

PLANNING BOARD

Meeting Minutes

Thursday, February 24, 2022

6:00 P.M.

PB Members Present: Paul Graves (online) (left at 6:12 P.M), Brandon Quesnell, Jeffrey Mulliken, Paul Kelly, Donna Walker (online), Marianne Clements (online), and Dana Masterpolo (online).

Members Absent: Steven Azar (excused) and Mia Cliggott-Perlt (excused).

Staff: David Gardner (Assistant Town Manager) and Thaddeus Soulé (Town Planner).

Acting Chair Brandon Quesnell 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 *(continued from 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 from 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**. Paul Graves, Brandon Quesnell, Paul Kelly, Jeffrey Mulliken, and Donna Walker sat on the case. Mr. Quesnell informed the Board and the public that these two applications have been open since June of 2021, thus he will not consider or recognize any public comment, or any Board member statements that do not pertain to the information that was specifically provided to the applicant at the Board's previous meeting. This information includes:

- Providing a detail of both the stone and a Cape Cod berm, clearly demarcating where they will be located on the plan by using a different line type and add labels to make clear where each starts and stops;
- Delineating stairs that are going to have handrails on the plan, on the profile or the detail or create a line type and clearly label that or use a legend;
- Delineating the patios as being located 7” or 8” below the units. The units have finished floor areas on them, so add a finished floor label for the elevation of the patio as designed;
- Providing top and bottom grades for all retaining walls, relative to their sizes and areas, or use spot shots to better label the engineering of those walls;
- Providing a representative cross-section for the patios and walls;
- Providing elevations for the stairs and where they are going into patios area from sidewalk areas and what the proposed finish would be. Several still seem to end in grass. Show any additional pavers or gravel if that is what will be used. Provide information/labels identifying materials for stairs on the plan;
- Adding dimensions to the planting beds;
- Providing a detailed cross section of the entrance driveway where the property is 20’ wide and 2’ of berm is shown, as well as 2’ of blueberry bushes. Identify the travel width from the top of the side Cape Cod berms. Use labels and provide dimensions.
- Adding rise and run of stairs on the plans;
- Confirming that all of the retaining walls are timber and no walls will be taller than 4’;
- Accurately show where the grades will be at the face of the buildings with more clarity on the elevation plans, and perhaps there could be a dimension with that as well;
- Labelling the contour lines with elevations for the areas between the buildings; and
- Identifying the planting areas that are going to be just grass or loam and labelling vegetation as such.

He asked if that information had been provided by the applicant.

Presentation: Attorney Lester J. Murphy, Lyn Plummer, Kevin Bazarian, Jack Landers Cauley, Steve Cook were online to discuss the application. Gordon Peabody was present in the room. Attorney Murphy said that the information had been provided, both electronically and in hard copy form. He said he had also provided a request for a waiver from the width of 18’ as a minimum for the entry driveway. He said that the application request now was for a 9-unit complex, 1 of which will be deed-restricted affordable and 3 of which will be payments in lieu.

Public Comment: None.

Board Discussion: Mr. Soulé said that the waiver will be included in the final decision. *There was a motion by Jeffrey Milliken to approve the site plan pursuant to Article 2, Section 2320, High Elevation Protection District (A), of the Zoning By-Laws to construct 9 new residential units 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 9 new residential units; 1 of which will be located on the site and deed-restricted as affordable, and 3 for which the Town will receive a payment in lieu on the property located at 50 Nelson Avenue with the following conditions: lighting on the property shall be dark sky compliant, all plantings on the property shall be native species and drought-tolerant, all stormwater runoff from proposed impervious surfaces shall be fully contained and infiltrated on the site, during construction all*

