

# PLANNING BOARD

## Meeting Minutes

Thursday, February 10, 2022

6:00 P.M.

**PB Members Present:** Paul Graves, Brandon Quesnell, Jeffrey Mulliken, Donna Walker (online), and Mia Cliggott-Perlt.

**Members Absent:** Paul Kelly (excused), Steven Azar (excused), and Marianne Clements (excused).

**Staff:** David Gardner (Assistant Town Manager) and 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 if there were 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** (*request to continue to the meeting of February 24<sup>th</sup>*)

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** (*request to continue to the meeting of February 24<sup>th</sup>*)

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**. There was a request from the applicant to continue PLN 21-14 and PLN 21-15 to the meeting of February 24, 2022 at 6:00 P.M. ***There was a motion by Brandon Quesnell to grant the request to continue PLN 21-14 and PLN 21-15 to the Public Hearing of February 24, 2022 at 6:00 P.M. Jeffrey Mulliken seconded. VOTE: 5-0-0 by roll call.***

**PLN 21-26** (*request to continue to the meeting of February 24<sup>th</sup>*)

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 24, 2022 at 6:00 P.M. ***There was a motion by Brandon Quesnell to grant the request to continue PLN 21-26 to the Public Hearing of February 24, 2022 at 6:00 P.M. Mia Cliggott-Perlt seconded. VOTE: 5-0-0 by roll call.***

**PLN 21-32** (*request to continue to the meeting of March 10<sup>th</sup>*)

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** (*request to continue to the meeting of March 10<sup>th</sup>*)

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**. There was a request from the applicant to continue PLN 21-32 and PLN 21-33 to the meeting of March 10, 2022 at 6:00 P.M. ***There was a motion by Brandon Quesnell to grant the request to continue PLN 21-32 and PLN 21-33 to the Public Hearing of March 10, 2022 at 6:00 P.M. Jeffrey Mulliken seconded. VOTE: 5-0-0 by roll call.***

**PLN 22-1**

Application by **Ted Smith**, on behalf of **John R. Lamb et vir.**, requesting Site Plan Review pursuant to Article 2, Section 2320 (B), High Elevation Protection District (B), of the Zoning By-Laws to reconfigure entry steps, an entry vestibule, and a stair from a west facing deck down to grade, to add a covered porch in front of the modified entry vestibule on the east elevation and an outdoor shower, and to enlarge two dormers on the property located at **9 Telegraph Hill Road**. Paul Graves, Brandon Quesnell, Jeffrey Mulliken, Mia Cliggott-Perlt, and Donna Walker sat on the case.

**Presentation:** Ted Smith, and the property owners, John Lamb and David Geiger, were on the line to present the application. Mr. Smith said that the proposal was minor, and the scope of work involves reconfiguring the entry steps and an entry vestibule, the construction of a covered porch, a reconfiguring a stair from a west facing deck down to grade, the installation of an outdoor shower, and the enlargement of two dormers. He reviewed the architectural drawings, commenting that the entryway on the structure will be reconfigured, and a stair that currently runs east/west will be modified to run north/south. He said that the green area will be increased slightly, but still be within the requirements of the zoning district. He reviewed the architectural plans. The reconfiguration of the vestibule is for convenience of access to the structure, as the existing front door is difficult to find if you do not know where it is located. A new screened-in porch is proposed in the front of the structure. He said that a landscaping plan had been submitted and that Mr. Lamb was an avid horticulturalist. All new plantings will be

native species. The drainage on the property will be increased slightly, as only a small amount of additional roof coverage is being proposed. The additional porch roof coverage will run off into landscaping beds. In addition, dormers on the west and east side of the structure will be increased and all exterior fixtures will be dark sky compliant.

**Public Comment:** There were 6 letters in support of the application. There was no other public comment.

**Board Discussion:** The Board briefly questioned Mr. Smith. He clarified that the foundation for the edge of the stairs would be a small concrete pad and will not disturb any existing vegetation or the adjacent hill. The drain for a proposed outdoor shower, which backs up to an interior shower, will tap into the interior plumbing that exits in a crawl space. The sense of the Board was that the proposal would have minimal impact in the high elevation district.

