

PLANNING BOARD

Meeting Minutes

Thursday, May 12, 2022

6:00 P.M.

PB Members Present: Paul Graves, Brandon Quesnell (online), Jeffrey Mulliken, Paul Kelly, Donna Walker, Dana Masterpolo, and Stephen Roope.

Members Absent: Mia Cliggott-Perlt (excused) and Marianne Clements (excused).

Staff: Thaddeus Soulé (Town Planner).

Mr. Soulé called the meeting to order at 6:00 P.M. He 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. **Election of Officers:** *There was a motion by Brandon Quesnell to nominate and elect Paul Graves for Chair. Jeffrey Mulliken seconded. VOTE: 6-0-1 (Paul Graves abstaining).*

There was a motion by Donna Walker to nominate and elect Brandon Quesnell as Vice Chair. Paul Kelly seconded. VOTE: 6-0-1 (Brandon Quesnell abstaining).

There was a motion by Paul Graves to nominate and elect Marianne Clements as Clerk. Stephen Roope seconded. VOTE: 7-0-0.

2. **Public Comment:** None.

3. **Public Hearings:**

PLN 21-26 *(continued from the meeting of April 28th)*

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**. Stephen Roope recused himself because of a conflict of interest.

Presentation: Robin B. Reid, Esq., representing the property owners, and Gordon Peabody, an environmental consultant, appeared to discuss the application. The property owners, Michael Shuster and Richard McCracken, as well as Wayne Tavares, the builder and designer, were on the phone to discuss the application. Attorney Reid clarified some issues and addressed some misconceptions about the site and the project that arose in the abutters' comments and the public at the previous hearing of the application in December of 2021. She said that the property is not a virgin forest and is not heavily wooded. The rear yard is primarily vegetated with shadbush, or serviceberry, and bull briar vine. The dune under consideration is not a dynamic coastal dune. There are existing structures along the ridge of the dune. One of the

charges of this Board is ensuring the stability of the dune. She noted that the proposed swimming pool is not cantilevered. The term 'cantilevered' is used in the engineer's notes, but that refers to the foot of the retaining wall. Finally, the pool will have retaining walls on all four sides. The issue with the Leland cypress plants mentioned at the previous hearing, which are owned by neighbors at 95 Bayberry has been resolved. She explained the law of what is referred to as the "Massachusetts Rule", which states that if the neighbors own the trees, the property owners have the right to trim roots and branches to the extent that they are on their, the property owners', land. Her clients are willing to replace any Leland cypress that die or are severely damaged during the construction process.

Attorney Reid corrected a typo in the applicant's construction protocol that mentions using hay bales. Her clients will only be using straw bales and straw wattles for erosion control measures. Bales will be used on the steepest portions of the slope and wattles will be used in all other areas. She stated that the Board is charged with the review of the form and function of the projects it considers, and the means and methods of construction are the sole purview of the Building Commissioner. However, she said that they have included in their application materials, an engineer's written opinion with respect to the stability of the pool and the dune's slope, given the level of abutters' and the Board's concerns. In the opinion of the structural and the geotechnical engineers, the pool as proposed will be stable. She said that she objected to the inclusion of a letter from a seated member of the Board, as it is a deliberative body and Board members participation in those deliberations should be confined to the hearing room.

Attorney Reid said her clients were seeking Administrative Site Plan Review approval pursuant to Article 4, Section 4010 and Article 2, Section 2320(B) of the Zoning By-Laws. The project does not propose to build anything over a story and a half. The proposal includes a pool and a meditation garden, which will create two exterior, functional living spaces in the yard. This space cannot now be used at all by her clients. She reviewed the structural engineer's drawings. She said that the project does not require any variances from either this Board or the Zoning Board of Appeals. The project plan remains the same as was first presented to the Board in December of 2021, except that now there is a double wall below the pool on the south elevation. The original plan, according to the engineers, was sufficient enough to secure the pool and maintain dune slope stability, however her clients are willing to add a second wall below the pool so there can be no doubt, debate, or concern as to the stability of the pool. There is a change in that the proposed laminar flow waterfall will be replaced with an infinity edge along the south edge of the pool. The change is reflected in the revised designer/builder plans that were submitted, but not in the structural engineer's plans because of tight time constraints, but it doesn't change any of the structural engineer's previous plans. She described the rear yard as sloping downward 20' over a distance of 100', with 8' of that drop occurring right behind the house. She noted the concern of the abutters on the south side of the property, whose outdoor living space comes right up to and, in some respects, encroaches over the property line. There are no visual or audio barriers between these abutters. This project meets all dimensional requirements of the Zoning By-Laws and there will be no structural encroachments into the setbacks. The existing vegetation will be maintained or replaced within the setbacks. This will preserve more than half of the existing shadbushes. The percentage of lot coverage, at 28%, is well below that which is required, which is 40%. The proposed green space is 62%, which is more than twice the required percentage.

