

PLANNING BOARD
Meeting Minutes
Thursday, September 8, 2022
6:00 P.M.

PB Members Present: Dana Masterpolo, Brandon Quesnell, Jeffrey Mulliken (on the phone and left the meeting at 7:47 P.M.), Paul Kelly, Donna Walker, Mia Cliggott-Perlt (online), Marianne Clements (online), and Greg Baldwin.

Members Absent: Stephen Roope (excused).

Staff: Thaddeus Soulé (Town Planner) and David Gardner (Director of the Dept. of Community Development).

Mr. Soulé convened the meeting at 6:00 P.M. and called the roll. He 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.

1. **Public Comment:** Michael Gaucher spoke in support the on-going efforts by the Planning Board to implement a prohibition on short-term rentals. He hopes the Board will continue to do that and bring a by-law to Town Meeting so the Town voters can decide. Austin Fisell commented that he was in support of limiting short-term rentals in Town.

2. **Public Hearings:**

PLN 21-32 *(continued from the meeting of July 28th)*

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 July 28th)*

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**. Greg Baldwin recused himself from the two cases because of a conflict of interest.

Presentation: Attorney Christopher J. Snow, Tom Tannariello, and Gordon Peabody, of Safe Harbor Environmental, appeared to discuss the application. Attorney Snow wanted to correct the record from a previous hearing where it was stated that Riley's, who owns a bike shop on Bradford Street, or any other affordable housing proposal in Town, has agreed, or is subject, to a restriction against weekly rentals. He said there was no such deed restriction on any affordable housing project. He said this was stated incorrectly as fact at the previous hearing of this project. He said it was also said that the Town Planner would provide a copy of that deed.

He called the misstatement misleading to his client, the applicant, and to the general public. Ms. Masterpolo said the misstatement was not made deliberately but was thought, in good faith, to be correct when it was spoken. Mr. Soulé said he made the misstatement and admitted that he was wrong and said that the record would be corrected. Attorney Snow also asked about a Town Counsel opinion regarding conditioning Planning Board projects with a prohibition on short-term rentals and Ms. Masterpolo said that nothing had been received from Town Counsel.

Since the last meeting, Attorney Snow said, the Board had asked the applicant to consider potential conditions that it had suggested. He said those suggestions have been considered by the applicant and his project team. Attorney Snow said that changes made to the site and landscaping plans reflect some of the Board's concerns. As to the retaining wall, it has been lowered to under 4' as requested and the wall will be made of timber, or a timber façade, and will be screened with vegetation to soften its appearance. The existing fence has been delineated as 'existing' on the site plan. The parking spaces have been assigned numbers corresponding to residential units and visitor parking will be marked as such. Also requested by the Board was the placement of a fire hydrant. The closest fire hydrant to the property presently is at a distance of 225'. The required measurement is within 300'. He argued that the installation of a fire hydrant on the site is unnecessary in view of this fact and the fact that the buildings will be sprinkled. As to the patio surfaces, the Board had asked about what material would be used. Attorney Snow said that pea stone will be used.

Mr. Peabody commented on the landscape plan. He said that this project was one of the more effort-driven that his company had done. The intent is to plant 157 trees, 39 bushes, 34 grass plugs, and 11 vines on the site, many of which will provide nuts and berries for wildlife consumption. He said he has found a supplier that would provide tall red maples, which will be planted at the entrance to the site. He also said that the proposal includes planting 7 sweet pepper and 20 virginiana rose bushes in the drainage area. Beyond that there will be inkberry, a type of holly, plants and panicgrass. He elaborated on a proposal to plant vines to grow up the retaining walls. Wood vine, which is a three-season vine, was chosen, which will create density and attract birds. He said that many of the trees, of which Monarch pines make up a majority, at different heights, will also attract more birds to the property.

Attorney Snow said that Mr. Landers-Cauley should be online shortly to speak to any revisions to engineering aspects of the project.

Attorney Snow said that the applicant has declined to prohibit short-term rentals and will not get rid of or move building 5, as had been suggested by the Board. He thought the site was appropriately designed and pays homage to the neighborhood. And that also includes separating the buildings to allow light and air to flow between them that is a paramount zoning and planning concern. This allows the 'village' feel of this development to be preserved. He reiterated that the proposed project was only seeking one waiver, for number of buildings. **Public Comment:** Sally O'Connell, a direct abutter, spoke about her concerns regarding the project. Michael Gaucher, an abutter, spoke in opposition to the project, Jackie Fung, an abutter, spoke against Town staff pressure on the Board regarding affordable housing and other concerns about the project's effect on the neighborhood. Michelle Jarusiewicz, the housing

specialist for the Town, spoke in support of the affordable units and said the Town needs all the affordable ownership units it can get. Jim Vogel and Rob Anderson, abutters, spoke in opposition to the project.