***There was a motion by Brandon Quesnell to approve the site plan pursuant to Article 2, Section 2320 (B), High Elevation Protection District (B), of the Zoning By-Laws to reconfigure entry steps, an entry vestibule, and a stair from a west facing deck down to grade, to add a covered porch in front of the modified entry vestibule on the east elevation and an outdoor shower, and to enlarge two dormers on the property located at 9 Telegraph Hill Road. Jeffrey Mulliken seconded. VOTE: 5-0-0 by roll call.***

### **3. Work Session:**

a) **Appointment of Dana Masterpolo:** Ms. Masterpolo, who is an architect, briefly introduced herself, explained why she is seeking to join the Board, and spoke of her relevant credentials. ***There was a motion by Donna Walker to appoint Dana Masterpolo to an alternate seat on the Board. Brandon Quesnell seconded. VOTE: 5-0-0 by roll call.***

b) **Draft Zoning By-Law Amendment discussion:** Mr. Gardner stated that the warrant will close on Friday, March 4<sup>th</sup>. The first draft of the warrant will be presented to the Select Board on Monday. He does not have initial comments on Zoning articles from Town Counsel yet, but he is expecting that to come shortly. He referred to the new draft of the proposed Zoning By-Laws that were submitted to the Board. He noted that there were three articles being proposed by the Town's housing committees. These articles were developed in joint work sessions that were held with two housing boards and the Select Board. They are sponsored by the Select Board, the Housing Council, and the Year-Round Trust. The Board can add its name to the articles as a sponsor if it is supportive. The first is an amendment to the Inclusionary By-Law is to increase the in-lieu fee. The fee is currently based upon the number of units being proposed. He noted the proposed changes that were highlighted in red. For two to three new dwelling units, the number is being revised from 33% to 67%. For four to five units, it is being revised from 50% to 100%. For six to nine units, it is being revised from 67% to 200%. And for ten or more, it being revised to 300%. He pointed out a chart showing what this proposed change would be in regard to the in-lieu fees paid based upon the number of units that are subject to the fee. He reviewed the chart and noted that the amendment would lead to a significant increase in fees. The Board commented on the amendments. Mr. Quesnell encouraged the Board to endorse the changes. He said that the intent behind the Inclusionary By-Law was to create bedrooms and he thinks this would encourage that as opposed to developers opting out of that option by paying the in-lieu fees instead. Ms. Walker asked about a linkage fee and the creation of dwelling units. Mr. Gardner said that Massachusetts doesn't

use linkage fee, which can be applied for anything, as much as other states. They are usually used in conjunction with new developments to mitigate their impact on a particular infrastructure. It is common to apply impact fees for housing, such as a new commercial development, to help pay for affordable housing. Those fees pay for sewer, roads, etc. He said one option is that one could apply an impact fee on market-rate housing in order to fund affordable housing. He thought that a linkage, or impact, fee would be redundant, as the Town already has an in-lieu fee. Ms. Walker suggested that the Board could discuss the idea as a by-law later and it could be assessed in addition to the in-lieu fee. Mr. Gardner commented that the Town does not get a lot of new developments, or large developments, so an impact fee has not been discussed frequently. Mr. Mulliken was in support of the amendment. He asked what the total amount of the in-lieu fees has been since the Inclusionary By-Law was approved. Mr. Gardner said he thought it was about \$140,000 collected to date, with about \$450,000 in the pipeline for pending projects. Mr. Mulliken questioned Mr. Gardner about what has been generated up to this point in terms of money versus dwelling units. He asked about how the increase in percentages compared to other communities. Mr. Quesnell said that our community was not like others and Mr. Gardner added that a comparison would not be informative.

Mr. Gardner commented on the next article that targets the incentive section of the By-Law and speaks to the ability of a project to increase the building height or the number of allowable stories of a structure. He said the language was being simplified and allows a project that provides 20% or more of affordable dwelling units to add a full third story while maintaining the character of a two-and-a-half story structure. And if the project is located in the GC zone, a structure could be four stories while maintaining the character of a three-and-a-half story structure. Mr. Mulliken asked about fire-fighting capacity for a four-story structure. Mr. Gardner said that the Fire Dept. had that capacity. Mr. Quesnell asked if the Res B zone should also be considered, such as the Harry Kemp Way area. Mr. Gardner said that this idea may bring more opposition because it is more of a residential zone, unlike the GC zone. Mr. Mulliken said that as a resident of the Harry Kemp Way area, he thought there would be opposition to taller structures. Ms. Cliggott-Perlt agreed with the latter comment.

Mr. Gardner reviewed the next amendment regarding accessory dwelling units. He said that ADUs are currently deed-restricted for year-round occupancy. The idea of the amendment was to allow for both seasonal and year-round occupancy, but to restrict short-term rentals, which are, by definition, restricted to 31 days or more. That wasn't long enough for the Town's purposes, so it was decided to increase that to 90 days. He said the Select Board has requested that it be restricted further and that it be limited to seasonal workers, which he thought was problematic in terms of zoning, but he expected Town Counsel to weigh in on that issue. The proposal now is to allow for any occupancy of more than 90 days, as opposed to year-round rental occupancy. He said this may be incentive to create more ADUs, as not a lot have so far been created. He stated the reasons why he thought this was the case included that the majority of the Town was multi-family zoned already and an ADU was not an attractive option in those instances, that the deed-restriction was too onerous, that the cost of, or lack of land for, upgrading a septic system for existing single-family residences might be too prohibitive, or that the owners of single-family residences would prefer not to have another person living on their property. He said that some business owners have artist studios or garages that they could be incentivized to convert for employee housing. Mr. Quesnell commented on the amendment

