

PLANNING BOARD
Meeting Minutes
Thursday, January 27, 2022
6:00 P.M.

PB Members Present: Paul Graves (online), Jeffrey Mulliken, Paul Kelly, Steven Azar (online), Marianne Clements (online), Donna Walker (online), and Mia Cliggott-Perlt (online).
Members Absent: Brandon Quesnell (excused).
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 not present, he said that the meeting would be suspended or terminated 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 February 10th*)
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 February 10th*)
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 21-26 (*request to continue to the meeting of February 10th*)
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**. There was a request from the applicant to continue PLN 21-26 to the meeting of February 10, 2022 at 6:00 P.M. ***There was a motion by***

Donna Walker to continue PLN 21-26 to the Public Hearing of February 10, 2022 at 6:00 P.M. Marianne Clements seconded. VOTE: 7-0-0.

PLN 21-32 *(continued to the meeting of February 10th)*

Application by **Christopher J. Snow, Esq.**, on behalf of **Tri-T, LLC**, seeking a Special Permit pursuant to Article 4, Section 4180, Inclusionary and Incentive By-Law, for a development that will result in a net increase of two or more dwelling units on the property located at **22 Nelson Avenue**.

PLN 21-33 *(continued to the meeting of February 10th)*

Application by **Christopher J. Snow, Esq.**, on behalf of **Tri-T, LLC**, seeking Site Plan Review by Special Permit pursuant to Article 4, Section 4015, Site Plan Review by Special Permit, a. (1 & (5), of the Zoning By-Laws for a development that will result in an increase of residential units of three or more and will result in new construction or any excavation, land removal, or earth-moving of more than 750 cu. yds. That will alter the topography from natural grade on the property located at **22 Nelson Avenue**.

PLN 21-34 *(postponed from the meeting of January 13th)*

Application by **Robin B. Reid, Esq.**, on behalf of **Howard Burchman**, seeking Site Plan Review by Special Permit pursuant to Article 4, Section 4015, Site Plan Review by Special Permit, a. (1), of the Zoning By-Laws for renovations that will result in an increase of residential units to three or more resulting from the conversion of a guesthouse to three dwelling units on the property located at **12 Center Street**. Paul Graves recused himself because of a conflict of interest. Jeffrey Mulliken, Paul Kelly, Marianne Clements, and Mia Cliggott-Perlt sat on the case.

Presentation: Attorney Robin B. Reid, Howard Burchman, and Ted Smith were in the room to present the application. Attorney Reid requested that Acting Chair Marianne Clements poll the Board before a vote is taken given that only 4 members of the Board were seated. The request was granted. Attorney Reid said the project involves the conversion of a guesthouse on the site to 3 dwelling units with 9 bedrooms. This building will become 2 dwelling units, one with 4 bedrooms and one with 3 bedrooms. The rear dwelling unit will have 2 bedrooms. She reviewed the illustrative site plan. She said the applicant was adding 1 dwelling unit for a total of 3 units. She added that the project has received the approval of the Historic District Commission and the Zoning Board of Appeals.

Mr. Smith reviewed the proposed renovations. He said the main building will have 2 units, one facing the street and the other facing the rear of the structure. The footprint of the building is being modified slightly by adding a rectangular bay on one side of the structure and a small portion of the structure on the opposite side will be extended. The rear structure on the property is currently a small, single guestroom. The structure will be expanded on the north elevation and become a 2-bedroom unit. He said that all exterior lighting fixtures, including walkway lighting will be downward facing and dark sky compliant.

Attorney Reid stated that the property was a 5,878 sq. ft. lot and is a developed and disturbed site. She said that the property is accessed via an easement over the driveway of the south abutter's property. The existing foot and vehicular access will remain the same, except that the

parking lot layout will be modified to reduce the number of parking spaces to provide for a total of 6 vehicles, which is 2 per dwelling unit. There will be no changes to the existing water and sewer services, except there will be a reduction in the number of bedrooms by 1, from 10 to 9 bedrooms.

There is a retaining wall along the entirety of the western lot line and along a portion of the rear yard of the abutters at 14 Center Street. There is a 6' fence on top of the retaining wall that runs from the existing northwest corner of the rear structure into the rear yard of the abutters at 14 Center Street. The retaining wall holds the 12 Center Street rear yard out of a parking area and shared driveway, which serves land-locked and Bradford Street-fronting properties to the west of 12 Center Street. She said it was not entirely clear that Mr. Burchman is the sole owner of the portion of the retaining wall abutting his property. However, he alone has made repairs to, and maintained, the wall, including that portion abutting 14 Center Street since he purchased his property. In 2019 and 2020, he spent more than \$25,000 to install a steel wale beam, which is tied into concrete deadmen buried between the wall and the patio on the 12 Center Street side. The wale beam extends along the 14 Center Street portion of the retaining wall. The work was permitted and supervised by Felco Engineering and subsequently inspected by the Department of Community Development. Mr. Burchman will hire an engineer to assess the wall again before the commencement of the project. He will take all steps necessary to prevent any hazards during or after construction. She noted that the ZBA conditioned its approval on Mr. Burchman assuming responsibility for the integrity of the retaining wall.