Board Discussion: Mr. Mulliken said he is dismayed that the applicant had declined to reconfigure the buildings or reduce the number of them on the lot. And he thought that no progress had been made, as the Board was looking at the same plans as last spring. He lamented the fact that not even a sketch of that proposed reconfiguration was offered by the applicant. He said a solution would be to have the same number of units in fewer buildings. He suggested building taller structures and not granting the requested waiver. He said buildings 5 and 12 could be removed and the number of units remain as proposed. He prefers 10 units with 2 being affordable. A more sensitive and creative site plan could still be done and still deliver 2 affordable units to the Town.

Mr. Kelly said that he is in the same position that he has been at previous meetings. He is not asking that any market rate or affordable units be eliminated. He is not satisfied with the applicant's responses to the Board's suggestions for changes. He still thinks that the location of building 5 impacts the neighbors on Nelson Avenue from their decks. He has asked that the building be moved several times. He hopes that something can be worked out. He doesn't like the idea of giving up on this. He thinks good planning includes taking the abutters concerns into consideration. His wish is that the applicant reconsider relocating building 5 and he knows it could be done.

Mr. Quesnell said that he had asked for the affordable units to be located in separate buildings and that has not been done. The installation of car-charging stations in certain parking spaces was also requested. He had requested deed-restricting parking spaces and the applicant returned stating that parking spaces had been assigned. He had asked for a sewer stub to be installed and making the affordable units accessible-ready. The Board had requested specs for bicycle racks. Fencing materials were requested, as were screening the parking spaces where vehicle lights would shine into the windows of abutters. These had not been submitted.

Ms. Masterpolo comments were built upon what has been said by Board members. She said that the Board was fully in support of the two affordable units being provided. She said the Board wanted the project to happen and that 12 units were being proposed, with a requested waiver from the density requirements. She thinks that the frustration comes from trying to make the project the best that it can be for the Town, the future inhabitants of the site, and for the abutters. She feels that there is a missed opportunity that hasn't been taken advantage of to look at what Mr. Mulliken and Mr. Kelly mentioned regarding reconfiguring the buildings, specifically building 5. This would not involve removing any buildings. The way it is laid out, it misses the opportunity to vastly improve the project. She would encourage the applicant to revisit that request. She said it could be a stand-alone unit elsewhere on the site or grouped with another building. It could act as a buffer and go a long way to making the project better for everyone involved. She noted that the Board appreciates the applicant's addressing the retaining wall, as those improvements were valuable. She also praised the amount of time that went into developing the landscaping plan. She said the reconfiguration of the buildings is a change that the Board could get behind and support. She encouraged the applicant to try to do this.

Attorney Snow rebutted the Board's comments. He is disappointed that recognition is lacking for the changes that have been made since April. He disagreed with the contention that no changes had been made since then. The changes include the landscaping, the changes to building 5, which he said had been reconfigured and relocated to make an additional parking space, to make 16 where 12 were required. He said that the sewer stub had not been considered because it is not known when the sewer will come to the neighborhood and that could take many years. And the arbitrary location of the stub would be hypothetical. He said that the applicant had asked to be treated the same way as the applicant for 50 Nelson Avenue. He emphasized that movement had been made and the applicant has been responsive to the Board's concerns and suggestions. He said that the abutting condominium association's property is not a paragon of planning virtue, and it lacked the kind of scrutiny that the applicant has gone through. Most of the decks are in the setbacks and one is over the property line. As to the direct abutter, he has been the subject of two cease and desist orders as to the misappropriation of the applicant's land when building a walkway. He said that there were retaliatory thoughts that have driven some of the abutters' comments. He said that some recognition was needed from the Board concerning what has been revised and what the applicant has gone through trying to respond to the Board's concerns. He noted that the installation of vehicle charging stations is not part of the Local Comprehensive Plan at this time. He reiterated his argument that the applicant has been responsive to the Board suggestions. He said that short-term rentals drive a large portion of the tourist economy on Cape Cod and that this idea of prohibiting short-term rentals has been turned down in many towns on the Cape and on Nantucket. He said that the Board cannot make policy and the project before the Board conforms to the Town's Zoning By-Laws and only one waiver is being requested. He said that the economic, social, and other benefits of the project outweigh any adverse impacts. The affordable housing element has been supported by the Town's housing boards and committees. In his opinion, the Board will be discouraging developers from using this By-Law and providing affordable housing. He requested that a poll of the Board be taken.

