

PLANNING BOARD

Meeting Minutes

Thursday, May 28, 2020

6:00 P.M.

PB Members Present: Brandon Quesnell, Paul Graves, Ross Zachs, Jeff Mulliken, Monica Stubner, Paul Kelly and Steven Azar.

Members Absent: John Peters-Campbell (excused).

ZBA Members Present: Jeremy Callahan, Daniel Wagner, Susan Peskin, and Robert Nee.

ZBA Members Absent: Steven Latasa-Nicks, Peter Okun and Quinn Taylor (all excused).

Staff: Thaddeus Soulé (Town Planner), Anne Howard (Building Commissioner), and David Gardner (Assistant Town Manager).

Others: Attorney Amy Kwesell (Town Counsel).

Mr. Soulé introduced the virtual hearing, explaining the reason the Public Hearing was being held virtually, how the Board, the applicants and the public could participate remotely, and the meeting protocol. He then called the roll.

Chair Brandon Quesnell called the Planning Board Public Hearing to order at 6:01 P.M.

1. Joint Meeting with the ZBA: Consideration of proposed motions drafted by Town Counsel to temporarily delegate to staff certain zoning process relief pursuant to Town of Provincetown Board of Health Rule and Order for the protection of public health by facilitating the Town's social distancing compliance under the Governor's Re-Opening Plan for all duly licenses businesses in Provincetown: David Gardner reviewed the request and noted a staff report that was sent to the Board. He said that at an earlier meeting today, the BOH and the Select Board voted to adopt a joint Emergency Order Imposing Certain Measures to Prevent the Spread of Covid-19 Within the Town. He then presented a PowerPoint overview of the actions that were taken. The measures include regulatory relief for businesses in order to prevent the causes of illness to spread out of their establishments so as to achieve the Governor's social distancing directives. The BOH will work with the Administration and other regulatory boards to implement a streamlined process to obtain temporary regulatory relief from the Town's by-laws and regulations to achieve this goal. The list of zoning and licensing relief considerations are as follows:

- Seating area requirements;
- Outdoor display of merchandise;
- Prohibition of food trucks or outdoor dispensing of food at large hotels on the outskirts of Town;
- Limitations on temporary structures or temporary use restrictions;
- Dimensional schedule/setback requirements;
- Parking requirements allowing expansion into parking lots;
- Signage restrictions; and
- Tent, awnings and temporary coverings.

Mr. Gardner said that some of these areas of consideration for regulatory relief came out of the meetings of the business sub-group of the Town's Recovery Coalition and the intent to delay or excuse certain zoning by-law requirements. However, upon subsequent review, it was the opinion of Town Counsel that the Town did not have the authority to waive zoning requirements. The limitations include not exempting local zoning requirements, as these cannot be changed except for a zoning by-law and state-wide zoning relief can only come from the State Legislature. These also may be further influenced by the Governor's Directives and the Department of Public Health. The PB and the ZBA can make a finding to take actions to ensure businesses affected by the Joint Emergency Order may make temporary modifications to existing Special Permits in a timely manner.

Mr. Gardner reviewed the actions that can be taken by the ZBA and the PB to effectuate regulatory relief, such as:

- Establishing a process that would allow temporary modifications to existing SPs specifically to address the Town's goals of advancing the social distancing criteria and guidance required by the Governor;
- Tying the timeline modification directly to the Emergency Order;
- The Boards making a finding pursuant to the by-law, that temporary modifications of existing SPs for the purpose of complying with the Covid-19 guidance and "...does not represent a substantive change of the findings or conditions of the approval of the project";
- Approving an expedited permitting process allowing staff to approve modifications provided they comply with all guidelines; and
- Waiving fees for temporary modifications.

Mr. Gardner said that a caveat was that the Town does not know what additional parameters will be placed on businesses to comply with until the Governor speaks to the issue for Phase 2 of the state's reopening.

Temporary relief applies to the ZBA for:

- Temporary modifications to existing SPs under Article 2, Section 2460 of the Zoning By-Laws for restaurant, alcohol and entertainment (seating plans); and
- Outdoor display of merchandise pursuant to Article 3, Section 3420.

Temporary relief applies to the PB for:

- Temporary modifications to existing site plans under Article 4.

If businesses that do not have existing SPs or site plan review for these activities, they must obtain an SP or a site plan review through the normal processes. The Town is simply providing an expedited process for consideration of modifications for the purpose of allowing businesses to comply with COVID-19 guidelines.

