

PLANNING BOARD

Meeting Minutes

Thursday, June 9, 2022

6:00 P.M.

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

Members Absent: Paul Graves (excused), Dana Masterpolo, (excused), Mia Cliggott-Perlt (excused), and Marianne Clements (excused).

Staff: Thaddeus Soulé (Town Planner).

Mr. Soulé convened the meeting 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 will 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.

Vice Chair Brandon Quesnell explained that agenda item ‘Public Comment’ gives the public an opportunity to comment on issues not on the agenda.

1. **Public Comment:** None.

2. **Public Hearings:**

PLN 21-26 (*continued from 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**. Stephen Roope recused himself because of a conflict of interest. Brandon Quesnell, Jeffrey Mulliken, Paul Kelly, and Donna Walker.

Presentation: Robin B. Reid, Esq., representing the property owners, appeared to discuss the application. Mr. Soulé explained that if only 4 members of the Board are present, and a unanimous decision would be needed for a Special Permit. In this situation, the Board gives the applicant the choice of proceeding or continuing until 5 members can be seated or proceeding with 4 members. A poll is taken of the Board members before a final vote is taken.

Attorney Reid requested that the Board be polled after the discussion and if there are 4 votes in favor of the project as revised, she will ask for a continuance and come back with fully engineered plans. If the Board would not support the project, she requested that a vote be taken to deny it. She reviewed a revised site plan showing the proposed pool, shed, deck, and fence. She is seeking an approval pursuant to Article 4, Section 4010, and an approval pursuant to Article 2, Section 2320 of the Zoning By-Laws. She said the pool will be supported with retaining walls on all four sides, including a double wall on the south elevation to be constructed as designed by the structural engineer, Michelle Cudilo, to maintain the integrity of

the dune. She said the retaining walls are more than sufficient to support the pool's stability and protect the dune slope. The geotechnical engineer, Ron Bukowski, from CGE Engineering, and the pool engineer, Paul Fallon, all agree that the retaining wall system is more than sufficient to support the pool and the dune. She said there are ways to safely build on sand with the correct engineering. The construction protocol and techniques will remain as discussed previously at the May hearing of the application, including the use of straw bales and wattles for erosion control during construction. Access will be from the west side of the property, entirely over her clients' land, outside of the eastern easement and the shared electrical services between this parcel and the abutting property. The grade will be restored post-construction and the property owners are legally able to trim the Leland cypress that encroach onto their property. However, they are willing to replace any vegetation that dies as a result of the construction process. She argued that the project met all of the criteria of an Administrative Site Plan Review and the High Elevation Site Plan Review, and the project is well within all of the required dimensional criteria pursuant to Article 2, Section 2560. The pool and deck are proposed to be located 43' from the rear property line. The existing grade and vegetation will be maintained within the setbacks. The proposed lot coverage at 21.8%, well under the 40% maximum allowed. The green space will be slightly greater than the 62.5%, which is more than twice the required. The excavated material will be 440 cu. yds. The house on the property is located, as all of the houses on the dune's ridge, on the dune's crest. The property across the street has many yards of concrete comprising its footprint. The proposed pool and deck are sited well below the dune's crest. The visual impact of the pool and deck will be limited. The retaining walls will match the existing slope as closely as possible, and they will be screened by native species. The latter were chosen for site appropriateness, with guidance from Gordon Peabody, and are listed on the plant inventory submitted and reviewed at the previous hearing. All retaining wall support members will be below ground, all pool mechanicals will be vaulted between the pool and the house, all new utilities will be underground, and all lighting will be dark sky compliant. The pool equipment will generate noise at a level of 65 decibels or less inside the proposed concrete vault. The infinity edge of the pool will not generate any noise above ambient levels. A solid board fence will be erected on the south property line to provide a noise attenuation barrier for the rear yard neighbors. The construction protocol will include extensive erosion control measures designed with guidance from Mr. Peabody. All construction run-off will be retained on the site. All plantings will be completed by August and all disturbed areas will be permanently stabilized within six months. All of the new plantings will be mulched, and all watering demands will be met with an on-site well. The pool water will be trucked in and out. All stormwater runoff from the deck will be collected by a drainage system comprised of perimeter scuppers hidden by the decking and the retaining walls, and designed to handle a 25-year storm. A dry well will be located under the shed. There will be no impact on drainage patterns on the site or on abutting properties. The project will have no impact on the Town's water supply or water quality. There will be protocols created by Safe Harbor for handling any concrete overpour. Post-construction, the project will have no impact on traffic in the neighborhood and construction traffic will be carefully monitored and a detail officer will be provided if necessary. The project contractor will dispose of all excess material off-site and in compliance with standard Provincetown building conditions. The project will not create demand on public services and will require the involvement of the Dept. of Community Development staff. She argued that any noise created by the use of the pool and deck will not be greater than what already emanates from the neighbors' use of their outdoor

spaces, especially since the pool and deck will be located at a lower elevation than many of the neighbors' decks in the area. She addressed several concerns of abutters related to alleged trespassing by her clients or their guests and litter. She said her clients would immediately deal with any trespassing and, as to the littering, she has noticed in her visits to the site that the whole area, not just on her clients' property, there is some wind-blown trash. She is not clear how the neighbors have determined that it is originating from her clients' property. She noted that the project met all of the criteria for Administrative Site Plan Review and the High Elevation Protection District. The project will improve her clients' property and increase the Town's tax base.

Public Comment: Attorney David Reid, representing two abutters, spoke in opposition to the revised project.

