

PLANNING BOARD

Meeting Minutes

Thursday, April 28, 2022

6:00 P.M.

PB Members Present: Brandon Quesnell, Jeffrey Mulliken, Paul Kelly, Mia Cliggott-Perlt (online), Marianne Clements (joined online at 6:10 P.M.), Donna Walker (online), and Stephen Roope.

Members Absent: Paul Graves (excused), and Dana Masterpolo (excused).

Staff: Thaddeus Soulé (Town Planner).

Vice Chair Brandon Quesnell called the meeting to order at 6:02 P.M.

Mr. Soulé called the roll and 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.

1. **Public Comment:** Louise Venden, as a citizen, thanked the Board for its ongoing commitment to striking a balance between what we have as Town-meeting approved housing goals and ways of implementing and increasing the numbers of housing units and the interests of property owners. She said it's not an easy thing to do. She thanked the Board for its work.

Mr. Quesnell said that public comments would be limited to 3 minutes.

Rob Anderson, as an individual and a property owner, thanked the Board for its work, but he had a concern regarding the delay and the starting and stopping of some applications. He said from a public point of view it was frustrating. He said it could be misused by both sides and suggested the Board review its policy regarding the issue.

2. **Public Hearings:**

PLN 22-10

Application by **Robert B. Greene**, on behalf of the **Robert B. Greene Realty Trust**, seeking Site Plan Review pursuant to Article 2, Section 2320(A), High Elevation Protection District (A), of the Zoning By-Laws to extend a deck by 3' on the property located at **172 Bradford Street, U3**. Brandon Quesnell recused himself because of a conflict of interest. Jeffrey Mulliken, Paul Kelly, Mia Cliggott-Perlt, Donna Walker, and Stephen Roope sat on the case.

Presentation: Bob Greene was on the phone to present the application. He said that he was seeking to add 3' to an existing deck that sits about 1.5' off the ground on the front of the structure on the property. Mr. Greene briefly reviewed the photographs and plans that had been submitted.

Public Comment: Rob Anderson pointed out some inconsistencies in what the plans showed and what Mr. Greene was describing in terms of how high off the ground the existing deck is. Mr. Anderson said that the existing deck was closer to 2' off the ground and was pointing that out for clarity's sake.

Board Discussion: The Board had no questions for the applicant. Mr. Soulé noted that he had created a report for the Board consisting of potential General Findings and decision criteria.

There was a motion by Paul Kelly to approve the Site Plan pursuant to Article 2, Section 2320(A), High Elevation Protection District (A), of the Zoning By-Laws to extend a deck by 3' on the property located at 172 Bradford Street, U3. Stephen Roope seconded. VOTE: 5-0-0.

PLN 21-26 (*request to continue to the meeting of May 12th*)

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 to continue PLN 21-26 to the Public Hearing of May 12, 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 May 12, 2022 at 6:00 P.M. Marianne Clements seconded. VOTE: 6-0-1 (Stephen Roope abstaining).***

PLN 21-32 (*continued from the meeting of April 14th*)

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 from the meeting of April 14th*)

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 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 has proposed to the Board and the Town Planner that a site visit be scheduled. He will be entertaining dates for that visit.

Presentation: Attorney Christopher J. Snow, representing the applicant, Tom Tannariello, the principal of the applicant LLC, Gordon Peabody, an environmental scientist, appeared to present the application, and Jack Landers-Cauley, an engineer, was online. Attorney Snow said that the applicant was seeking one waiver, the density as it pertains to the number of separate buildings that are being proposed for the site. That number, as of right, is five and the applicant is proposing seven. Of the seven, two units will be dedicated to affordable housing. He said that the Fire Chief has signed off on the safety of the project. He said that in term of drainage and parking, all water will be contained on the site. The finished development will be less contributing to water runoff in the neighborhood than the existing two vacant parcels. He argued that the drainage issues that many neighbors have been concerned about are not caused by these properties but is the direct proximate result of other properties not containing the water runoff on their properties. He said it is not the applicant's burden to solve this problem and this project will not contribute to that pre-existing neighborhood issue. He addressed the