saying that residents looking for affordable housing may push back when more housing for seasonal workers is created. He asked how the Town monitors ADUs, making sure they are not being used for more workers than is allowed. Mr. Gardner said there is a system of rental certificates in place that could prevent that situation. Otherwise, either abutters or occupants of that unit would complain to the Town. He asked if some of the incentives in the Inclusionary By-Law could be given to incentivize the creation of ADUs. Mr. Gardner said that there were existing incentives already for ADUs, such as parking, priority right to connect to the Town's sewer system, and the fact that it is permitted by right. He said that all internal restrictions, except the deed-restriction, have been removed. Another proposed change was created a couple of years ago with Town Counsel that rounded the affordable units up to the next whole number. A developer cannot create a fraction of a unit. Mr. Gardner said there is a rental exemption for developers to provide year-round rental units. They wouldn't have to pay an in-lieu fee or provide an affordable unit, as this is a Town priority. However, as a deed restriction, if at any time in the future, a year-round rental unit is converted to a condominium, an in-lieu fee would need to be paid at that time. Otherwise, the in-lieu fee is due at the time that a Certificate of Occupancy or there is a sale. That activity can be tracked with the Town's online permitting system.

Mr. Gardner commented on the incentive portion of the By-Law that deals with allowable density and the density bonus. He said if a project meets or exceeds the percentage of affordable required, it can take advantage of incentives. The density bonus allows a project to drop below the 16.67%. He said this created an inconsistency. He spoke of the project at 50 Nelson Avenue, proposing 9 units and 1 affordable unit, which equals 11%. The affordability requirement is being met, at 16.67% according to the existing By-Law, but not solely by the creation of new dwelling units, as the developer is paying an in-lieu fee as well. The Board can continue to interpret the By-Law in that way, or it can say that density bonuses can apply, but they can never apply to the extent that the development drops below the 16.67%. If this development at 50 Nelson Avenue were to provide 2 affordable dwelling units, it would meet the 16.67% affordability requirement. That is much higher than 16.67% and may be difficult financially for a developer to comply with. He asked the Board to weigh in on this scenario, with the affordability requirement not being met specifically with new dwelling units created, then the "Of which a minimum of 10% of the total dwelling units (after the density bonus is applied)..." language can remain. However, this would allow projects with lower densities to take advantage of the incentives and in contradiction to a statement in the By-Law that says that all projects that meet the 16.67% affordability requirement can take advantage of the incentives. As it exists and as it has been applied, the Board has allowed projects below the 16.67% requirement to take advantage of the incentives. It is an inconsistency that the Board needs to decide on how to proceed. One option is to remove the requirement that 16.67% be maintained by units created. The Board discussed the issue and left the recommendation as is.

Mr. Gardner said that the old By-Law states that any lot or dimensional regulation can be an incentive has been amended to add setbacks, lot coverage and green area. The reason for this is because just stating that "any lot or dimensional regulations" could be modified or waived was too broad. Building height, building stories, and density are all covered in different sections and are regulated based upon the incentive that the By-Law provides. But to be able to waive

those, as is stated in the By-Law, means that those other sections are useless and that there is a Select Board regulation that affordable housing can waive permit fees.

The Community Housing Council plays a role in Article 6 by providing affordable housing permits to any projects that provide a deed-restricted affordable dwelling unit. In this section, the CHC would make a recommendation regarding the affordability of units and send it to the Board and then the Board has the ability to reject it and make its own recommendation, which would mean that there could be two separate recommendations that do not agree, creating a discrepancy. What is being proposed is that the Board recommend how many deed-restricted affordable units are appropriate and have the CHC determine the affordability level and recommend it then to the Board. That information would get incorporated into the Special Permit. The Board discussed the issue. Mr. Gardner said that if there is anything in the dimensional schedule that the Board would like to waive, that is not covered in another section of the By-Law, it should be articulated. This allows the developer to be aware of what the process is and there is no debate about what is covered. The Board reviewed the dimensional schedule and discussed the recommendation.