Construction access will be from the west side of the house, entirely over her clients' land and will not interfere with an easement or with the shared electrical services with the eastern abutter. The project is sited well below the crest of the dune where the existing house is located. The retaining walls have been prudently designed by a structural engineer, Michelle Cudilo, so as to maintain the integrity of the dune and a geotechnical evaluation of the site has been done by Ron Bukoski, of CGE Engineering. Both the pool engineer and Mr. Bukoski endorsed Ms. Cudilo's plans and attest to the adequacy of the retaining walls' ability to support the stability of the pool and maintain the integrity of the dune slope. The visual impact of the pool and retaining walls will be limited. The retaining walls were designed to match the existing slope as closely as possible. The existing slope and vegetation will be maintained between the retaining walls and the southern lot line. The side yard, 15', and rear yard, 20' setbacks will remain as they now exist. Native species will be planted along the retaining walls. The maximum exposure on the pool retaining wall will be 6' along the south side and 4' at the two corners of the meditation garden lower wall. She noted the native species of vegetation that will be planted, include arrowwood, switchgrass, inkberry, pepperbush, wild roses, dogwood, and witch-alder. All retaining support members will be placed underground. All pool mechanicals will be placed in a small vault between the house and the pool. All new utility lines will be buried. All lighting will be compliant with dark sky requirements. A solid board fence will be installed along the rear property line to provide a visual and noise attenuating barrier for the rear yard abutters.

Attorney Reid said that the project does propose to remove existing vegetation over an area greater than 2,000 sq. ft. But Section 2320, 2k. does not prohibit such clearance, it requires special erosion controls to be approved to control runoff and either a constructed surface or cover vegetation provided and mulched by the end of August. No such area shall remain and cannot remain throughout the winter without plant material cover. Her clients' construction protocol includes extensive erosion control measures designed with input from Mr. Peabody. All construction runoff will be contained on the site. All constructed surfaces and plantings will be completed by August. No disturbed areas will remain unplanted or without mulch throughout the winter. All disturbed areas will be permanently stabilized within six months of the end of the construction work. All new plantings will be mulched, and all watering demands will be met with an on-site well. Post-construction, all rain and stormwater runoff from the impervious pool deck will be collected by perimeter scuppers draining to a drywell located below the proposed shed. The scuppers will be hidden by the retaining walls and decking. The drainage to the leach basin will be buried and runoff from the stairs to the house and the lower retaining walls will be handled with the installation of perforated PVC, slightly below grade, under the stairs and along the lower retaining wall. This project will not create any impact on the drainage patterns of abutting properties, given the proposed stormwater runoff management system of sufficient size and routed to an appropriately-sized leach basin. All grades will remain as they currently exist after the construction is completed. The project will have no impact on the Town water supply or quality. The construction protocol includes methods developed by Safe Harbor regarding concrete overpour to prevent cement leaching into the soil. The pool's infinity edge supports pool water maintenance, lessening the need for chemicals. Her clients are installing a well to support the maintenance of new plantings. All pool water will be trucked into and out of the site. There will be no impacts on the existing

Title 5 septic system or on abutting septic systems. There are no immediately abutting wetlands in the area. Post-construction, this project will have no impact traffic in the neighborhood. Construction traffic will be closely monitored so as to prevent any interference to the access of abutting properties. Her clients are willing to provide a detail officer if necessary. Any damage caused by the construction activities to the serving roads will be repaired at her clients' expense. The project contractor will dispose of all excess material off-site and in accordance with standard Provincetown building permit conditions. There will be no increase in septage or solid waste once construction is completed. It is not anticipated that the project will create any demand for public services. There will be no increase in public safety demand after construction is complete. The project will require some work to be done by staff in the Dept. of Community Development, work which will be paid for by building permitting fees. The work will result in an increase in property values and in taxes paid to the Town. The project will have no impact on solar access to abutting properties and no need for petroleum storage will be created. The native plantings have been chosen for site appropriateness by Mr. Peabody.

