. He indicated that this would be relevant when public comments are considered, as an abutter is claiming that their view of Soper Street is being obstructed. He said that the shed will not be moved but its height will be increased. He reviewed the site plan. Originally proposed were two dormers on the existing structure, one on the right and one on the left. This is no longer being proposed. The HDC instead requested a small one on the left and leaving the two doghouse dormers on the right as they currently exist. Also no longer proposed are a new porch and deck on the lower part of the Soper Street side of the structure, however the one above it to the right is remaining. He said that the applicant is looking to extend a pre-existing, non-conforming dimensions for a small dormer on the north side. A new porch reconfiguration is an extension of a pre-existing, non-conforming setback. He again reviewed the shed, which he characterized as an existing potting shed. He said that utility sheds are allowed in the district, however, the shed does not conform to the dimensions in the Zoning By-Law regarding sheds. The shed is higher than allowed, but it is pre-existing. He said the shed proposal includes raising the roof, in order that the applicant would be able to stand up in it but maintaining the same footprint. He briefly reviewed what the HDC objected to, given that the house was a 'floater' and had historic significance. Mr. Callahan asked if the project would have to return to the ZBA after approval by the HDC. Mr. Soulé noted that the increase in scale would be less because the plans have been scaled down. Mr. Callahan suggested the possibility of having the matter continued until the HDC has approved the project. Mr. Smith requested a consensus from the Board regarding the shed proposal. He finished his presentation, noting that the project now proposes only adding dormer on the north elevation and he would need a revised scale calculation given the change. Mr. Okun requested that Mr. Smith obtain updated scale calculations and then return to the Board.

Public Comment: Mr. Callahan continued this portion of the hearing until the requested document has been received.

Peter Okun moved to continue ZBA 20-73 until the Public Hearing of August 6, 2020 at 6:00 P.M., Robert Nee seconded and it was so voted, 5-0 by roll call.

ZBA 20-74

Application by **Jonah Swain**, on behalf of **Sean McConnell**, requesting a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and re-build a structure on a new foundation on the property located at **25 Watson's Court (Residential 3 Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, Robert Nee, and Quinn Taylor sat on the case.

Presentation: Jonah Swain and Ted Smith were both present to discuss the application. Mr. Swain reviewed the request. He indicated that the building had collapsed in on itself when the roof trusses were dismantled in the process of putting in cribbing to support the building before a new foundation was installed. The project now needs the approval of the Board for demolition and reconstruction.

Public Comment: None.

Robert Nee 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 had no comments for Mr. Swain and Mr. Smith.

Peter Okun moved to grant a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and re build a structure on a new foundation on the property located at 25 Watson's Court (Residential 3 Zone) with no conditions, Robert Nee seconded and it was so voted, 5-0 by roll call.

Jeremy Callahan will write the decision.

B. Work Session:

1) Pending Decisions:

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 tabled.

ZBA 20-70 (Steven)

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)**. This decision was not ready.

ZBA 20-71 (Thaddeus)

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)**. The decision was tabled.

2) Approval of minutes: July 2, 2020:

July 2, 2020: Peter Okun moved to approve the minutes as amended, Robert Nee seconded and it was so voted, 5-0 by roll call.

4) Any other business that may properly come before the Board: Mr. Soulé said that the Town has implemented its new online permitting system and briefly reviewed it. He will introduce the software at the next hearing

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

ADJOURNMENT: *Quinn Taylor moved to adjourn the meeting at 7:16 P.M. Robert Nee 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,