stormwater runoff shall be trapped on the site, and all exposed or disturbed areas shall be permanently stabilized within 6 months of the end of all work, electrical utilities and other necessary metering and wiring to accommodate the future installation of electrical vehicle charging stations shall be installed within the garages of each unit, and at least 2 exterior parking spaces shall be installed in front of units 1 and 2, all utilities will be underground, owners and tenants in the affordable units and market rate units shall have the same rights and privileges to access and use any of the development's amenities and facilities, evidence that a Regulatory Agreement has been executed and recorded at the Barnstable County Registry of Deeds shall be submitted to the Department of Community Development prior to any units in the development receive a Certificate of Occupancy, a payment in lieu of \$46,207 (3 new dwelling units) times (16.67%) times (4279,988 affordability gap for FY2021) times (33%) shall be paid at and upon the sale or prior to the issuance of a Certificate of Occupancy, whichever occurs sooner, the developer shall enter into a binding written agreement with the Town of Provincetown before the issuance of the first building Permit and with appropriate payment surety arrangements, to provide the required payment(s) to the Housing Fund and with a notice of the required payments to be recorded against the property before any Certificate of Occupancy is issued if full payment has not been made at the time an application is filed for a Certificate of Occupancy, the last Certificate of Occupancy to be issued shall be for a market rate unit and shall not be issued unless or until the affordable unit is occupied, and a copy of the as-built plan shall be submitted to the Department of Community Development after work is complete for final site inspection prior to the issuance of the final Certificate of Occupancy and the applicant will be granted a waiver from the required 18' width of the traveled way. Paul Kelly seconded. VOTE: 5-0-0.

PLN 21-26 *(request to continue to the meeting of March 24th)*

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 March 24, 2022 at 6:00 P.M. *There was a motion by Jeffrey Mulliken to grant the request to continue PLN 21-26 to the Public Hearing of March 24, 2022 at 6:00 P.M. Paul Kelly seconded. VOTE: 6-0-0 by roll call.*

PLN 21-32 *(continued to the meeting of March 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 March 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**. Mr. Quesnell asked the Board if it would

like to do a site visit and answer neighbors' questions. The Board was in favor of scheduling a site visit. Mr. Soulé recommended that the site visit occur before a regularly scheduled Board meeting. Mr. Quesnell suggested 4:00 P.M. on March 10, 2022.

PLN 22-2

Application by **Paul Muldoon**, on behalf of **TMW Properties, LLC Prov Series**, seeking a Site Plan Review by Special Permit pursuant to Article 4, Section 4015 a., (5), Site Plan Review by Special Permit, of the Zoning By-Laws to excavate, remove land, or earth move more than 750 cu. yds. that will alter the topography from natural grade to remove and reconfigure an existing retaining wall and stair structure abutting a recessed parking area on the property located at **28 Bradford Street**. Brandon Quesnell, Paul Kelly, Jeffrey Mulliken, Donna Walker, and Marianne Clements sat on the case.

Presentation: Paul Muldoon was on the line to present the application. He said that the project is based on the existing retaining walls on the property. He reviewed photographs showing the location of the concrete masonry retaining wall that wraps around a parking area in the front of the property. He said that parts of the walls and the stairway up to the rest of the site show signs of failure, including falling bricks, vertical cracking, and spalling. The wall is about 6' at its highest point and looms over a walking path directly adjacent to Bradford Street.

He reviewed a site plan and said the project goals are to reduce the looming aspects of the wall and make the area a safer and more enjoyable location on the property line. This can be done by reducing the height of the wall by introducing a tiered system where the first wall will be approximately 3'6", with a planting bed in between this tier and the next retaining wall height. This reduces the massing appearance of the wall to a more human scale and by creating a planting bed on the lower tier and re-creating the fence line and more plantings on the higher levels, the area will be safer and more pleasing. Another goal is to increase the parking capability at the site. In its current form, it barely fits one car, and a truck must park diagonally, so moving the wall back a few feet, and tiering it so as not to create such a looming form, would produce space for at least 2 cars. The stairs will be moved back as well. He said the planting plan was simple and some hydrangea plants will be uprooted, moved temporarily, and then replanted, with more to be added on the right-hand side. The lower tier will be planted with a mixture of native and herbaceous species with some dogwoods. There is a post lamp at the top of the existing stairs, which will be relocated farther back towards the top of the stairs.