The following are issues that may be considered as part of staff review of the temporary modifications:

- Temporary pick-up/loading zones;
- Relaxed signage relating to COVID-19 operations;
- Flexible seating plans/outdoor restaurant seating;
- Outdoor entertainment uses;
- Reduced parking requirements;

- Liquor for take-out and delivery;
- Expanded liquor service areas for restaurants (potentially bars);
- Outdoor display of merchandise;

These are given expanded explanations in the staff report.

The expedited permitting process includes:

- Applications for temporary modifications submitted to the Dept. of Community Development in the form of a site plan or seating plan as applicable;
- Review in consultation with the Health, Licensing, Building, Fire, Police, and Zoning Depts.; and
- Seating area plans may be, “conditionally approved based on seating area, final approval may be contingent upon an inspection confirming compliance with valid orders from the Commonwealth and Provincetown BOH regarding restaurants and social distancing”.

He said that staff will consider approved plans for seating areas will be accepted and require compliance and actual seating plans when further guidance has been issued by the Governor.

Attorney Kwesell commented, adding that in the zoning by-laws both the ZBA and PB have the opportunity to amend SPs and site plan review approvals at a public meeting with a note to the file and which contemplates staff input. This is a good way to get things moving and help out businesses.

Chair Quesnell asked ZBA Chair Jeremy Callahan if his Board had questions. No ZBA Board members had questions or comments on the presentation or the substance of the material.

Chair Quesnell asked PB members if they had comments or questions. Mr. Mulliken asked for a clarification of the proposed procedure. The Board briefly discussed the issue of reviewing applications for modifications. He asked about requiring site plans or seating plans to scale. Mr. Gardner explained that in order to expedite the process and not cost the business more expense, this requirement was deliberately left out of the process. He said that more important aspects are where the proposed seating area is located and whether it violates any Town regulations. Mr. Zachs had a question about whether applications for modification were required. Attorney Kwesell responded that since the request was only for a modification or an amendment because an application would infer that a public hearing would be required. The motion states that this is a temporary state of affairs, not a permanent situation. She reviewed what each of the PB and he ZBA would be reviewing. She noted that the scope of the amendment and the time of the amendment are both quite narrow. She said that minor modifications with notations to the file are allowed under the Town’s Zoning By-Laws. The notation to the file will refer to the plan submitted and it is valid only until the Emergency Order is lifted. Mr. Zachs asked for clarification as to whether a form would be required. Mr. Gardner said that restaurants will make the actual modifications on their seating plans that are filed with their SPs, as this will make future compliance checks easier.

Mr. Gardner asked Town Counsel about revising the motion to include indoor seating as well as outdoor seating, to which Attorney Kwesell agreed.

Mr. Kelly asked about what would be required of seating plans. Mr. Gardner replied that the SPs were already existing. Many could be old, he conceded, but he understands that the Town is willing to work with restaurants to modify their seating in order to operate. Staff will be using plans filed with both the ZBA and Licensing files and not require businesses to spend money to acquire new plans that would incur at substantial cost. Mr. Azar asked about the use of parking spaces in public right of ways for seating. Mr. Gardner said that it would require Select Board approval and a license agreement between the business and the Town. He said that the Town has considered sidewalks, but that is not a realistic scenario given its layout. He said that the seating has to be done on the business property or alternative plans would be considered on a case by case basis. He asked about the temporary structures being considered by the Historic District Commission. Anne Howard said she would bring up the topic at the next HDC meeting.

Chair Callahan requested that the proposed motion have a date certain, such as January 1, 2021, for expiration or expire at the end of the Emergency Order, whichever is earlier. The Zoning Board members voting on the motion were Jeremy Callahan, Daniel Wagner, Susan Peskin, and Robert Nee.

Pursuant to the Provincetown Zoning By-Law, Section 5350, Robert Nee moves to issue an amendment and minor modification to the valid Special Permit to allow for compliance with the Town of Provincetown Board of Health Rule and Order on Use of Outdoor Space for On-Premises Dining effective May 28, 2020 (The “Board of Health Rule and Order”) by allowing all restaurants in Provincetown to submit a revised seating plan to the Building Commissioner. Said amendment and minor modification shall be noted in the file and shall only be valid upon the earlier of the Board of Health Rule and Order terminating or January 1, 2021, Daniel Wagner seconded. It was so voted, 4-0 by roll call.