Attorney Reid said the project was consistent with the goals of the Local Comprehensive Plan, Chapters 1, Land Use, and Chapter 4, Historic Preservation. The project will integrate the front and back of the principal structure, bringing them, from an historic point of view, into architectural unity. The rear structure will not increase in height and the flat roof will remain. She said the existing, mature landscaping is appropriate to the site and will remain. No trees will be removed. She pointed out where the trees were located on the landscaping plan and said that they meet the requirements for street trees. No excavation nor filling of the site will take place and no alteration of the site topography will be undertaken. She said cut sheets for the dark sky compliant exterior light fixtures were submitted. No new utility services will be needed, and she pointed out on the site plan where the HVAC systems will be located, between the two structures. The parking area will be graveled. Lot coverage remains well below the minimum of 60%, at 41.3%. The green space remains above the required 10%, at 29.7%. There will be no increase in density because of this project, and, in fact, there will be a reduction in the bedroom count on the property and will lead to a reduction in the demand for Town water and sewer use and solid waste. Drainage, runoff, and stormwater will continue to be handled onsite. A significant amount of the site will remain comprised of permeable or semi-permeable surfaces. She said it is anticipated that traffic to and from the site will decrease, given the change in use from a guesthouse to private residences. A trash enclosure will be located behind a hedge on the east/street side of the property. A bike rack will be installed on the property between the two buildings. The project will place no additional burden on Town safety services or the Town's administration. The project will have no impact on solar access of the neighbors to the north. The rear portion of the principal structure will increase slightly in height, less than 3'. As the building at 14 Center Street is located so close to the lot line, within

its side yard setback, this slight increase in the height will have no impact on the neighbors at that address. The proposed height of the principal structure is in conformity with the Zoning By-Laws pursuant to its height and proposed scale. The property to the south is also located within its side yard setback and the 4' extension along the south property line will not have a negative impact on the abutting structure any more than currently exists. A letter in support of this project was submitted by this immediate abutting neighbor to the ZBA. To the west, the rear structure is not increasing in height. The extension of the rear structure, along the west property line will have no impact on the neighbors to the west, given the drop in elevation at the retaining wall. The project was revised from proposing a two-story rear structure to proposing a one-story structure because of the volume of opposition from the western neighbors at the HDC and the ZBA meetings. The applicant will maintain the large trees on the site.

She noted that Mr. Burchman was not requesting any waivers from Article 4 of the Zoning By-Laws. She argued that pursuant to Article 5, Section 5330, the social, economic, and other benefits of the project outweigh any adverse effects. The renovations of both the principal and the rear structures are well-integrated into the site and its surroundings. The project maintains and secures the character and appearance of both structures. The historical integrity of the principal structure will be rehabilitated. The project will improve the Town's residential housing stock, will increase the property value and increase the Town's tax base. She argued that there will be no adverse effects and the intensity of use, and the number of bedrooms will be reduced. There will be no negative health or safety consequences. The project will have no negative impacts on the light or air to abutters and no impact on the natural environment. There will be a reduction in the use of Town services.

Public Comment: Attorney Christopher J. Snow, representing an abutter, spoke in opposition to the project, requesting a drainage report given the addition to the rear structure and an engineering report for the retaining wall. William Krinsky, an abutter, spoke in opposition to the project. Jim Schreyer, Attorney Snow's client, spoke in opposition to the project. Attorney Reid responded to the public comments. Mr. Burchman is planning on retaining the services of an engineer to assess the stability of the wall and to maintain its integrity during the construction process. This was a condition of the ZBA Special Permit. She added that no one who commented on the project has contributed to the maintenance of the retaining wall.

Board Discussion: The Board briefly questioned Attorney Reid. She read from an 4/24/18 engineering report regarding the retaining wall, which stated that no collapse was imminent and there was no potential for catastrophic failure. The report went on to opine that the wall, with its movement and its existing cracks, may have reached a state of equilibrium with its surroundings over the years it has been there. The report then recommends some quick fixes and recommends a permanent solution involving the installation of a timber or steel wale beam across the exposed side of the wall, about two-thirds up. This beam would receive threaded rod tiebacks anchored into concrete or timber deadmen buried on the property side between the patio and the hot tubs. The assembly would be dug in, tightened up and then buried. In addition to this all cracks could be grouted. The report was written by Felco Engineering.

