

PLANNING BOARD
Meeting Minutes
Thursday, August 25, 2022
6:00 P.M.

PB Members Present: Brandon Quesnell, Jeffrey Mulliken, Paul Kelly (online), Donna Walker, Mia Cliggott-Perlt (online), Marianne Clements (online), Dana Masterpolo, and Stephen Roope.

Members Absent: Greg Baldwin (excused).

Staff: Thaddeus Soulé (Town Planner).

Acting Chair Brandon Quesnell convened the meeting 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 app. Since a quorum was present in the room, he said that the meeting would not be suspended or terminated if there were technological problems interrupt the broadcast, unless required by law. The meeting is being broadcast live on PTV, Ch. 18, and will be posted online as soon as possible. He called the roll.

1. **Election of Officers:**

Chair: *There was a motion by Brandon Quesnell to nominate and elect Dana Masterpolo as Chair of the Planning Board, Marianne Clements seconded. VOTE: 7-0-0 by roll call.*

Vice Chair: *There was a motion by Brandon Quesnell to nominate and elect Jeffrey Mulliken as Vice Chair of the Planning Board, Marianne Clements seconded. VOTE: 7-0-0 by roll call.*

Clerk: *There was a motion by Brandon Quesnell for Marianne Clements to continue as Clerk of the Planning Board, Donna Walker seconded. VOTE: 7-0-0 by roll call.*

2. **Public Comment:** None.

3. **Public Hearings:**

PLN 21-32 *(continued to the meeting of September 8th)*
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 September 8th)*
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 withdraw without prejudice*)

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 withdraw without prejudice*)

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 Brandon Quesnell to withdraw PLN 22-8 and PLN 22-9 without prejudice, Marianne Clements seconded. VOTE: 7-0-0 by roll call.*

4. Work Session:

a) **Discussion of Short-Term Rentals:** Mr. Soulé said that this is the first discussion that the Board is having on this topic. Mr. Quesnell said that there has been confusion about the Massachusetts laws regarding short-term rentals and he has received some pushback from various people about it. Mr. Soulé reviewed the MA Department of Revenue’s definition of short-term rental as a rental lasting 31 days or less. Mr. Mulliken spoke about how the topic has arisen as part of a review of a project on Nelson Avenue and the suggestion that there be a stipulation in the conditions for approval that there would be no short-term rentals allowed in the development. Subsequent to that discussion, Town Counsel informed the Board that the requirement could not be imposed. Mr. Soulé said that this was a suggestion by the Board to be taken under consideration by the applicant based upon public input and Board comments about what could improve a project or make it better for the health, safety, and well-being of the community. It was not a condition mandated by the Board, which would deliberate when discussions with the applicant were complete, prior to voting. He said that typically the Board would ask the applicant if a potential condition was amenable so as not to create an adversarial situation with the applicant. Mr. Quesnell said that under Article 4, Section 4180, the Board has been tasked with creating affordable housing opportunities, “for households of all incomes, ages, and sizes in order to support a strong, stable, and diverse year-round community and a viable and healthy local workforce and to prevent the displacement of Provincetown residents...” He said that there has been a significant amount of displacement of both Provincetown residents and the local workforce. One of the challenges for the Board in creating the Inclusionary and Incentive Zoning By-Law was to try and stem the rising tide of the renting of residential units for short term periods, whether by private parties or corporate entities. He said that a lot of the year-round residents have been forced to move and, in the winter, many streets in Town are dark. Thus, he thought it was a topic that should be discussed in regard to projects that come before the Board. He wanted to know why the prohibition of short-term rentals cannot be applied to all projects, given the stance of the Town Manager and the Select Board that the Town has a housing crisis. He thinks it should apply to all housing projects. Mr. Mulliken agreed with Mr. Quesnell and noted Town Counsel’s opinion that the Board cannot prohibit short-term rentals.

Ms. Masterpolo interpreted the opinion as there being no nexus between the Inclusionary and Incentive Zoning By-Law and mandating or suggesting the prohibition of short-term rentals, that it was arbitrary and therefore could not be done. She doesn't think the opinion precludes the Board from asking the applicant to consider a particular condition, especially since it would make the project better and the neighbors happy. She said that conditioning a project was a negotiation between the Board and the applicant. Mr. Quesnell said that he thought the opinion was written to support a particular agenda and worked against the Board's mandate. Usually, an opinion gives the Board ways to come to a resolution with the applicant or provides the Board with a negotiating tactic to work with the applicant. He said the opinion did not answer the question raised by the Board and did not aid in a resolution to the dilemma. The Board discussed who requested the opinion from Town Counsel.