Gloria McPherson, a former Provincetown Town Planner, who spearheaded the development of the original By-Law made comments about the amendments. She agreed with the increase in in-lieu fees and said that the 16.67% was based upon a recommendation of Town Counsel at the time the By-Law was being created. She recommended that the percentage be increased to 20% and the incentive percentage should be at 25%, such as with the requirements of a 40B project. She suggested offering performance standards for specific zones in order to provide certainty. She suggested leaving lot area and frontage, with added parameters, for developer bonuses. For example, the lot cannot be less than 25% of the minimum lot area for each zone and having the frontage be something like 12' or 15'. Her recommendations include going up to 20% from 16.67% for the inclusionary section of the By-Law, creating a section for the renovation or expansion of commercial spaces and the housing of seasonal workers, including charging an in-lieu fee if no housing is created. This would make the By-Law applicable in the instance that only 1 dwelling unit is created which would increase the multi-dwelling units to 3 or more and tie the in-lieu fee to the cost of an entire unit rather than the affordability gap or increase the percentage of the affordability gap to be paid, which is what is being done. As to incentives, she suggested allowing seasonal units to be built for commercial projects or allow a payment in-lieu for a dedicated seasonal housing fund. As to the density bonus, she suggested just incentivizing a flat density bonus for each zone, such as 2.5, identify an area, not necessarily a particular zone, in Town to maximize the incentive bonuses to create overlay zones. The Board discussed the ideas and what to include in this round of amendments. The Board decided to add parameters of 12' for frontage and a minimum of 25% of the lot coverage for each zone.

Mr. Gardner said that the multiple buildings per lot has been removed, as it is an unnecessary restriction, and the change will support smaller scale buildings that are more in keeping with the Town's historical character while meeting the housing goals of increased density in the multi-family zones.

Mr. Gardner next reviewed the changes to the Growth Management By-Law. The minimum affordability requirement was 33% before the Inclusionary By-Law was created in order to gain priority access through Growth Management. It is now 11%. Inclusionary projects are in Category 2 and market-rate housing is Category 3. A higher priority, a lower number, means that the project's path to realization is easier. He said that Category 2 is going to capture the bulk of inclusionary projects, however if developers are only paying an in-lieu fee, they will be in Category 3. He said that 84% of all growth ideally should be from Category 2, but the existing gallons allocated to Category 2 is probably not going to last much longer. An amendment needs to be made to allocate gallons. The CHC makes recommendations as to how gallons get distributed to each Category. Now Category 1, affordable housing, has 30,000 gallons allocated to it and that growth is stuck in a category that won't be fully utilized. The proposal is to combine Categories 1 and 2 in terms of allocations. The CHC will look annually at demand and the Town's existing inventory and will make recommendations to the Select Board, which holds an annual Growth Management meeting in March. The Select Board will have the annual ability to look and assess how well the existing Category of inclusionary and affordable projects is meeting demand. If it isn't meeting demand, the Select Board has the ability to move the gallons around so it does. The By-Law gives the Select Board the flexibility to change as the inclusionary and affordable projects change to meet demand. Now that is not possible without a Town Meeting vote. Language that is no longer relevant has been removed.

Mr. Gardner addressed the parking requirement amendment He said that the Town is proposing to expand the exemption in the TCC zone, which now only applies to commercial uses, to apply to all uses. For example, if you want to create a dwelling unit above a commercial shop on Commercial Street, it will not require a parking space. Parking spaces are not available in the TCC zone and a Special Permit from the ZBA to allow a waiver is never denied. It will be easier, cheaper, and save time just to allow a residential unit not to have to provide parking in the TCC zone. And any land that may be available for parking should be left as green space in the TCC zone to mitigate the density of development. The second proposal is to incentivize the creation of dormitories, hotels, and inns by removing the requirement to provide parking for employees, the number of which would not be known at the time of a development. This is a difficult requirement for a project to know or anticipate in such an early phase of development.

Mr. Gardner asked if the Board would like to see its name as a supporter of the articles discussed. It was the sense of the Board that it would. He also recommended that the Board start the amendment process earlier in the year and possibly create a sub-committee to work on By-Law changes or to hold work sessions in the summer and fall. The Board briefly discussed the issue. Mr. Quesnell mentioned the idea of creating first-floor retail spaces with upper floors residential in the GC zone. Mr. Gardner suggested the Board require a commercial component in a mixed-use development to prevent only residential units being developed in that zone in order to maintain a sense of community. The Board briefly discussed the issue.

c) **Pending Decision:**

**PLN 21-34**

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**. The decision will be reviewed by Mr. Soulé after questions were raised by Mr. Mulliken.

c) **Minutes of January 13 and 27, 2022:**

**January 13, 2022:** There was a request from Mr. Mulliken for a revision to the minutes. Mr. Soulé will revise and bring back to the Board at the next meeting.

**January 27, 2022:** The minutes were not approved.

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

*There was a motion by Brandon Quesnell to adjourn the meeting at 8:50 P.M. Mia Cliggott-Perlt seconded. VOTE: Unanimous by roll call.*

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2022  
Paul Graves, Chair