Ms. Masterpolo reiterated that the Board is in full support of the program features of the project. And in support of making the project happen with 2 affordable housing units. The Board agrees with the number of units, but what has been discussed is the number of buildings and the location of building 5. The other Town entities that are in support of the Inclusionary and Incentive Zoning By-Law and in support of the affordable housing units are not looking at the plans that the Board is looking at. They are talking about the concept of the project, which the Board agrees with.

Ms. Walker reiterated what Ms. Masterpolo said. The Board is trying to come up with a way to approve the 12 units with 2 affordable ones. And to allow all parties to feel like there has been a true communication to make this a good project. She takes umbrage with the fact that everyone thinks that the Board is not in support of affordable housing because that is not true.

Mr. Mulliken asked if the applicant was willing to reconsider a reconfigured site plan with the same number of units, including 2 affordable ones, in fewer buildings. He commented on the as-of-right calculation of number of units on a site. He said that regulation envisions a rectangular site, whereas what the Board is looking at is a pork chop lot. It is a difficult

geometric shape and to follow hard and fast rules about density doesn't take that shape into consideration. There is open space on the lot, but it is allocated to narrow corridors of plantings and 9' corridors between buildings. Some considerations have to be taken into account given the geometry of sites that the Board will be looking at in the future.

There was a 10 minute break in the meeting so Attorney Snow could consult with his client.

Attorney Snow said that after conferring with the applicant, he is not opposed to re-designing the project to relocate building 5 elsewhere. He suggested that location be within the front yard setback of Nelson Avenue and noted it on the site plan. It would be located between building 1 and Nelson Avenue. He reminded that Board that distances from the septic system needed to be maintained. Buildings 1, 3, and 4 would need to be moved to the north as well, to accommodate the new location. These movements may result in a redesign of the septic system given the required distances of structures from wastewater systems. He said a parking space may be lost or have to be relocated. He asked what the Board thought. He added that a waiver of the front yard setback by the Board would be needed. He thought this is a small concession for a big move by the applicant. Mr. Tannariello said that the septic redesign would be up to the engineer as to whether that was possible. Attorney Snow asked for a poll of the Board as to the new proposal. The Board would not agree to a straw poll. Mr. Tannariello asked what other conditions the Board would require. Mr. Quesnell said it looked like the applicant was moving in the right direction. He continued to assert his position that the two affordable units be in different buildings. Mr. Mulliken reiterated his request to combine units within buildings so there would be fewer buildings. Attorney Snow said that the applicant would make every effort in the redesign to minimize the intrusion into the Nelson Avenue setback. Attorney Snow requested a continuance to the October 27, 2022 Public Hearing at 6:00 P.M. Mr. Peabody said that the planting plan would need to be revised as well. Mr. Mulliken requested that just a building layout plan for the site be submitted as opposed to complete plans, in addition to a revised planting plan.

***There was a motion by Brandon Quesnell to grant the request to continue PLN 22-32 and PLN 22-33 to the Public Hearing October 27, 2022 at 6:00 P.M. Paul Kelly seconded.
VOTE: 7-0-0 by roll call.***

3. Work Session:

a) Discussion of Inclusionary and Incentive Zoning By-Law Amendment:

The Board reviewed the proposed amendment to the Inclusionary and Incentive Zoning By-Law. It adds the ability for the creation of at least 20% of the overall floor area of a development to be dedicated to dormitory/worker housing. Ms. Masterpolo asked how that would be administered and how the Town would make sure that it was conforming to the new regulations. David Gardner joined the discussion. He said the By-Law currently has a provision for year-round rentals, so the provision of a dormitory or employee housing would qualify a project for the incentive section of the By-Law. The Board would condition the project just like any other inclusionary project. The Town could potentially do a deed restriction for that style of housing. A dormitory or employee style housing consists of multiple bedrooms around common living areas, so they do not look like a normal dwelling unit in