Mr. Quesnell reviewed the purpose of Article 4, Special Regulations, that states what the purview of the Board is. He proposed that short-term rentals could apply to the Site Plan Review process, and not just to the Inclusionary and Incentive Zoning By-Law. That process, "regulates the use of land and structures to minimize adverse impact on the natural environment and the town's character and protect the health, safety, and general welfare of the people and to ensure the following: a. the safety and convenience of pedestrian and vehicular movement internal to the site and in relationship to abutting properties and rights-of-way; b. the consideration of the protection of the use and enjoyment of the property of abutters; and c. the protection of the historic character of the community in a manner consistent with the Local Comprehensive Plan..." He would suggest guidance as to how to do that as the Board looks for solutions to alleviate the housing crisis. He asked to hear from other Board members about pursuing the idea.

Ms. Masterpolo agreed that the Board should look at, consider, and work on what Mr. Quesnell's has suggested. Building affordable housing is only one aspect of tackling the housing crisis. She said that the trend is for less and less year-round residents to live in Town. She said that normally a town, with the support of its Boards, is looking to encourage development as a means to promote growth and prosperity. However, in this Town, the development of units involves expensive residential construction. If these units are just for investment purposes, as many will be used for short-term rentals, she doesn't know how this contributes to the Town's betterment. If the Board does not pay attention to this and make a stand, then she doesn't know who would. Ms. Walker asked if the Board could move in that direction if the applicant is not coming to the Board with that in mind. Can supporting arguments be made for including the prohibition of short-term rentals under the rubric of protecting the health and character of the Town when considering Site Plan Reviews?

There was a motion by Brandon Quesnell to direct Town staff look into how a short-term rental restriction can be applied to either Site Plan Review or Special Permit review.

Ms. Walker suggested that Town Counsel review the "Purpose" clause of Article 4 and not narrow it to just Site Plan and Special Permit Reviews. The Board briefly discussed the motion. Mr. Quesnell wanted to add to the motion, ***and to bring to the Planning Board a proposed by-law that the Board could consider applying.***

There was a motion by Brandon Quesnell to direct Town staff to inquire with Town Counsel regarding a review of Article 4, Section 4000, specifically Section 4005, and the purposes

under Site Plan Review, as to whether or not there is the ability to condition a project regarding short-term rentals, or the limitations thereof, as part of a Special Permit or a Site Plan Review by Special Permit application, as well as an inquiry as to drafting a by-law that would be appropriate under G.L. c. 64G, Section 14 for the regulation of short-term rentals that the Planning Board could present to Town Meeting.

The Board briefly discussed the motion. Ms. Walker suggested separating out the two requests.

There was a motion by Brandon Quesnell to direct Town staff to inquire with Town Counsel regarding a review of Article 4, Section 4000, specifically Section 4005, and the purposes under Site Plan Review, as to whether or not there is the ability to condition a project regarding short-term rentals, or the limitations thereof, as part of a Special Permit or a Site Plan Review by Special Permit application. Jeffrey Mulliken seconded. VOTE: 7-0-0 by roll call.

There was a motion by Brandon Quesnell to direct Town staff to inquire with Town Counsel as to drafting a by-law that would be appropriate under G.L. c. 64G, Section 14 for the regulation of short-term rentals that the Planning Board could present to Town Meeting. Jeffrey Mulliken seconded. VOTE: 7-0-0 by roll call.

b) **Planning Board Communication Procedures:** Mr. Mulliken requested this discussion about communications made to the Board that were then made public. And communications that were made to Town Counsel about Board deliberations. Mr. Mulliken said that a project was presented to the Board in April. The Board suggested certain aspects of the project be modified. The applicant subsequently went away for several months, asked for several extensions and the Board ultimately accepted a new date of July 28th to be heard, starting with a site visit. The Board received an email at 4:00 P.M. from the Town Manager implying that the Board was going to deny the project. The email lectured the Board on how to make a decision, and it was received 30 minutes before the start of the hearing. The Town Manager then attended the hearing and made comments. In addition, a member of the Select Board, as a public citizen, made a public comment with similar language. The Board met and again suggested that aspects of the project made several members uncomfortable and asked the applicant to consider some of its suggestions for revisions. A week later, comments made by the Town Manager appeared as an op-ed piece in a local newspaper. Mr. Mulliken understands now that the communication to Town Counsel was made by the Town Manager about the Board's deliberations. His question is does the Board believe that these kinds of communications that are about its deliberations, decisions, and discussions impede its ability to make independent decisions? Is it something that needs to be replied to? Or is the Board comfortable with letting the issue go and move on? The Board discussed the issue and thought that deciding the night of July 28th would have been premature and that having subsequent meetings to get more information and answers to questions and suggestions that were posed to the applicant were needed. Several Board members felt as though they were being pressured to decide that night.

