



## Zoning Board of Appeals Findings and Decision



ZBA 20-57 and ZBA 20-66: 30 Shank Painter Rd.

July 2, 2020

### INTRODUCTION:

ZBA 20-57: 30 Shank Painter Road - Application by Meilli West, LLC, on behalf of Shank Painter Medical Bldg. Trust, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a three-story structure with a building scale above the neighborhood average scale on the property located at 30 Shank Painter Road (General Commercial Zone).

ZBA 20-66: 30 Shank Painter Road - Application by Meili West, LLC, on behalf of Shank Painter Medical, seeking a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish a building and replace it with a three-story, multi-unit residential building on the property located at 30 Shank Painter Road (General Commercial Zone).

The public hearing opened on the 21<sup>st</sup> of May 2020 and was completed on the 4<sup>th</sup> of June 2020. Note that the hearings were held remotely in accordance with Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, March 23, 2020 Order imposing strict limitation on the number of people that may gather in one place, and Chapter 53 of the Acts of 2020.

The Applicant presented the petition to the Board. Zoning Board of Appeals members adjudicating this application were:

Jeremy Callahan, Chair  
Steven Latasa-Nicks, Vice Chair  
Daniel Wagner  
Peter Okun  
Susan Peskin

The meeting was duly posted and notices of this application were sent out in accordance with zoning regulations and Massachusetts open meeting laws.

The five members hearing this case exceeded the legal quorum requirement for a super majority vote.

**Decision: By a vote of five (5) in favor and zero (0) opposed, none (0) abstaining, the Zoning Board of Appeals APPROVED both petitions for a special permit.**

## DESCRIPTION OF PROPERTY AND PROPOSAL

1. The Subject Property can be further defined as 30 Shank Painter Road, Assessor's Parcel ID 7-2-69-0 and recorded in the Barnstable County Land Court Certificate 109251, Document 414898; Plan 15435-E, Lot 4. The 7,826± sq. ft. property is currently improved with an existing structure formerly used as a professional medical office. The Project proposes to demolish the existing structure and construct a multi-family residential structure (8 condominium units with a parking area beneath a portion of the building) that will result in an increase in building scale volume above the maximum allowable volume.
2. The Property is located in the General Commercial zoning district and the Class A Floodplain Overlay District.
3. The abutting properties are a mixture of commercial, municipal, institutional, and residential dwellings. The General Commercial Zoning District provides for small-scale commercial and industrial uses outside the central downtown area while maintaining pedestrian scale development and accessibility, maintaining, or enhancing landscaping, minimizing visibility of parked automobiles, and avoiding creation of hazards or congestion.
4. The lawfully located pre-existing building is nonconforming with respect to the minimum southeastern side yard distance (5.8± ft. where 10 ft. is required).
5. The reestablishment of the southeastern side yard setback distance after demolition will be more conforming by increasing the side yard setback distance from 5.8± ft. to 7± ft. to the proposed building, and 6± ft. to the proposed stoop.
6. New construction is subject to waivers granted by Provincetown Planning Board Application PLN 20-14 and PLN 20-15 under the Inclusionary and Incentive Zoning Bylaw Section 4180 5. A. (3), including Article 4, Sections 4120, 4140, 4150, and Article 2, Section 2560.
7. The neighborhood average structure volume is 17,731± cu. ft. and the maximum allowable increase above the neighborhood average is 25% or a total of 22,164± cu. ft.
8. The existing structure is 33,848± cu. ft. in volume and is above the neighborhood average.
9. The Project proposes a multi-family residential structure with a volume of 92,799± cu. ft. that would be 174% above the scale of the existing structure.
10. A portion of the proposed increase in volume is designed to increase or enhance landscaping and provide parking spaces under the building to minimize the visibility of parked automobiles.
11. The project appears to meet a number of the goals of the Local Comprehensive Plan, including:
  - a. Chapter 1, Goals 1, 2 and 3
  - b. Chapter 4, Goal 2
  - c. Chapter 5, Goals 1, 2 and 4-7
  - d. Chapter 6, Goals 1-3
12. The development as proposed will produce an important building to the community as a whole in that it creates affordable housing units, a primary goal of the Local Comprehensive Plan.
13. The development by necessity will have a large volume due to the number of proposed units and the requested density-bonus provided under the Inclusionary and Incentive Zoning Bylaw.
14. The Project appears to be designed to allow the residential uses proposed within the subject property, including access to air and light for each residential unit, and access to a second floor common deck for all residents.
15. The Project is designed to enhance safety for vehicular access by designating one driveway on Browne Street as the main access/egress, providing down lighting, and properly designated parking. The Project is designed to improve public safety by eliminating the existing perpendicular parking spaces that require drivers to back out onto Shank Painter Road, a major

arterial road within the General Commercial District, and adjacent to the Provincetown Police Headquarters.