some respects. They need to have common kitchen facilities and common living facilities in addition to the bedroom areas. The Board would have definitions in the Zoning By-Laws and identify the conditions for approval of a project and the deed restriction, similar to what is done for year-round housing. The Board questioned Mr. Gardner. The property owner would have to decide how the dormitory/employee housing would be managed. Mr. Gardner said because this amendment is not tied to income level, it provides a different opportunity to incentivize development for someone to meet their own needs and would provide another option for developers because it is not income restricted. Ms. Masterpolo said that this could benefit a property owner who is re-developing a property or renovating a structure and is a business owner who sees an opportunity to provide housing for employees by increasing their square footage by 20%. Mr. Gardner said the deed-restriction would go with the property if it were sold. He said there is a need for this type of housing, and as no public funds are available to support it, the onus is on the private sector to provide it. This will provide incentives for that to happen. The Board discussed the issue. Mr. Gardner said that the 20% figure was a lower threshold number and not a firm one. The Board has the opportunity to discuss what the number should be. Mr. Gardner gave various examples of what some business owners in Town have done to accommodate employees, such as buying a house and reducing the living area and adding bedrooms, or beds to a bedroom, or converting spaces above their businesses. He said that this option is probably more for a business owner who sees it as an opportunity to create employee housing as opposed to a developer. Mr. Gardner asked if the Board was ready to move this forward and sponsor the amendment and is the 20% threshold correct.

There was a motion by Donna Walker to support a proposed Zoning By-Law amendment of the Inclusionary and Incentive Zoning By-Law regarding incentives for the construction or rehabilitation of affordable or community housing unit to add the development of dormitory/employee housing and include it on the Fall Town Meeting warrant. Brandon Quesnell seconded.

Mr. Gardner said that Town Counsel has briefly reviewed the amendment. The amendment in its final form will be brought back to the Board for a vote at its September 22nd meeting. The results of a straw poll of Board members showed unanimous support.

b) **Discussion of Shank Painter Road Overlay District/Form-Based Zoning:** Tabled.

c) **Discussion of Short-Term Rentals:** Mr. Quesnell wanted to discuss defining short-term and long-term rental areas. He has worked on possible language for a by-law revision that would take into consideration making the Residential 3 Zoning District north of Route 6 a long-term rental area. Mr. Gardner has had the opportunity to talk to Town Counsel about it yet. He said he needed to verify the state definition of short-term rental and use the same definition. He reviewed an issue in the language in that the Town does not issue short-term rental certificates. The Town issues rental certificates with no distinction as to short- or long-terms. To fully achieve Mr. Quesnell's intent, the Board of Health may need to evaluate that issue. The Board of Health would have to establish a distinction between short- and long-term rental certificates. Town Counsel has expressed concerns about the Town's ability, once a grandfathering is established, to remove it. It's a land use and it goes with the land in that the grandfathering would exist, not a current owner, so a transferring of property to a new owner could be problematic. He asked about a lapse of the certificate as discontinuing the use, not

that it expires, because they will have the ability to renew a certificate if one exists. He said if the Board wanted to move forward with this idea and create an overlay district for short-term and long-term rentals, Town Counsel would have to mark it up. The Board discussed the idea. The Board requested that Mr. Gardner proceed to move this forward.

There was a motion by Donna Walker to include a proposed Article 2, Section 2370, Year-Round and Long-term Rental Regulated District, including its definition, purpose, and sections 1-5, in the October Town Meeting draft warrant, with the stipulation that it will be reviewed by Town Counsel. Brandon Quesnell seconded.

The Board discussed the motion. Mr. Baldwin wanted to look at the research on the number of long-term and short-term rentals on Nelson Avenue before he voted on the motion. Mr. Gardner said he needs some direction from the Board. The Board discussed whether to recommend the proposed article for Fall Town Meeting or wait until the Spring Town Meeting in 2023. Ms. Masterpolo took a straw poll of the Board, which by a majority vote, did not want to move the proposal forward at this time. She requested more data in order to consider the proposal and that the Board work on the proposal at its subsequent meetings.

d) **Pending Decisions:** None.

e) **Minutes of August 25, 2022:**

August 25, 2022: There was a motion by Brandon Quesnell to approve the minutes of August 25, 2022, as written. Paul Kelly seconded. VOTE: 7-0-0 by roll call.

f) **Any other business that may properly come before the Board:**

There was a motion by Brandon Quesnell to adjourn the meeting at 9:16 P.M. Marianne Clement seconded. VOTE: Unanimous by roll call.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2022

Dana Masterpolo, Chair