Mr. Kelly felt that the plans were not schematic but were almost construction documents with a lot of details, and that the Board was expected to approve them as submitted with no corrections or suggestions for revisions. He said he felt that there was no real room for

discussion or changes. He was concerned about the process of presenting plans as though they were complete already. He said the Board should have been able to talk about aspects of the project that seemed to already be set in stone, with no place to go.

Mr. Mulliken said he thought that Mr. Kelly's concerns should be a separate discussion. He said he had never experienced influence by a Town official such as he described previously. He asked the Board's opinion of the way the communications were handled and how they and the Board's process became so public. He asked if this incident would hamper the Board's deliberations in the future. The Board discussed the issue. Mr. Quesnell said that he thought the actions by the Town Manager were inappropriate. He suggested voicing the Board's concerns to the Select Board who hires the Town Manager. He also recommended waiting until after the project that was being alluded to was dispensed with before anything was done. The Board should treat the remarks by the Town Manager and the Select Board member as individual public comments and not give them further weight. If the Board has questions, Town staff and Town Counsel are available for answers.

Ms. Cliggott-Perlt agreed with Mr. Quesnell. Ms. Walker said that this was an unusual circumstance and if Town leadership has a question or comments about a project and wants to approach Town staff or the Board, it would be helpful to discuss with the Board rather than putting it out in the public realm. It is a courtesy and allows for open dialog as to how the project is proceeding. Ms. Clements agreed with what has been said. Ms. Masterpolo was unsure if a formal response was necessary as a means of addressing the issue. Should something be put in the public record? Or should a letter be sent to the Select Board, or a request for a conversation with the Select Board? Should the Board say that it can be approached through Town staff or as a Board if clarification is needed? The best vehicle would not be through the public realm. Mr. Mulliken agreed with Mr. Quesnell to get through the process before a response is given. Ms. Cliggott-Perlt added that waiting until the project was voted on will allow the Board to decide what the Board's formal response will be.

c) **Discussion of Shank Painter Road Overlay District/Form-Based Zoning:** Mr. Soulé said that he has sent the Board a PowerPoint presentation on the topic and examples of form-based zoning codes from other towns and cities in MA. He said the process was to go through the existing conditions block by block, look at different district types and boundaries and to discuss what would be most appropriate for Provincetown and specifically the Shank Painter Road corridor. This project will be paired with the Town's registered Complete Streets program, for which the Town has an approved policy and that has been committed to by the Select Board. The Town is moving towards the next step, which is to create a prioritization plan that the Dept. of Public Works is working on. A consultant will be assisting with that plan. He reviewed the PowerPoint presentation. This area is part of a MA Dept. of Transportation transit improvement program. Proposed changes to enhance the public realm include bike lanes, sidewalks on both sides of Shank Painter Road, and street trees, and is in keeping with the Complete Streets program. Shank Painter Road is a gateway for cars and bikes into the community, funneling cars to a large municipal parking facility. These documents are available online for the public's information. He reviewed the existing conditions on a block-by block basis.

On the first block, he noted the housing project at 90 Shank Painter Road is an example of what the Board would like to see more of in terms of enhancing the streetscape and in terms of its location the structures and parking on the property. On the next block, 63-79 Shank Painter Road, he said there was some regularity to the development, but a lot of the structures in this section are set back from the street, so the parking is the most visible aspect when traveling down the street. Further down the street there is buffering between the Stop-n-Shop parking lot and the road and there are some residential and commercial properties. The next block has the Fire Station, and across the street, the Board will have an opportunity to look at the redevelopment of the existing Police Station structure in the future. The Board has already reviewed and conditioned the residential unit development at 30 Shank Painter Road. The public can see if the height of that building and its distance from the road is acceptable and should be copied. The last block includes the intersection of Shank Painter Road and Bradford Street and the end of the Shank Painter corridor.

