

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
April 5, 2018**

**Members Present:** Jeffrey Gould, Jeremy Callahan, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks.

**Members Absent:** Rob Anderson (excused)

**Others Present:** David Gardner (Assistant Town Manager), Jeffrey Ribeiro (Town Planner) and Ellen C. Battaglini (Permit Coordinator).

**A. WORK SESSION**

Chair Jeffrey Gould called the Work Session to order at 6:50 P.M.

1) **PENDING DECISION:**

a) **ZBA 18-37 (Rob)**

**166 Commercial Street (Town Center Commercial Zone), Tom Thompson –** Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case. The decision was not ready.

2) **MINUTES: March 15, 2018 – Marianne Clements moved to approve the minutes as written, Jeremy Callahan seconded and it was so voted, 5-0.**

**MINUTES: March 29, 2018 – Marianne Clements moved to approve the minutes as written, Jeremy Callahan seconded and it was so voted, 5-0.**

3) **Any other business that may properly come before the Board: None.**

**B. PUBLIC HEARING**

Chair Jeffrey Gould called the Public Hearing to order at 7:00 P.M.

1) **ZBA 18-05 (request to postpone to the meeting of April 19<sup>th</sup>)**  
**350 Bradford Street (Residential 3 Zone), Attorney Lester J. Murphy, on behalf of BPJC, LLC –**

The applicant seeks a reconsideration of a **Notice of Appeal** regarding a July 12, 2017 decision by the Building Commissioner that a flat-roofed structure was in excess of 23' and was in violation of Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws. The applicant requested to postpone to the April 19, 2018 Public Hearing. ***Jeremy Callahan moved to grant the request to postpone ZBA 18-05 to the Public Hearing of April 19, 2018 at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.***

2) **ZBA 18-21** (*request to postpone to the meeting of April 19<sup>th</sup>*)  
**53 Commercial Street, Rear (Residential 2 Zone), Don DiRocco, of Hammer Architects, on behalf of Jay Anderson –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions or Alterations, and Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish an existing structure and construct a new structure within a pre-existing, non-conforming east elevation and for an increase in building scale. The applicant requested to postpone to the April 19, 2018 Public Hearing. ***Jeremy Callahan moved to grant the request to postpone ZBA 18-21 to the Public Hearing of April 19, 2018 at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.***

3) **ZBA 18-23** (*request to postpone to the meeting of April 19<sup>th</sup>*)  
**509 Commercial Street (Residential 3 Zone), KA Bazarian on behalf of 509 Commercial, LLC –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to raise a structure 9' to conform with FEMA regulations, going up and along east and west pre-existing, non-conforming elevations, to add and enclose the space below a deck on the south elevation and to add an egress stairway on the west elevation. The applicant requested to postpone to the April 19, 2018 Public Hearing. ***Steven Latasa-Nicks moved to grant the request to postpone ZBA 18-23 to the Public Hearing of April 19, 2018 at 7:00 P.M., Jeremy Callahan seconded and it was so voted, 5-0.***

4) **ZBA 18-32** (*request to postpone to the meeting of April 19<sup>th</sup>*)  
**57A Pleasant Street (Residential 3 Zone), Ted Smith, on behalf of Karl Broussard –**  
The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to demolish and rebuild a structure with an expanded footprint and an increased building scale. The applicant requested to postpone to the April 19, 2018 Public Hearing. ***Marianne Clements moved to grant the request to postpone ZBA 18-32 to the Public Hearing of April 19, 2018 at 7:00 P.M., Steven Latasa-Nicks seconded and it was so voted, 5-0.***

5) **ZBA 18-39** (*postponed from the meeting of March 1<sup>st</sup>*)  
**7 Bradford Street (Residential 3 Zone), Steven Cook, of Cotuit Bay Design, on behalf of Matthew Metivier & Ricardo Gessa Abreus –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Sections 3110, Change, Extensions and Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and rebuild a cottage up and along a pre-existing, non-conforming east elevation and to increase building scale on an existing principal structure by adding an addition. Marianne Clements is an abutter to the property and offered to

recuse herself. Chair Jeffrey Gould explained to the applicant that if only 4 members could be seated on the case and the granting of a Special Permit requires a supermajority vote of the Board, the applicant could choose to postpone to a hearing when 5 members could be seated or proceed. An applicant could also choose to allow Ms. Clements to be seated on the case. The applicant chose the latter option. Jeffrey Gould, Jeremy Callahan, Daniel Wagner, Marianne Clements and Steven Latasa-Nicks sat on the case.