Public Comment: None. There were no letters in the file.

Board Discussion: Mr. Soulé reviewed his staff report, which included the facts that the Historic District Commission had issued a Certificate of Appropriateness for the project and the Zoning Board of Appeals had issued a Special Permit for the project. Mr. Mulliken complimented Mr. Muldoon on the completeness and clarity of his application and asked about 3 existing trees on the east side of the site and if they will remain. Mr. Muldoon replied that the goal was to retain as many of the existing trees as possible. He said they may not be able to save all the trees, but they will try. There is quite a bit of earth-moving that is needed on the site and there are 2 trees that may have to be removed. Ms. Clements said that the plan was well done and that she was concerned about the removal of the 2 trees that may have to occur and whether the applicant could plant replacements if removal was necessary. Mr. Muldoon agreed to plant new trees to replace any that are permanently removed. Mr. Kelly complimented the plans and the presentation. Ms. Walker agreed with the previous comments

and asked about potential buckling of the wall with the installation of a tiered system. Mr. Muldoon responded that the segmented wall system has a shallow 12” crushed stone base foundation. Geosynthetic fabric will be stretched back into the soil, engaging it, thereby helping to support the upper tier. Just using an oversized footing would entail encroaching into the public way at the site and a massive amount of concrete would be needed in the back. Ms. Masterpolo thought the project was an elegant solution, making the experience better at the pedestrian level. Mr. Quesnell asked for a cut sheet for the exterior light fixture. He asked if the applicant had a plan to install infrastructure for an electrical vehicle charging station, given this was a parking area. Mr. Muldoon said that was most likely not a part of the project.

There was a motion by Jeffrey Mulliken that the Special Permit be granted pursuant to Article 4, Section 4015 a., (5), Site Plan Review by Special Permit, of the Zoning By-Laws to excavate, remove land, or move a volume of earth of more than 750 cu. yds. that will alter the topography from natural grade to remove and reconfigure an existing retaining wall and stair structure abutting a recessed parking area on the property located at 28 Bradford Street with the conditions that any trees that are compromised or removed shall be replaced within the site and if the exterior light fixture is to be replaced that a manufacturer’s specification sheet shall be provided to Town staff for approval. Paul Kelly seconded. VOTE: 5-0-0.

3. Work Session:

a) **Draft Zoning By-Law Amendment discussion:** Mr. Quesnell requested unanimous consent from the Board that the amendment regarding building height within a FEMA flood zones, located on page 5 of the Zoning By-Law amendments, would not be discussed tonight, as it was only received about an hour before the start of the meeting. He wants to give Board members the opportunity and time to review the amendment before it was discussed. He added that the Select Board still had concerns about it. He mentioned a rules and regulation change for the Board that it does not consider any draft Zoning By-Law amendment six months before the close of the warrant. This is so last-minute amendments that are not given enough time to be vetted by the Board and the public do not get placed on the Town Meeting warrant. He would like staff to generate language to that effect and place it on a future agenda. Mr. Gardner commented on the proposed change in the rules and regulations, saying that six months was a long period of time. Generally, Town-sponsored Zoning By-Law amendments have been submitted to the Board in January for an April Town Meeting. He said the By-Law amendment in question is not being given to the Board to sponsor, but that there was a suggestion that the Select Board would instead sponsor it and because of the timing, he wanted to make sure the Board had the opportunity to see it. The Board’s Public Hearing notice will have to be posted by next Wednesday, so this is the last opportunity for the Board to amend the language on any Planning Board-sponsored zoning articles. It is included with the other amendments so the Board knows that it will be discussed on Monday at the Select Board’s meeting. He said the Board did not have to discuss it, as it would not be sponsored by the Board if inserted into the warrant. It would be sponsored by a public petition or another Town Board. This article has not been reviewed by the Select Board, so it is not clear that it will be included after Monday night. So, the Board will be finalizing the language of its sponsored amendments tonight and the Select Board will do what it will do on Monday night. Then the Board’s Public Hearing will be posted. Between Tuesday and Friday, there will still be time for another petitioned zoning article to come forward. That’s why the language in the By-Law references any potential