He said the Board may want to look at a traditional New England neighborhood design of mixed-use buildings for this area, perhaps something of a main street caliber. The Board needs to think about what type of district it wants and if a new one is needed. A hybrid approach is possible, using a partial form-based code, an overlay, that does not change the underlying zoning, but allows an applicant the option of doing something different than what exists. The other type is a new district, which he has provided examples of from Littleton and Dennis. The underlying zoning is intact, and a new overlay has been created. In the examples of Ayer and Northampton, new districts were created, called a form-based district, which replaced the underlying zoning.

The Board questioned for Mr. Soulé. The Board discussed having to generate incentives for Shank Painter properties that are now owned by private individuals to conform to a form-based zoning district. The re-development of the existing police station could be a good example of form-based zoning. Mr. Soulé reviewed Ayer's and Northampton's examples of form-based code districts and reviewed how the process could be used to create housing. He noted how the designation of boundaries for a new district could be created, including using the existing General Commercial boundaries or establishing new boundaries at certain distances off of Shank Painter Road. Another option is to go block by block, such as in Ayer, and have sub form-based code areas that meet different building types and have a graduated use category that transitions from existing zones to most intensive uses to least intensive form-based code. He noted the Littleton, Ayer, and Northampton overlay districts and use standards and how each entity incorporated form-based zoning and reviewed examples from each. He noted dimensional standards and proximity, or minimum build-to requirement, setbacks. He reviewed photographs of Plymouth as an example for what a gateway road looks like, minus the on-street parking. He reviewed architectural parking standards, including examples of different off-street parking locations on a site, various building styles and standards, including examples of first floor commercial with residential above and what a downtown traditional neighborhood building might look like. He noted the Town's current landscaping requirements for Site Plan Review, including the Conservation Commission's table of approved plantings, noted examples of landscaping standards for various types of gardens depending upon their location and what type of building are on a site, and a table of dimensional standards for buffer landscaping. He remarked on other standards, such as guidelines for pre-existing buildings,

signage, and stormwater management. He reviewed the Board's homework: Review Northampton, Ayer, Littleton, and Dennis codes • What do you want the Shank Painter Road streetscape to look like? Develop a common "Vision" • What's the best district type to make the vision a reality and one that Town Meeting will be most likely to adopt? • What are the boundaries of the new Shank Painter Road district? • How much redevelopment should be by-right vs. subject to planning board review? • Is there an example code format that you like best and/or elements of several codes that could be combined? • Which types of standards are easiest to understand and when they are followed will achieve the vision? • Board discusses the answers to the questions above • Direct the Town Planner to draft a code based on the Board's feedback • Review and revise the draft code • Develop a public outreach and education plan • Final revisions & edits based on public feedback • Submit final code as a zoning bylaw amendment to Town Meeting. The Board discussed a time schedule. The Board discussed the topic.

Ms. Masterpolo suggested an extra meeting for those who want to participate to discuss these issues and get to the next step. The Board discussed Town Meeting timelines and how to proceed with the Shank Painter Road corridor changes. Mr. Mulliken said that Board needs specific goals and how and why any proposed changes would benefit the Town economically, culturally, and socially, like a statement of purpose. The next step would be to get the Select Board's support. Ms. Walker added that the stakeholders on Shank Painter Road need to be notified and gotten onboard with any ideas promulgated by the Board. Mr. Mulliken agreed with holding a special meeting. The Board thanked Mr. Soulé for his work on the issue and he said he will work on a purpose statement.

c) **Pending Decision:**

PLN 22-15

Application by **Ted Smith**, on behalf of **Michael Gaucher**, seeking a Site Plan Review by Special Permit pursuant to Article 4, Section 4015, Site Plan Review by Special Permit, a. (1), for developments consisting of an increase of residential units that will result in 3 or more on any parcel, to add one-bedroom residential unit addition above an existing one-story commercial/retail structure on the property located at **397 Commercial Street**. There were no corrections to the decision.

Minutes of July 28, 2022:

July 28, 2022: There was a motion by Brandon Quesnell to approve the minutes of July 28, 2022, as written. Stephen Roope seconded. VOTE: 7-0-0.

d) **Any other business that may properly come before the Board:** Mr. Soulé said that PLN 21-26 regarding 99 Bayberry Avenue has been appealed.

There was a motion by Brandon Quesnell to adjourn the meeting at 8:09 P.M. Jeffrey Mulliken seconded. VOTE: Unanimous by roll call.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2022
Dana Masterpolo, Chair