issue of traffic and parking, another concern of the many in the neighborhood. He said the minimum amount of parking for a project as proposed is twelve and what is being offered is fifteen spaces. He suggested that other properties in the neighborhood offer parking consistent with the Zoning By-Laws on their individual parcels. If this were done, there most likely would not be an issue with parking. He conceded that there will be additional traffic in the neighborhood, as there will be for the development at 50 Nelson Ave. In terms of parking on the street, the neighborhood has been a free-for-all and many of the neighbors have a laissez faire attitude towards parking. He said it wasn't the responsibility of the applicant to solve this neighborhood problem either, except to contain the parking for this development on the property as required. He suggested, as with the other major issues raised by the neighborhood, that it be solved at the level of a neighborhood association.

Attorney Snow addressed some of the particulars of the project and said that he knew the applicant needed to give more detail of the development, saying that the two units, 1 and 2, closest to Nelson Avenue, would be affordable as indicated on the site plan. There are some changes proposed to the planting plan, which Mr. Peabody will address. He anticipates that the Board will ask for material related to lot coverage, walkways, landings, and stairways. The approvals that have been given to the project so far, including the Conservation Commission issuance of an Order of Conditions, the Community Housing Council regarding the propriety and suitability of the proposed affordable units, and an ANR endorsed by the Board to combine the two lots. He added that the Commonwealth of Massachusetts Fisheries & Wildlife Division had to re-review the property to find out if any changes had been made since a previous approval by the Conservation Commission. The agency has no concerns regarding the project. Attorney Snow said that applicant was open to a site visit.

Mr. Peabody reviewed the planting plan. The site was previously a campground. He referred to a photograph of the site, which is covered in crown-heavy monarch pine trees. Some small oaks are also present and will keep coming up, as a successor tree to the pines. He has proposed a higher diversity of vegetation for the site. He said that the project has had to be reviewed by the Commonwealth of Massachusetts Natural Heritage and Endangered Species Program, which conducts a thorough, detailed, and professional site review of the vegetation and species habitat. The Program has approved both parcels. The Conservation Commission's by-law has no performance standards for this site and can thus attach any kind of conditions it sees fit. However, this project received unanimous approval. He said that the project proposed the planting of nearly 100 trees, including bear oak trees, which provide mass and shelter to animals, and are grown by Mr. Peabody's organization, Safe Harbor Environmental. He is hoping to plant closer to 150 trees. In terms of erosion control, there will be no discharge going off-site. There is pure sand beneath the surface of the land that will absorb water quickly. This geological feature, which is not present anywhere else on Cape Cod, lends itself to a good drainage environment with excellent percolation.

Mr. Landers-Cauley said that there are some changes, additions, and added details that need to be discussed. He said that the big issue is drainage. He reviewed the drainage plan, which shows that each building will have its own drainage collection system. Under each patio area, there is a leaching basin, for a total of seven basins, below it to contain the surface water runoff. In addition, there will be a catch basin and three leaching pits installed for the

additional impervious areas, such as the bituminous entryway pavement and the native crushed stone parking areas. He said that he believed that this plan is adequate to abet most storm activity. He said the details mentioned earlier as having yet to be submitted consist of the walkways and what material, such as porous pavers or bituminous concrete or cement concrete will be utilized. Whether the landings will have handrails will also be identified. These are elements that are not needed for Conservation Commission or Division of Fisheries and Wildlife review. They are details to be completed after those approvals. He said he knows from a previous development on Nelson Avenue, that the Board is looking for the turning radii entering onto the property, the minimum width of the roadway, which will be 20', and to delineate and note that on the site plan. These details will be added, and these details do not change the nature of the project, such as the number of units and buildings, and drainage characteristics. He asked about staking the property, including the corners of the buildings and the perimeter of the site before the site visit. Mr. Quesnell said that the corners of the building should be done at a minimum and the location of the roadway and any other significant impacts to the site should be staked to indicate how the site will be accessed and used and where elements of the project will be located. The property boundaries should also be staked.

Mr. Tannariello added that his intention is to use pervious surfaces for the walkway and the driveway, etc.