16. In response to Planning Board Site Plan Review over the course of four public hearings the Project underwent significant modifications and reduction in size.
17. The Project, located within Class A Floodplain Overlay District and a sensitive resource area, required complex engineering to improve drainage, and was subject to a comprehensive Order of Conditions issued by the Provincetown Conservation Commission.
18. While the Project does not fall within the jurisdiction of the Historic District Commission, the applicant did voluntarily appear before the HDC for its input.
19. Plans include:
  - a. Plan entitled “Plan Showing Existing Site Conditions” prepared by Coastal Engineering Co., prepared for Meili West, LLC, in 1 sheet (24x36) dated November 11, 2019, certified by John McElwee, PLS No. 33602, and labeled C1.2.1.
  - b. Plan set entitled “New Construction: 30 Shank Painter Rd. Provincetown, MA” prepared by Acropolis Design Consultants, in 18 sheets (24x36): T-1 dated Mar. 7, 2020; C2.1.1 and C2.1.2 dated Mar. 12, 2020 and certified by David J. Michniewicz, PE No. 31493; L1 dated February 27, 2020; L2 and L3 dated February 26, 2020; and A-1, A-2, A-3, A-4, A-5, A-5.1, A-6, A-6.1, A-7, A-7.1, A-8, and A-9 dated March 7, 2020.

#### APPLICABLE LAW AND DECISION CRITERIA:

1. Massachusetts General Laws Chapter 40A, Section 6 (Existing structures, uses, or permits):  
...Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood...
2. Section 2640 E  
Discretionary approval for a deviation in building scale may be granted if the Board of Appeals finds that the deviation meets the standards for a Special Permit, under Article 5, Section 5300 and that the applicant demonstrates that the deviation is appropriate and meets one or more of the following criteria:
  1. The proposed building or addition is in keeping with the goals and objectives of the Local Comprehensive Plan.
  2. The building is an important structure to the community as a whole. Public buildings are logical candidates for this type of conditional approval. For example, the Pilgrim Monument is out of scale with everything in town, yet its value as a monument to the town's history and in giving identity to the town, makes it acceptable.
  3. The proposed building or addition by necessity must be large and that the location is suited for that larger scale use. For example, churches may be permitted uses in a residential district and their larger scale is often dictated by traditional architectural forms.
  4. The building scale deviation is warranted due to the size of the parcel of land involved so as to discourage subdivision into smaller parcels and the proposed building or addition will not result in a structure that will disrupt the character of the neighborhood in which it is located.

5. The proposed building or addition successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures.
  6. The property is located in the Provincetown Historic District and the addition is consistent with the Historic District Guidelines and approval of the deviation would further the purpose and intent of the bylaw.
3. Section 3115 Demolition and Reconstruction  
 A nonconforming structure and/or use may be demolished and reconstructed, and/or reestablished by Special Permit and in accordance with the following provisions:
1. Reconstruction of said premises shall commence within two years after such demolition.
  2. Structures(s) as reconstructed shall be located within the same footprint as the original nonconforming structure and shall be only as great in building scale or area as the original nonconforming structure, unless as approved under Section 3110.
  3. The use of said premises shall be reestablished within one year of the issuance of the certificate of occupancy.
4. Section 5330 of the Zoning By-Law  
 Special Permits (other than those specified in Section 3420) shall be granted by the Special Permit Granting Authority only upon its written determination that the social, economic or other benefits of the proposal for the neighborhood or town outweigh any adverse effects such as hazard, congestion or environmental degradation.

#### PUBLIC COMMENT

1. As of May 5, 2020, there were 13 public comment letters expressing concerns about the proposed project. Of the 13 letters, only 3 are dated after the February 13, 2020 Planning Board public hearing. Significant changes, including the reduction of the number of units from 11 to 8, occurred between February 13, 2020 and the date of the final approved Site Plan, on April 9, 2020. The 3 letters do not appear to relate to the final scheme approved by the Planning Board that was the subject of ZBA review herein.
2. Randy Carpenter spoke in support of the application. There were 12 new letters in support of the application including one from an abutter.