Board Discussion: Mr. Kelly commented that a huge percentage of the project involves clear-cutting of planted tree materials. He said that the plan submitted were not to scale and found it challenging to read. He claimed that no attempt was made to incorporate the pool into the hillside environment and the landscaping is reshaping the slope instead of having the landscaping design conform more to the contours of the pool. There should be more creativity in the design of the landscaping in relation to the retaining walls. He suggested that the location of the pool be closer to the house and reduces the percentage of hillside disturbance.

Mr. Mulliken said that he appreciated the elimination of the meditation garden and the increase in the area of undisturbed vegetation. He said the new site plan was disingenuous and it shows vegetation right next to the retaining wall and that would not be possible, construction-wise, to have vegetation directly next to the retaining wall, as in order to install the wall, about 4' or 5' of land would need to be disturbed. There is no clearcut construction zone with erosion control delineated on the plan. He has also thought it problematic to try and fit that size pool and deck in an area that the Board is tasked with protecting. He suggested making the pool smaller or engineer it in such a way that it could be moved closer to the house. He also suggested delineating a sufficient buffer between the construction zone and the existing vegetation with the acknowledgement that excavating to build footings will have to be done where the retaining wall is located. He would rather have Attorney Reid speak to her clients and not deny the project, as the Board has approved pools with less impact in the high elevation district in the past. He thinks a compromise can be reached while preserving as much of the dune as possible.

Ms. Walker asked if the absence of the meditation garden would mean more undisturbed parts of the property would remain. Attorney Reid responded in the affirmative. Ms. Walker agreed with Mr. Mulliken comments about moving in the right direction and would like to have seen a cross-section. Attorney Reid responded that the cross-sections in the earlier material remained accurate except for the leveling of the area where the meditation garden was to be located.

Mr. Quesnell said that if the Board's suggestions about moving the pool closer to the house are not possible because of concerns about the integrity of the foundation, he is asking why the dune is being disturbed at all. Excavation is going to take place anyway so that leads to the question of why that doesn't compromise the integrity of the foundation of the house. One never knows how things will move and the Board has to rely on engineering reports. However, engineering reports do not always reflect the accuracy of what's going on. He agrees with what

has been said by other Board members. He said there were less intrusive options for the applicants to consider if the property owners want a pool in which to swim laps. The change presented is a step in the right direction, but many of the Board's suggestions were not implemented and not enough of the project was changed. He asked staff for an opinion. Mr. Soulé said that Board had done a good job in interpreting the Zoning By-Law vis-à-vis the project. Even though the Board relies on stamped engineering plans, there is no way of knowing how any project will impact a sensitive area, such as a dune, once it is built. Nor can one rely on mathematics to predict how the project will impact the neighborhood and Town. The Board uses its logic and reasoning to interpret how the plans would impact the site and dune.

Mr. Mulliken added that the Board has always worked with property owners to realize their projects. He said the Board made recommendations at the last hearing and it was clear that the pool was too far down the slope of the dune and was too big. The Board was looking for movement as to the size of the disturbance of the dune, to make it less than what was presented. He appreciates the removal of the meditation garden and that change was in the right direction. He thought that the denial was not to the applicants' benefit.

Mr. Kelly said he would be interested in having one more round of discussion about the project to give the landscape architect another chance to take what was said at this meeting into consideration and give him a chance to deal with the Board's concerns and see a more creative plan that responds to the applicants and to the Board. Mr. Quesnell closed the public hearing of the application.

There was a motion by Jeffrey Mulliken to approve the site plan 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 as presented on the property located at 99 Bayberry Avenue. Paul Kelly seconded. VOTE: 0-3-1 (Donna Walker abstaining) by roll call.

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 June 23rd)*

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 request by the applicant to postpone PLN 22-8 to the Public Hearing of June 23, 2022 at 6:00 P.M.

PLN 22-9 (*request to postpone to the meeting of June 23rd*)

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 request by the applicant to postpone PLN 22-9 to the Public Hearing of June 23, 2022 at 6:00 P.M. ***There was a motion by Jeffrey Mulliken to postpone PLN 22-8 and PLN 22-9 to the Public Hearing of June 23, 2022 at 6:00 P.M. Donna Walker seconded. VOTE: 3-0-0 by roll call.***

3. Work Session:

a) **Pending Decision:** None.

d) **Minutes of May 26, 2022:**

May 26, 2022: *There was a motion by Donna Walker to approve the language as written. Paul Kelly seconded. VOTE: 4-0-0.*

e) **Any other business that may properly come before the Board:** Mr. Soulé said he had the letter of recommendation for the Open Space and Recreation Plan and has circulated it amongst the Board. ***There was a motion by Donna Walker to approve the letter of recommendation for the Open Space and Recreation Plan. Jeffrey Mulliken seconded. VOTE: 4-0-0 by roll call.***

Mr. Soulé said that the Local Comprehensive Plan draft has been released. There are currently community engagement sessions occurring. The next one is on Tuesday, June 14th at 2:00 P.M. at the Council on Aging. Another one will occur on Saturday, June 18th at the Library. These sessions are for feedback purposes and changes will be made throughout the month of June up until July 13th when the LCP will meet again to integrate the suggestions into the body of the Plan. The final document will be presented to the Board early in the fall and will then go to Town Meeting for approval.

There was a motion by Jeffrey Mulliken to adjourn the meeting at 7:04 P.M. Paul Kelly seconded. VOTE: Unanimous by roll call.

Respectfully submitted,

Ellen C. Battaglini

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