Public Comment: Michael Gaucher, Dick Silva, Bill Furdon, Jerry Conlin, Irene Briga, Jacqueline Fung, Jacoba DeJager, Mary Beth Petrie, Levi Johnson, Laurence Young, Sally O'Connell, Rob Anderson, Julie DeVita, Laruton Agababian, and Rob Anderson, all abutters, spoke in opposition to the project. Attorney Robin Reid, on behalf of Michael Gaucher, spoke in opposition to the project. Gregory Gundling, an abutter, spoke in support of the project. There were 28 letters of concern or in opposition and 2 letters in support of the application.

Board Discussion: The Board questioned Attorney Snow, Mr. Peabody, and Mr. Landers-Cauley and commented on the project. Attorney Snow reiterated that the wildlife issue, which is of concern to many neighbors, has been scrutinized by the Commonwealth of Massachusetts Division of Fisheries and Wildlife, as well as the Conservation Commission. He addressed the drainage issue on Nelson Avenue and reiterated that this project will not contribute any runoff to the neighborhood, as all runoff will be contained on site and his client is not, and will not be, responsible for any drainage issues in the remaining Nelson Avenue area.

Mr. Kelly asked that the applicant consider changes to the site plan to improve the project. He noted that the building closest to the three structures on the western boundary are the most impacted. The stand-alone Unit #5 is one of his main irritations regarding the site plan. It is isolated and is the closest to the duplexes on the western boundary. He speculated that if that building was gone, the space could be used for three additional parking spaces or other uses, such as for trash enclosures or bicycle racks. He noted that it wouldn't be impossible to change the layout of that side of the driveway if Unit 5 were to be re-situated. He also said that Unit 5 could be removed from the development. As the plans are only design/development drawings and not construction documents, there is still time to revise the site plan. He was concerned about the clear-cutting of trees on the site and suggested re-examining the proposed trees to be removed, especially the older ones.

Mr. Mulliken stated that in his opinion, the proposed project, in terms of density and size, overly burdens the neighborhood. He is concerned about traffic, especially during the construction phase, and noted that there are no sidewalks on the site plan. He would not be inclined to vote for 12 units on the site. He is willing to work with the applicant to revise the project, including saving more trees and decreasing the density. He noted that the plans are missing a lot of information, such as the grading between the structures and the lot lines and how they integrate, and the building elevations do not show the grades accurately.

Ms. Cliggott-Perlt agreed with the previous Board member comments.

Ms. Clements said that she reserves her comments and questions until after the site visit.

Ms. Walker agreed with the previous Board member comments. She had a question about the Conservation referencing the local wetlands protection by-law and the Natural Heritage and Endangered Species Program reports. She said the report did not address her concerns about the kinds of species on the site and the migration patterns. She would like to see an expanded report and questioned whether there was a local by-law that would allow for that. She is also concerned about the proposed density of the site and wondered if there will be room to revise that number and the configuration of the structures.

Mr. Roope had no comments beyond what has already been mentioned.

Mr. Quesnell said that a lot of questions could be answered if a Development Impact Statement, pursuant to Article 5, Section 5331 of the Zoning By-Laws were to be submitted, including a traffic report given the neighbors' comments concerning that issue. It would also give the Board options. He would ask staff to investigate the parking situation, including a review by the Parking Dept. and the possibility of designating permitted parking spaces on Nelson Avenue. He would like the Dept. of Public Works to weigh in on whether there were issues going on at the site. He agreed that the project was large. He said that 3-D elevations would be helpful. Mr. Soulé commented that there will be additional questions from the Board after the site visit, as well as public comment on any new information or changes presented, and he hoped the applicant would address the issues raised by the public comments in written form so it could be integrated into the Board's decision. Mr. Quesnell suggested that the applicant explain what could be done on the site in the Residential 3 Zone by right and if no affordable housing units were proposed.

Attorney Snow commented on the wildlife issue again and said he didn't know what additional information regarding it could be presented. The Conservation Commission has reviewed the project, as has the relevant Commonwealth of Massachusetts agency. He asked the Board what its expectation was in this regard. Mr. Quesnell said that the impact of the project on the environment was part of the Development Impact Statement. Ms. Walker reiterated her concerns and would like to see all the reports concerning the issue and Mr. Soulé requested that Attorney Snow address the issue in writing. Attorney Snow said that he would provide the Order of Conditions from the Conservation Commission and two reports from the Division of Fisheries and Wildlife. Mr. Mulliken said that the Board was charged with assimilating a lot of information about projects and cited Article 4, s. 4005 and 4035 and Article 5, s. 5331. He

asked that the applicant defend the proposal and how it meets the general criteria in these sections of the Zoning By-Laws.