Attorney Reid addressed the issue of noise pollution from the use of the pool and meditation garden. She noted that abutters who attended the previous hearing admitted that they could hear noise from their neighbors on their decks. The abutters and her clients can attest to the noise generated by Cape Tip Estates, an abutting condominium association. She said it was not clear how her clients use of the pool for a swim or to socialize on the pool deck will give rise to higher levels of noise than the existing, neighboring decks and patios, especially as the pool and deck are located at a lower level than those structures. She said it was not clear how the use of the meditation garden would have any impact on neighbors. The pool equipment will generate noise at a level of 65 decibels or less and will be maintained in a vault between the retaining wall between the house and the pool deck. The infinity edge of the pool will not generate noise above an ambient level.

Mr. Peabody said he would provide occasional environmental updates on the project as it progressed and after the completion of the construction will monitor the new vegetation growth. He said that he was asked to review documents related to the project for quality of habitat, water quality, and effectiveness of erosion control and he was very satisfied with the attention to those details. It is incumbent upon the applicants to maintain zero discharge performance standards until the vegetation is back in place. He commented on the Leyland cypress in the area, stating that it is a cultivar and does not produce any food for birds or contribute in any way to Provincetown's habitat. Whereas he would recommend planting Eastern red cedar, which does produce food for birds. He encouraged the Board when they had the opportunity to remind applicants of that fact and that they have other options vegetation. He also suggested that excavated material go into the Provincetown sand bank, an example of the conservation of geo-mass, and a project that is being done through the Conservation Commission and the Harbor Committee. She said that this project meets all the requirements for Site Plan Review pursuant to the High Elevation Protection By-Law and Administrative Site Plan Review and her clients will do everything necessary to mitigate any impacts on neighbors during the construction process. The project will improve the property and increase the Town's tax base.

Public Comment: Linda Nichols, Joseph Agostini, on behalf of himself and Jonathan Shee, and Vala Brown, all abutters, spoke in opposition to the application. Attorney David Reid, representing several abutters, also spoke in opposition to the application.

Board Discussion: Mr. Mulliken commented on the material submitted, but he said the project hasn't changed scope and size and his position hasn't changed. He said the charge of the Board, pursuant to Section 2320 was to preserve the integrity of dunes and that additional structures shall not detract from the site's scenic quality and shall blend with the natural landscape. Also, Section 4005 was relevant to this project in that the site plan review process regulates the use of land and structures to minimize adverse impact on the natural environment and the Town character and protect the health, safety, and general welfare of the people and to ensure the following: The safety and convenience of pedestrian and vehicular movement internal to the site, and in relationship to abutting properties and rights-of-way; The consideration of the protection of the use and enjoyment of the property of abutters; The protection of the historic character of the community in a manner consistent with the Local Comprehensive Plan; The protection of natural features and environmental resources. He added that the Board has looked at and approved pools in this neighborhood, and it is possible to develop a pool and preserve a dune, however he thinks with the proposal there will be too much disturbance to the dune and the natural vegetation. He suggested moving the pool closer to the house and not include a meditation garden as a compromise. If not, he cannot support the project.

Paul Kelly agreed with Mr. Mulliken. He said that the project will have a major impact on the side of a hill and that there will be a lot of hard surfaces. He said the south abutter would have a meditation garden 20' away from their lot line and, if this property were to be sold, the next landowner could install a pickleball court. Whereas the abutter had access to peace and quiet before, now they will see a wall on the lot line and then 20' away they will see a different environment totally. He thinks it is not correct. He said a more modest project would be more appropriate and compatible with the neighborhood and the district. He thinks there is a compromise to be had and suggested doing away with the meditation garden and that he will not vote in favor of the application unless it is changed.

Ms. Masterpolo asked about the doubling of the retaining wall on the south side of the pool. She said setbacks are there to protect up to a certain point and then the property owners can do certain things by right and certain other things need approval. She felt uncomfortable suggesting that the pool should be moved within a certain amount of feet from the south property line or the house. She also felt that a project should not be changed because an abutter does not want to look at something. She was concerned about the hard surfaces and the transformation of the site that are not congruent with preserving the dune. She thought that it was a large change in topography, as it takes up most of the backyard. She would be in favor of a more conservative approach and not attach a specific distance to the siting of the pool.

Mr. Quesnell agreed with Mr. Mulliken and Ms. Masterpolo and added that the Board was in charge of preserving the high elevation dunes, which are of natural scenic beauty. He said he has only heard are about walls, PVC, structures, etc. He characterized the project as, "a concrete vault with a pool in the middle of it." He is concerned about the scope of the project and that more projects such as this will be brought to the Board for approval. He questioned the

validity of the engineer's survey where the amount of earth that will be disturbed during the project was projected as 740 cu. yds. and called it "hard to comprehend." He said the project was "not right" for the site. He thought a more conservative project would be more appropriate.