Pursuant to the Provincetown Zoning By-law, Section 5350, Robert Nee moves to issue an amendment and minor modification to the valid Special Permit to allow for compliance with the Commonwealth of Massachusetts Governor’s Order Prohibiting Gatherings of More Than 10 People (COVID-19 Order No. 13) by allowing any retail establishment with an existing Outdoor Display Special Permit to submit a revised outdoor display plan to the Building Commissioner. Said amendment and minor modification shall be noted in the file and shall only be valid while COVID-19 Order No. 13 is in effect and shall terminate at the earlier of the termination of the COVID-19 Order No. 13 or January 1, 2021. Susan Peskin seconded. It was so voted, 4-0 by roll call.

Chair Quesnell requested a similar amendment as the ZBA regarding an expiration date. He said members voting on the amendment would be Jeffrey Mulliken, Paul Graves, Ross Zachs, Monica Stubner and Brandon Quesnell.

Pursuant to the Provincetown Zoning By-Law Section 4040, Paul Graves moves to issue an amendment and minor modification to the valid Site Plan to allow for compliance with the Town of Provincetown Board of Health Rule and Order on Use of Outdoor Space for On-Premises Dining effective May 28, 2020 (The “Board of Health Rule and Order”) by allowing all restaurants in Provincetown to submit a revised seating plan to the Building

Commissioner. Said amendment and minor modification shall be noted in the file and shall only be valid while the Board of Health Rule and Order is in effect and shall terminate at the earlier of the termination of the Board of Health Rule and Order or January 1, 2021. Jeff Mulliken seconded. It was so voted, 5-0.

Robert Nee moved to adjourned the Joint Meeting at 6:57 P.M. Jeremy Callahan seconded and it was so voted, 5-0 by roll call.

2. **Public Comment**: Michaela Murphy requested a clarification on a previous motion. Would seating include on a Town beach and parking areas or parking areas. Chair Quesnell said that staff would be able to answer the question. She commented on the HDC question that was asked earlier. She said as a Commissioner that the HDC would like to make the process as easy as possible for businesses.

3. **Consent Agenda**: Approval without objection required for the following item: None.

4. **Public Hearings**:

PLN 20-34 (*postponed to the meeting of June 11th*)

Application by **Keith LeBlanc**, of **LeBlanc Jones Landscape Architects**, seeking a Site Plan Review pursuant to Article 2, Section 2320(A), **High Elevation Protection District (A)**, of the Zoning By-Laws for changes to parking, stairs, and walkways, and adding a wood deck, and installing a pre-fabricated swim spa, an outdoor shower, retaining walls, and native plantings on the property located at **14 Thistlemore Road (Residential 1 Zone)**.

5. **Work Session**:

a) Discussion with Ginny Binder regarding the Local Comprehensive Plan: Ms. Binder reviewed the status of the LCP update project. She said that the committee in charge of the project and its activities shut down on March 13 because of the Governor's COVID-19 Emergency Orders. However, despite the hiatus, the committee has been making progress. She noted the documents given to the Board for its review, including the Cape Cod Commission's LCP guidance document, its LCP regulations, and the vision and growth policy that they approved prior to being shut down. She said that the LCP's revision would be in a different format than the previous LCP, looking at things in a more graphic and simpler form. The document will be written through the lenses of housing, economic development, and climate change, with a goal of implementing a plan that will work for people and developing goals and objectives that are actionable. She said that the committee is looking to partner with the Board in exploring how the zoning by-laws can be amended to be of greater support to the plan itself and to look to make by-laws that are less ambiguous and more in keeping with the goals and objectives of the LCP. The committee started working on the document a couple of months ago, but had started to pull back because of the imminence of spring Town Meeting. She said that they were hoping to have a draft by fall Town Meeting, after having some engagement with stakeholders and public sessions, in addition to introducing by-laws that will support the LCP. The areas of by-laws that are most critical are regarding the environment, zoning and planning and to making sure that the view is long-term. She praised her committee. She hopes

that the committee will be able to create a living document that will be understood by all people. She said that the committee is using documents that go back to 2015 to create a simple plan that is easily understood.

Ms. Binder said that a number of land use issues are present in the CCC's outline, such as height and density. In addition, FEMA regulations have to be considered and supported in the local by-laws. She said that the committee will endeavor to remove any ambiguity in those areas and encourage property owners to lift their structures if they are in a flood zone and sooner rather than later. Many other Towns have explored how to incentivize this process and make it less onerous for property owners and she would like to collaborate with the Board to make that possible here. She said she was hoping to find ways to consolidate and streamline the permitting and review processes and help applicants avoid duplication of effort, including holding joint meetings of permitting Boards. And it would make sense, she said, during this coronavirus moment, to look more collaboratively and comprehensively at the issues that we face as a Town. One way would be to bring Boards together where projects cross jurisdictions. She said she would like to work with the Board to review the zoning by-laws in an effort to rid them of ambiguities and redundancies in order to support the vision of the committee.