petitioned articles because you don't even have to see them before 11:30 A.M. on Friday, when the warrant closes. And that is already past the deadline for the Board's Public Notice. The Town is not trying to get anything through the Board that it hasn't had time to review, but it wanted to have the Board at least see it in case it got onto the warrant. He said that the Board's statutory requirements are to review all Zoning By-Laws and make recommendations to Town Meeting, whether those By-Laws come from the Board or from another Town Board or from a citizen's petition. Mr. Gardner said that if the Board was in support of the Housing Committee articles, it could vote to co-sponsor them, but it is not required that the it do so.

Mr. Quesnell asked for Board questions about the housing committee article dealing with the increase in the payment in lieu fee for the Inclusionary By-Law.

There was a motion by Brandon Quesnell that the Board co-sponsor with the Housing Committee the Zoning By-Law Amendment: Inclusionary In-Lieu Fee Amendment. Marianne Clements seconded. VOTE: 6-0-0.

There was a brief discussion of the Zoning By-Law Amendment, Inclusionary and Incentive Zoning By-Law, Incentives for Development including increasing the building height to 4 stories in the General Commercial Zone.

There was a motion by Jeffrey Mulliken to co-sponsor with the Housing Committee of the Zoning By-Law Amendment: Inclusionary and Incentive Zoning By-Law, Incentives for Development including increasing the building height to 4 stories in the General Commercial Zone. Paul Kelly seconded. VOTE: 6-0-0.

Mr. Gardner explained that the Accessory Dwelling Units proposed amendment language was struck, as Town Counsel opined that limiting the residential units to seasonal workers would likely not be approved by the Attorney General or could be subject to challenge as being contrary to the uniformity requirement (M.G.L. c. 40A, s. 4). The article will be withdrawn from the warrant. As ADUs are still allowed as of right. Mr. Quesnell said that he would like to reach out to, and educate, those property owners who have the capacity to add ADUs on their property.

Planning Board Articles:

Mr. Gardner said that the Board's requested language was added about clarifying this amendment. It currently refers to any lot dimension being waived, which was changed to specifying exactly which dimensional requirements can be waived and some options were added. Ms. Masterpolo commented that having the blanket approach, as previously worded, was too general, allowing developers too much of an opportunity to ask for too much, so the idea was to narrow the options down, but to leave enough specificity and flexibility for the Board to be able to negotiate and the proposed items now specified in the language allow it enough flexibility to do so. The Board had no further changes. Mr. Gardner explained that the table on page 9 showed how one could take advantage of the incentives and still provide less than the 16.67% affordability requirement.

The Growth Management By-Law had no changes and is predominantly a housekeeping amendment. Mr. Gardner explained that it provides the Housing Council more input in terms

of how the gallons that have been reserved for affordable and inclusionary housing get utilized and it provides the Select Board more flexibility in making its annual allocations.

Mr. Gardner said that the parking requirements amendment was a pro-housing article. Within the Town Center Commercial zone, right now, any commercial use does not have a parking requirement. Those uses are exempt, but the residential uses do have a parking requirement. There is very little room for the inclusion of more parking spaces in the TCC zone. If a dwelling unit were added in the TCC, a parking space would have to be provided. If one had a commercial space and wanted to convert a second-floor storage area to a residential unit, a parking space would have to be provided. That could not be done, so one would have to go to the Zoning Board of Appeals to obtain a waiver from the parking requirements. If the Town doesn't want parking spaces on Commercial Street, the Select Board would never approve a curb cut for a driveway on Commercial Street, so it should not expect the ZBA or this Board to be demanding parking spaces for the addition of an in-filled residential unit. He said it didn't make sense to have that requirement if the Town doesn't want parking spaces in the TCC zone. With this amendment, the Town is removing a regulatory obstacle for someone proposing to develop an in-filled residential unit in the TCC zone. Even though the ZBA has never not approved a waiver request, the amount of time and money that needs to be spent going through the ZBA process is a waste. After that process a developer would be required to go to the Select Board for a curb cut. This does not make sense if the Town wants to encourage the development of housing in the TCC zone. This does not mean that a developer could not propose a parking space, just that it shouldn't be required by Town regulations. The Board briefly discussed the issue.