**Presentation:** Steven Cook, Kevin Bazarian and Matthew Metivier appeared to present the application. Mr. Cook reviewed the project, which includes the removal of an existing 10' by 12' rear section of the main house and existing hip dormers, the construction of a 13' by 18' two-story addition on the rear of the main house and a 9' by 7' single-story addition on the east elevation of the main structure on the property. An existing deck will be removed and replaced, making the main structure conforming to its east side setbacks. An existing dilapidated guest cottage will be torn down, re-located and rebuilt with an attached storage shed. The additions on the south and east elevations of the main house are conforming as to setbacks. The Historic District Commission has approved the changes to the main house and will hear the proposal to tear down the cottage at a later hearing. Mr. Cook argued that the main structure, after completion of the project, would successfully integrate into its surroundings and would be sited in a manner that minimizes the appearance of mass from the streetscape and would not have a significant negative impact on the natural light to, or views from, neighboring structures.

**Public Comment:** Frank Pantano, an abutter, spoke in support of the application. There were no letters in the file.

**Board Discussion:** The Board questioned Mr. Cook. The Board was concerned about the increase in building scale of the main structure given its high visibility in the neighborhood and disagreed that the changes to the main structure would successfully integrate into the neighborhood and minimize its increased mass from the streetscape, but had no issue with the proposed changes up and along the pre-existing, non-conforming elevations. Mr. Cook requested a continuance to the Public Hearing of May 3, 2018 in order to revise the design of the main structure. The Board suggested to Mr. Cook that the massing could be shifted or minimized by some other means in order for the Board to make a finding regarding the building scale requirement or make an argument that the increase in scale is in keeping with the goals and policies of the Local Comprehensive Plan.

**Jeremy Callahan moved to grant the request to continue ZBA 18-43 to the Public Hearing of May 3, 2018 at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.** Jeffrey Gould will write the decision when it has been rendered.

6) **ZBA 18-44** (*postponed from the meeting of March 1<sup>st</sup>*)

**18 Priscilla Alden Road (Residential 3 Zone), Tom Thompson**, on behalf of **Bruce Heron** – The applicant seeks a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions and Alterations, of the Zoning By-Laws to extend up and along pre-existing, non-conforming west and south elevations to construct a second floor. Jeffrey Gould, Jeremy Callahan, Daniel Wagner, Marianne Clements and Steven Latasa-Nicks sat on the case.

**Presentation:** Tom Thompson and William Heron appeared to present the application. Mr. Thompson reviewed the proposed project and requested that it be heard under the *Goldhirsh v. McNear* ruling. The project includes adding a second story to increase the applicant's living space up and along pre-existing, non-conforming south and west elevations. The size of this one-

story cottage dwelling is being increased in order to accommodate the living needs of the owner and there will be no increase in the footprint of the structure. He reviewed the non-conforming aspects of the property. He argued that the project is in conformity with the goals and policies of the LCP as follows: Chapter 1, Goal 1, Policy B, Goal 2, Policy A and Chapter 4, Goal 2, Policy A. In addition, there will be no disruption in the character of the neighborhood, and the structure will be harmonious with the surrounding area and of limited visibility. He added that the project would not make the structure substantially more detrimental to the Town or neighborhood than the existing non-conforming one. The plans meet the requirements of Article 5, Section 5330 in that the social, economic and other benefits outweigh any hazard, congestion or environmental degradation. The benefits include an increase in the local tax base, increasing the living space of a dwelling for a resident while allowing him to continue to contribute to the local economy and community.

**Public Comment:** Richard Shields, an abutter, spoke in opposition to the application. There was 1 letter from Mr. Shields in opposition to the project and 1 letter from an abutting condominium association with concerns about the appearance of the proposed structure and that another bedroom could be created on the second floor in violation of the Board of Health decision regarding the septic system.

**Board Discussion:** Chairman Gould read the requirement of an application to be heard under the *Goldhirsh v. McNear* ruling.