The Board discussed scheduling a site visit with the applicant's team. The agreed date and time are Tuesday, May 17th at 4:00 P.M. Attorney Snow requested a continuance to the Public Hearing of June 23, 2022 at 6:00 P.M. ***There was a motion by Jeffrey Mulliken to grant the request to continue PLN 21-32 and PLN 21-33 to the Public Hearing of June 23, 2022 at 6:00 P.M. Donna Walker seconded. VOTE: 7-0-0 by roll call.***

PLN 22-8 (*request to postpone to the meeting of May 12th*)
Application by **Dave Krohn**, on behalf of **DTODD, LLC**, seeking Site Plan Review pursuant to Article 4, Section 4010, Administrative Site Plan Review, of the Zoning By-Laws to relocate 3 parking spaces on the property located at **66 West Vine Street**. ***There was a motion by Jeffrey Mulliken to postpone PLN 22-8 to the Public Hearing of May 12, 2022 at 6:00 P.M. Paul Kelly seconded. VOTE: 7-0-0 by roll call.***

PLN 22-9 (*request to postpone to the meeting of May 12th*)
Application by **Dave Krohn**, on behalf of **DTODD, LLC**, seeking Site Plan Review pursuant to Article 4, Section 4010, Administrative Site Plan Review, of the Zoning By-Laws to modify parking on the property located at **72 West Vine Street**. ***There was a motion by Jeffrey Mulliken to postpone PLN 22-9 to the Public Hearing of May 12, 2022 at 6:00 P.M. Marianne Clements seconded. VOTE: 7-0-0 by roll call.***

3. Work Session:

PLN 22-12
Application by the **Town of Provincetown** for endorsement of a plan believed not to require approval (ANR) to divide 16 Jerome Smith Road (**Map 8-1, Parcel 13**) into Lot 1 and Lot 2 and add 65,484 sq. ft. from the Route 6 right-of-way to Lot 1 to contain the minimum area and frontage on a public way and in accordance with the Provincetown Zoning By-Laws and M.G.L. c. 41, s. 81P. ***There was a motion by Jeffrey Mulliken to endorse the ANR for the Route 6 alteration and division plan. Paul Kelly seconded. VOTE: 7-0-0 by roll call.***

b) **Pending Decisions:** None.

c) **Minutes of March 10 and April 14, 2022:**

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

April 14, 2022: *There was a motion by Jeffrey Mulliken to approve the language as written. Paul Kelly seconded. VOTE: 6-0-0.*

d) **Any other business that may properly come before the Board:** Discuss Zoning By-Law amendment for building height on the waterfront. Anne Howard, the Building Commissioner was online to discuss the topic. Mr. Quesnell said that this proposed amendment for height was brought to the Board about two years ago for consideration as a revision to the

Zoning By-Laws. The concept was brought to the Board by a developer in Town. Mr. Quesnell was concerned that the proposal was not properly reviewed by staff and ready to be brought to a Town Meeting. He wanted the Board to hear the questions and concerns that Town staff had regarding the proposed by-law. Ms. Howard said that there were clauses in the proposal that conflicted with the state Building Code and other issues that are above and beyond the scope of what a zoning by-law should be dealing with. The by-law as it stands is in compliance with the Town's model floodplain by-law, which was approved in May of 2021. This would narrow the scope and would have a hard time complying with the Historic District Commission guidelines. She said in her opinion the proposed by-law was not ready to move forward. It would be very difficult to support from a Building Code aspect. A lot of the items in the proposed by-law are addressed in the Building Code, which would supersede the zoning by-law. Even though it would alter and make things more restrictive, it conflicts with the overall goals.