Mr. Kelly suggested that the applicant submit a foundation plan developed by an engineer. Mr. Smith said that the foundation for the cottage has not been designed yet. Mr. Kelly said the project should not be approved without the foundation design. Mr. Smith said the footprint of

the cottage would not change and pilings may be used for the foundation structure, cantilevering the cottage. Mr. Mullikan recommended a condition that an engineer re-inspect the wall and generate a new report on its condition and affirm that the wall is suitable for the new proposed construction, including that the installation of a new foundation for the cottage could take place safely. He requested a plan that shows how the runoff from the roof of the renovated cottage will be handled. Ms. Clements polled the Board. All members were inclined to approve the project.

There was a motion by Jeffrey Mulliken to grant a Special Permit pursuant to Article 4, Section 4015, Site Plan Review by Special Permit, a. (1), of the Zoning By-Laws for renovations that will result in an increase of residential units to three or more resulting from the conversion of a guesthouse to three dwelling units on the property located at 12 Center Street, PLN 21-34, with the conditions that the applicant retain an engineer to assess the retaining wall before construction commences to determine whether it is sufficient for the project, and, if not, what needs to be done to make it so, and that a drainage plan be submitted indicating that all roof runoff will be contained and infiltrated on the site. Paul Kelly seconded. VOTE: 4-0-0.

3. Work Session:

a) **Request to extend PLN 19-21/16 Jerome Smith Road Police Station:** Mr. Soulé briefly reviewed the history of the project. After it was rejected by voters at a 2019 Town Meeting, it has been revived by the Provincetown Police Station Building Committee. This Committee is submitting another article for placement on the 2022 Spring Town Meeting agenda. As part of this process, the Board would need to grant an extension for the Planning Board permit that was previously approved in FY2019. He said that the ZBA has already extended its Special Permits for the project. This is a request by the Town to extend the Board's approval of its previous site plan and Special Permit for the Police Station. Mr. Mulliken said that both he and Mr. Kelly were members of the Building Committee. There was no objection to both Board members voting on this issue despite their being on the Committee. Ms. Walker asked a question about what work has been done on the Committee. Mr. Mulliken answered the question about whether the building design had been changed. He said that some plant materials have changed. Funding in the form of a grant or a loan from the Department of Agriculture is being sought and the talks are on-going. He said that Board members will be hearing a lot about the Police Station before Town Meeting. ***There was a motion by Jeffrey Mulliken to extend PLN 19-21 for the 16 Jerome Smith Road Police Station. Marianne Clements seconded. VOTE: 7-0-0.***

b) **Draft Zoning By-Law Amendment discussion:** Mr. Soulé said that these discussions would continue for this meeting and the next. Once the draft articles are delivered to the Select Board, they will become part of the warrant. After the articles have been petitioned, they will come back to the Planning Board, which will then have a Public Hearing in March at which time the Board will vote to recommend or not recommend or take no action on each of the articles. The articles will then be placed on the Town Meeting warrant. Mr. Graves asked for questions or concerns. Mr. Soulé briefly identified the amendments and the intent behind some of the revisions. He asked for recommendations on clarifying the language of the explanations for each article. Mr. Mulliken asked about inviting individuals to the Board's Work Sessions to

discuss the amendments. Mr. Soulé said that any recommended changes should be submitted to him before the February 10th Public Hearing.

c) **Pending Decision:**

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**. There were no changes to the decision.

d) **Minutes of December 9 and 23, 2021 and January 13, 2022:**

December 9, 2021: *There was a motion by Donna Walker to approve the language as written. Jeffrey Mulliken seconded. VOTE: 6-0-1 (Marianne Clements abstaining).*

December 23, 2021: *There was a motion by Jeffrey Mulliken to approve the language as written. Paul Kelly seconded. VOTE: 6-0-1 (Mia Cliggott-Perlt abstaining).*

January 13, 2022: Mr. Mulliken had revisions that he will provide at the next meeting.

e) **Any other business that may properly come before the Board:** Paul Kelly asked who reviews the conditions of approved site plans before Certificates of Occupancy are issued. Mr. Soulé said that he goes out to sites to review whether conditions have been met. Mr. Kelly asked what happens if plants die before the period of survival that is conditioned by the Board. Mr. Soulé said that the applicant of that approval would have to restore those plantings. He added that the Board can condition that any plantings survive for 3 years or ask for a bond, as was done at 350 Bradford Street, to be returned upon completion of, and compliance with, the conditions of the approval. Mr. Mulliken asked about imposing a bond on a property. Mr. Soulé said he had language around that issue, which he will bring to the next meeting.

Mr. Mulliken asked the best way to resume the practice of receiving full-sized printed plans for projects. Mr. Soulé said that he should contact Ellen Battaglini, the Permit Coordinator, and make a formal written request.

Mr. Mulliken encouraged Board members to contact him or Paul Kelly about the Police Station and there are hybrid meetings every other Wednesday that are open to the public. He said a website is being produced, as well as Facebook posts regarding the project.

There was a motion by Marianne Clements to adjourn the meeting at 7:50 P.M. Paul Kelly seconded. VOTE: Unanimous by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2022
Paul Graves, Chair