Mr. Quesnell noted his idea of inserting language for electrical vehicle charging stations. Mr. Soulé commented on and explained the language. The Board briefly discussed the idea. Mr. Mulliken recommended installing fast chargers as opposed to slow chargers, which is what is located at the Municipal Parking Lot. Mr. Soulé said he has been working with the Recycling and Renewable Energy Committee and the Parking Director to install fast charging stations within the Town's public parking lots.

Mr. Quesnell also mentioned his idea about developing commercial spaces on first floors of structures with residential spaces on upper floors in the General Commercial zone and suggested that By-Law discussions be placed on all future Board agendas, no matter how lengthy those discussions may or may not be.

Mr. Quesnell said he had a concern about the parking spaces at 30 Shank Painter Road. He said it was never the intention of the Board to allow the developer to sell the extra parking spaces that were allowed at the site. He said that in the future if developers ask for extra parking spaces, the Board will have to be vigilant in making sure that those spaces are not then sold. He wants to discuss the issue further. Mr. Soulé clarified that the spaces in question will not be sold. Anne Howard, the Building Commissioner, clarified that the 3 parking spaces in question were sold to owners of residential units on the site. She said the Certificate of Occupancy will tie those spaces as appurtenant to those units. Mr. Gardner said that specific language in the conditions of an approval by the Board needs to be written to prevent the sale of parking spaces to individuals not owning units in a development and to prevent any unit owner from

selling a parking space. Developers must be informed that they will be required to come back to a regulatory board for approvals to sell a parking space that is tied to the property. Mr. Soulé will work on language for a condition related to this issue.

b) **Pending Decisions:**

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 has been revised.

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**. There were no revisions to the decision.

c) **Minutes of January 13 and 27 and February 10, 2022:**

January 13, 2022: *There was a motion by Jeffrey Mulliken to approve the language as amended. Paul Kelly seconded. VOTE: 5-0-1 (Dana Masterpolo abstaining).*

January 27, 2022: *There was a motion by Donna Walker to approve the language as amended. Marianne Clements seconded. VOTE: 5-0-1 (Dana Masterpolo abstaining).*

February 10, 2022: *There was a motion by Jeffrey Mulliken to approve the language as written. Donna Walker seconded. VOTE: 6-0-0.*

d) **Any other business that may properly come before the Board:** Mr. Mulliken recalled that when the Board approved the marijuana dispensary on the corner of Standish Street and Commercial Street that the entrance was proposed to be located on Standish Street. He said that now the main entrance was located on Commercial Street. M. Quesnell agreed and had other concerns, stating that in regard to the shop on the far west side on Commercial Street, there was a Board condition that it would not sell marijuana paraphernalia, but that it would remain a t-shirt shop. He would like clarification on that recollection. He said he also thought, according to state law, a dispensary was not supposed to advertise the contents of the store in windows. He said there were neon lights that show through the window illuminating products for sale in the dispensary. Mr. Soulé said he would be in touch with the Zoning Enforcement Officer to investigate that. Mr. Mulliken requested that Mr. Soulé send him an email with the address of the dispensary.

Mr. Quesnell requested that Board members stop by Town Hall to sign a document that is sent to the Barnstable County Registry of Deeds and the Barnstable County and the Massachusetts Land Courts. The documents, in addition to identifying current Board members and their signatures, will officially delegate the signing of site plans and ANRs for the Planning Board to Mr. Soulé. The documents will be brought to the next meeting as well.

There was a motion by Jeffrey Mulliken to adjourn the meeting at 7:43 P.M. Paul Kelly seconded. VOTE: Unanimous by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2022
Paul Graves, Chair