Ms. Walker asked about retaining walls and whether they were new and was concerned about the amount of concrete to be placed on the dune. She said it would be jarring to come upon that. She agreed with the rest of the Board that the project should be smaller. She said that the project is in a natural area, and it is not natural.

Mr. Graves commented that he believes property owners should be able use their property in a way that is to their benefit and that does not harm their neighbors. He likes aspects, such as the vegetation that will be removed from the site, of the project, but does not want to dictate the terms. He disagrees with the rest of the Board about setbacks and going beyond what is legally required, however the Board's responsibility is to preserve the dune and the scenic nature of it. He supports the property owners' right to install a pool, but thinks this project is large in scale and raises concerns for him. The Board has to be concerned about setting precedents.

Attorney Reid responded to Ms. Walker's usage of the word "vault", which she had only implied was a box where the pool mechanicals would be located and would not be a large cement structure on the property. She requested a continuance to the June 9, 2022 Public Hearing 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 June 9, 2022 at 6:00 P.M.. Paul Kelly seconded. VOTE: 6-0-0.***

PLN 21-32 *(continued to the meeting of June 23rd)*

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 June 23rd)*

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**.

PLN 22-8 *(request to postpone to the meeting of May 26th)*

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**.

PLN 22-9 *(request to postpone to the meeting of May 26th)*

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 22-8 and PLN 22-9 to the Public Hearing of May 26th. Donna Walker seconded. VOTE: 7-0-0.

PLN 22-11

Application by **Bill Fornaciari**, on behalf of **Woods-Shields Joint Living Trust, J.E. Woods & S.J. Shields, Trustees**, seeking a Site Plan Review pursuant to Article 2, Section 2320 (A), High Elevation Protection District (A), of the Zoning By-Laws to remove an existing porch and replace it with a new enclosed room, expand a deck, and move the front door location on the structure located at **51R Harry Kemp Way, U1**. Paul Kelly recused himself because of a conflict of interest. Paul Graves, Brandon Quesnell, Jeffrey Mulliken, Donna Walker, and Dana Masterpolo sat on the case.

Presentation: Bill Fornaciari and Jim Woods, an owner of the property, appeared to present the application. Mr. Woods reviewed a PowerPoint presentation of the project to remove a porch, move a front door, repair shingles, and expand a deck. He said part of the property was in the High Elevation Protection District (A). He noted the topography of the site, which is sloping. He said a porch will be removed and a 10' by 14' enclosed room will be added. He noted a picture of the porch and balcony and described the removal. There is a 2' high timber retaining wall in the rear that will be moved and the slope behind it reinforced to accommodate the new room. There are no large trees, of 10" dbh or larger, on the property. No trees or shrubs will be removed or damaged during the project. If a tree or shrub does happen to die, it will be replaced with one that is approved by the Cape Cod Cooperative Extension for this coastal environment.

He said that a concern of the Board is stormwater runoff. A porch and balcony are being replaced with an enclosed room and the volume of stormwater will not be increased. He said that since living on the site, there has been no problem with containing stormwater on the site. The land surrounding the property is porous, as it is either clamshells or mulch, and absorbs the water. He said that there is an intention to add a drywell anyway for added insurance. Another concern he addressed was the Board's concern with excessive light spillage. He said that there are no lights in the back of the house, and they will not be adding any. Mr. Fornaciari briefly noted the floor plans. Mr. Woods described a change in the originally proposed location of the door, as refrigerant lines came into the structure at that location.

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

Board Discussion: The Board had no questions for Mr. Woods and Mr. Fornaciari.

There was a motion by Jeffrey Mulliken to approve the Site Plan pursuant to Article 2, Section 2320 (A), High Elevation Protection District (A), of the Zoning By-Laws to remove an existing porch and replace it with a new enclosed room, expand a deck, and move the front door location on the structure located at 51R Harry Kemp Way, U1. Brandon Quesnell seconded. VOTE: 5-0-0.

4. Work Session:

a) Pending Decision:

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**. There were no amendments to the decision.

b) **Minutes of April 28, 2022:**

April 28, 2022: There was a motion by Donna Walker to approve the language as written. Jeffrey Mulliken seconded. VOTE: 7-0-0.

c) **Any other business that may properly come before the Board:** Mr. Mulliken asked about resuming discussion regarding Shank Painter Road that had previously occurred. Mr. Soulé briefly reviewed his on-going research and will send out material to the Board for its consideration.

There was a motion by Jeffrey Mulliken to adjourn the meeting at 7:21 P.M. Paul Kelly seconded. VOTE: Unanimous by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2022
Paul Graves, Chair