#### SPECIFIC FINDINGS

1. ***Steven Latasa-Nicks moved to close the public portion of the hearing, Peter Okun seconded and it was so voted, 5-0 by roll call.***
2. Where the Project proposes to demolish the existing building and construct a new structure, all new construction is subject to the waivers granted by Provincetown Planning Board Application PLN 20-14 and PLN 20-15 under the Inclusionary and Incentive Zoning Bylaw Section 4180 5. A. (3), including Article 4, Sections 4120, 4140, 4150, and Article 2, Section 2560, such that the new structure will not be substantially more detrimental than the existing nonconforming structure to the neighborhood or Town.
3. Where the Provincetown Planning Board found that waiving dimensional regulations was appropriate and necessary to accommodate the additional units on the Property as part of the Inclusionary and Incentive Bylaw of the Zoning By-Laws, the proposed demolition and new

construction, including the reestablishment of the southeastern side yard setback distance after demolition that will be more conforming by increasing the side yard setback distance from 5.8± ft. to 7± ft. to the proposed building, and 6± ft. to the proposed stoop is not substantially more detrimental than the existing nonconformity to the neighborhood.

4. Where the proposed Project is a multi-family residential structure which would result in an increase in Building Scale above the neighborhood average scale, is designed to increase or enhance landscaping, to provide parking spaces under the building to minimize the visibility of parked automobiles, it successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures.
5. Where proposed demolition and new construction are within the same general location of the Property and the Project is designed to maintain or improve means of access and egress, the proposed alterations are unlikely to create construction hazards or increased congestion on Shank Painter Road or Browne Street.
6. For all of the above general and specific findings, the Board finds that the social, economic or other benefits of the proposal for the neighborhood or town outweigh any adverse effects such as hazard, congestion or environmental degradation.
7. ***Peter Okun moved that the Board find pursuant to Article 2, Section 2640E, Building Scale, subparagraph 5, the proposed new construction integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have significant negative impact on the natural light to, or views from, neighboring structures on the property located at 30 Shank Painter Road, Susan Peskin seconded and it was so voted, 5-0 by roll call.***
8. ***Peter Okun moved that the Board approve a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, to demolish the pre-existing, non-conforming structure and construct a new structure on the property located at 30 Shank Painter Road (GC), Steven Latasa-Nicks seconded and it was so voted, 5-0 by roll call.***
9. ***Peter Okun moved that the Board find pursuant to Article 5, Section 5330, Special Permit Considerations, the social, economic, and other benefits of the proposal for the Town and neighborhood outweigh any adverse effects such as hazard, congestion or environmental degradation, Steven Latasa-Nicks seconded and it was so voted, 5-0 by roll call.***
10. ***Peter Okun moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a structure to include 8 condominium units in a structure that will be greater than the neighborhood average scale on the property located at 30 Shank Painter Road (GC), subject to the conditions following conditions:***
  - a. ***that the project will comply with the all terms of Special Permits issued by the Planning Board, PLN 20-14 and 20-15, including, but not limited to the provision of one unit of affordable housing within the project and one addition unit of affordable housing to be located off-site,***
  - b. ***that reconstruction of said premises shall commence within 2 years after demolition and***
  - c. ***timing or deadlines to begin/finish construction work so as not to block/obstruct traffic on Shank Painter Road, Browne Street or any other public ways, and***
  - d. ***that the Special Permit shall lapse 24 months following the grant thereof (plus such time required to pursue or await the determination of an appeal referred to in M.G.L. c. 40A, s. 17) if substantial use thereof or construction has not sooner commenced except for good cause as determined by the Board of Appeals.******Steven Latasa-Nicks seconded and it was so voted, 5-0 by roll call .***

SIGNED BY:

DATE OF FILING:

A copy of the application in this matter, bearing the stamp of this Board, the signatures of the sitting members or the designee, and the date of this decision, will be on file in the Provincetown Department of Community Development. The applicant is hereby put on notice that any deviation from the above referenced application shall invalidate this Decision and shall require further review by this Board. Furthermore, the Decision issued hereunder shall not be valid until recorded at the Registry of Deeds in Barnstable as provided in the Provincetown Zoning By-Law and G.L. ch. 40A.

Important: Any appeal from the decision of the Zoning Board of Appeals can be made only to the Court and must be made pursuant to MGL ch. 40A, § 17, as amended, and must be filed within twenty (20) days after the date of filing of the decision with the Town Clerk.

Note: or as such timeframes are suspended and extended pursuant to Section 17 of Chapter 53 of the Acts of 2020.