Ms. Binder said she has people working on the inclusionary and the transportation sections of the Zoning By-Laws and added that she thought that this summer could be useful to study as an opportunity to find out what is possible. She hoped to come with Zoning By-Law revisions to the fall Town Meeting. She said that she would like to add to the proposed Zoning By-Law changes that had been proposed for spring Town Meeting before it was cancelled. She said the goal of the committee was to have the main sections of the revised LCP done by end of July or early August and come to the Board with recommendations. Chair Quesnell asked about the Shank Painter Road corridor. Ms. Binder said that Conwell Street, Harry Kemp Way and Shank Painter Road were being looked at in Zoning terms for creating more height and greater density latitude in order to create housing opportunities. Mr. Soulé requested that any questions be sent to the LCP committee. The Board briefly questioned Ms. Binder.

Mr. Quesnell said that the planning training held last week was pretty good. He said to email Mr. Soulé if any Board member would like a copy of the PowerPoint presented. He encouraged Board members to convey any questions to either himself or Mr. Soulé.

b) Pending Decisions: No decisions were approved at this meeting.

PLN 20-31

Application by **Don DiRocco**, of **Hammer Architects**, seeking a Site Plan Review pursuant to Article 2, Section 2320 (B), High Elevation Protection District (B), of the Zoning By-Laws to construct a screen porch on an existing second floor deck and reconstruct an existing set of stairs on the structure located at **5 Telegraph Road**.

PLN 20-35

Application by **Dave Krohn** seeking a Site Plan Review by Special Permit pursuant to Article 4, Section 4015, a. (1) and (5), Site Plan Review by Special Permit, and Article 4, Section 4180, Inclusionary and Incentive By-Law, of the Zoning By-Laws to construct five dwelling

units, two septic systems, gravel driveways, and retaining walls, re-align fencing, complete associated utility upgrades, add hardscape patios and other landscape improvements, resulting in the moving of more than 750 cu. yds. of earth, which will alter the topography from the natural grade on the properties located at **66 & 72 West Vine Street**.

PLN 20-36

Application by **Deborah Rossi, Patricia Ackad, & Jonathan Stevens** seeking a Site Plan Review pursuant to Article 2, Section 2320 (A), High Elevation Protection District (A), of the Zoning By-Laws to add a wrap-around deck and to remove a concrete ramp on the structure located at **19 Brewster Street**.

PLN 20-37

Application by **Melissa S. Schwartz & Linda M. Freundlich** seeking a Site Plan Review pursuant to Article 2, Section 2320 (B), High Elevation Protection District (B), of the Zoning By-Laws to construct a three-season addition and two decks on the structure located at **24 Berry Lane**.

PLN 20-39

Application by **James & Luanne McCullum** seeking a Site Plan Review pursuant to Article 2, Section 2320 (A), High Elevation Protection District (A), of the Zoning By-Laws to construct an enclosed screened-in porch over an existing deck and to add egress stairs on grade to the structure on the property located at **28 Berry Lane**.

PLN 20-40

Application by **Ted Smith, Architect, LLC**, on behalf of **Steven Lagana**, seeking a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, A1b, Two Family Dwelling, 1., One per lot, and Article 4, Section 4180, Inclusionary and Incentive By-Law, of the Zoning By-Laws to construct a new structure containing two dwelling units on a vacant lot located at **46.5 Harry Kemp Way**.

PLN 20-42

Application by **William N. Rogers, II, P.E., P.L.S.**, on behalf of **Adam S. Ackerman**, seeking a Site Plan Review pursuant to Article 2, Section 2320 (A), High Elevation Protection District (A), of the Zoning By-Laws to add a new entryway and a new covered porch and to convert an existing deck into a screened-in porch on the structure located at **2 Willow Drive**.

PLN 20-44

Application by **Robin B. Reid, Esq.**, on behalf of **Pensco Trust Company, Custodian**, seeking a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, B15, Marijuana Establishment, Industrial, of the Zoning By-Laws to establish a marijuana production facility on the property located at **220 Commercial Street, U2 (Town Center Commercial Zone)**.

c) **Minutes of April 23, August 27 and October 22, 2015, January 14, March 24, April 28, and June 9, 2016, and May 14, 2020**. No minutes were approved.

d) **Any other business that may properly come before the Board:** None.

There was a motion by Jeffrey Mulliken to adjourn the meeting at 7:25 P.M. Paul Graves seconded. VOTE: unanimous by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2020
Thaddeus Soulé, Town Planner,
on behalf of the Planning Board