Mr. Soulé said the proposed by-law could be put to further study. Some of its language may have the result of encouraging activity that were unanticipated by the author. He said the Board has been diligent about making decisions regarding what the Town should look like, including how to implement the Local Comprehensive Plan, and what it doesn't want the Town to look like. Now, buildings on the water, such as 509 Commercial Street, have the potential to be raised above the floodplain. He said that for buildings in the Historic District, there is an ability for the Historic District Commission to preserve the historic nature of the Town. If a building is raised, it is no longer contributing to the historic streetscape of the Town. He said that staff has discussed allowing incremental changes to the streetscape. This would prevent a kind of saw-toothed approach to changing the streetscape, with some buildings raised significantly higher than others. The language of the proposed by-law allows a building to increase its height in a non-incremental fashion and encourages individual applicants to raise their structures, as opposed to envisioning a more cohesive, holistic vision of a neighborhood that is planned and an approach that would be implemented more slowly. He said that it was important to keep the characteristics that maintain the historic fabric of the Town. He concluded by saying that the unintended consequences of some of the suggestions in the by-law would encourage applicants to build higher and be detrimental to the Town's unique character.

The Board discussed the proposal with staff. Mr. Quesnell said it would be good for applicants and the Town to have a guideline to move forward considering the changes in the climate and sea level. Ms. Howard said that the Town is now well served by the current Zoning By-Law that was adopted in 2021. She said that the exemption from height issue was addressed a couple of years ago with an amendment to the definition of building height and she didn't think the Town was not in a position to make any changes. The unintended consequences of this proposal could result in the filling of land and would go above and beyond the standards of FEMA for Velocity and A Zone construction. In addition, it would allow for the capture of spaces under structures for parking, access, or storage and more than what the Town may want to see. This proposed by-law, in her opinion, regarding that aspect has not been thoroughly reviewed. Mr. Soulé said the Board would probably revisit the height issue regarding Shank Painter Road, although portions of that neighborhood are in the floodplain. The Board should evaluate which areas of Town should be considered, and which shouldn't be considered.

Paul Kelly had a concern about the High Elevation Protection District. He asked if staff could have the ability to do an administrative review of minor projects located in the HEP. He said the Board had discussed what would be feasible for such a review. He said what got approved was anything under a foot above the existing grade would qualify as an administrative review. He noted the application for 172 Bradford Street, which sought an extension of an existing deck. The applicant had to get the approval of the HDC and the Board. The applicant reportedly spent \$700 on the approval process. Mr. Kelly thought making the applicant go through that process was wrong. He suggested changing the criteria for review, making it broader and not so cumbersome for some applicants, especially if the structure in question is in Town, with other buildings surrounding it, as opposed to up on a hill, such as the structures on Thistlemore Road. He questioned why if a feature was not exceeding, but below the ridgeline of a structure, it needed Board review. He would like the issue to be studied. The Board discussed the issue. Mr. Soulé said that the HEP was unique to this Town. Mr. Mulliken mentioned the HDC has an administrative review process. The Board discussed the idea. Ms. Howard weighed in on the HEP, based upon her experience on the Board, and cautioned that it was a concept that the Town could not move away from lightly and without further research because of unintended consequences. Mr. Soulé said that the HEP By-Law could be amended and tailored to include and exclude projects and asked for the Board's input. Mr. Kelly will do some research and speak with staff about the topic. Mr. Soulé will also do research.

Mr. Quesnell mentioned the Shank Painter Road options and the allowance for four stories. He suggested that staff create a by-law that allows for retail on the first floor and non- Airbnb, such as workforce housing, units on the second floor, and market rate units on the third and fourth floors. This would create another commercial corridor along Shank Painter Road. He said that there are already too many Airbnbs in Town, and the Board needs to concentrate on ideas that would create more workforce and community housing. Mr. Soulé said that it would be a minimum build-to threshold for Shank Painter Road and noted the idea of an overlay districts. The Board discussed the idea. Mr. Soulé will do research on the topic. Mr. Quesnell asked the Board members to contribute ideas if they have any.

Mr. Kelly requested that the Board discuss the form-based zoning code information that Mr. Soulé submitted to the Board.

There was a motion by Jeffrey Mulliken to adjourn the meeting at 9:00 P.M. Paul Kelly seconded. VOTE: Unanimous by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2022
Brandon Quesnell, Vice Chair