*Jeremy Callahan moved to hear the matter under the Goldhirsh v. McNear ruling, Marianne Clements seconded and it was so voted, 5-0.*

*Jeremy Callahan moved to grant a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions and Alterations, of the Zoning By-Laws to extend up and along pre-existing, non-conforming west and south elevations to construct a second floor at the property located at 18 Priscilla Alden Road (Res 3), Marianne Clements seconded and it was so voted, 5-0.*

7) **ZBA 18-45** (*request to postpone to the meeting of April 19<sup>th</sup>*)

**78 Bradford Street (Town Commercial Center Zone), Eliot Parkhurst**, on behalf of **Thomas Walter and David Sanford, dba Crowne Pointe Inn & Spa** –

The applicant seeks a Special Permit pursuant to Article 2, Sections 2440, Permitted Principal Uses, 2460, Special Permit Requirements, and 2470, Parking Requirements, of the Zoning By-Laws to change the use of a structure to commercial accommodations serving alcoholic beverages and for relief from parking requirements. The applicant requested to postpone to the April 19, 2018 Public Hearing. *Marianne Clements moved to grant the request to postpone ZBA 18-45 to the Public Hearing of April 19, 2018 at 7:00 P.M., Daniel Wagner seconded and it was so voted, 5-0.*

8) **ZBA 18-46** (*request to postpone to the meeting of April 19<sup>th</sup>*)

**78 Bradford Street (Town Commercial Center Zone), Eliot Parkhurst**, on behalf of **Thomas Walter and David Sanford, dba Crowne Pointe Inn & Spa** –

The applicant seeks a Variance pursuant to Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws to construct emergency egress stairs into and along a pre-existing, non-conforming west elevation. The applicant requested to postpone to the April 19, 2018 Public

Hearing. *Marianne Clements moved to grant the request to postpone ZBA 18-46 to the Public Hearing of April 19, 2018 at 7:00 P.M., Steven Latasa-Nicks seconded and it was so voted, 5-0.*

9) **ZBA 18-47**

**7 Johnson Street (Town Commercial Center Zone), White Porch Inn –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws for the service of alcohol for private consumption by registered guests of the White Porch Inn. Jeffrey Gould, Jeremy Callahan, Daniel Wagner, Marianne Clements and Steven Latasa-Nicks sat on the case.

**Presentation:** Tom Shirk appeared to present the application. He explained that a previous Special Permit had been granted for the service of alcohol, but had only been valid for a year. He is requesting that another Special Permit be granted for the service of alcohol for a longer period of time. He added that the service of alcohol only occurs until 10:00 P.M. and that no noise complaints related to the property had been filed with the Provincetown Police Dept.

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

**Board Discussion:** The Board had no questions.

*Jeremy Callahan moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws for the service of alcohol for private consumption by registered guests of the White Porch Inn at the property located at 7 Johnson Street (TCC), Marianne Clements seconded and it was so voted, 5-0.* Marianne Clements will write the decision.

10) **ZBA 18-48**

**304 Bradford Street (Residential 3 Zone), Mary Ann Bragg –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to rebuild a retaining wall in a pre-existing, non-conforming east elevation. Jeffrey Gould, Jeremy Callahan, Daniel Wagner, Marianne Clements and Steven Latasa-Nicks sat on the case.

**Presentation:** Attorney David Reid, representing the applicant, and Stacy Kanega, an engineer with Coastal Engineering Co., appeared to present the application. Attorney Reid reviewed the project, which involves pre-existing, non-conforming east and south elevations. The project includes the replacement of a series of retaining walls and stairs that are in poor condition on the east side that run from a parking area to the lower elevation of the property. The new location of the retaining wall and stairs will correct the encroachment onto the eastern neighbor's property and will therefore be more conforming and safer for the applicant. He argued that there would be no increase in the non-conformancies on the property and that the project would not be substantially more detrimental than the existing situation. In fact, he added, the project will result in the wall being more conforming.

**Public Comment:** None. There was 1 letter in support of the application.

**Board Discussion:** The Board questioned Attorney Reid and Ms. Kanega.

*Jeremy Callahan moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to rebuild a retaining wall in a pre-existing, non-conforming east elevation at the property located at 304 Bradford Street (Res 3), Marianne Clements seconded and it was so voted, 5-0.* Daniel Wagner will write the decision.

11) **ZBA 18-49**

**15 Race Road (Residential 3 Zone), Jay Abbiuso –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to add a garage to a structure. Jeffrey Gould, Jeremy Callahan, Daniel Wagner, Marianne Clements and Steven Latasa-Nicks sat on the case.

**Presentation:** Jay Abbiuso and Attorney Chris Fiset appeared to present the application. Mr. Abbiuso reviewed the project, which involves attaching a 16' by 24' garage to a structure. He said if the Board did not approve this project, he could by right construct a 12' by 37' garage 6' from the west side property line, closer to an abutting property, which would require the removal of a large portion of vegetation. He argued that an attached garage would be more harmonious with the neighborhood. Mr. Abbiuso submitted plot plans showing the garage attached and the garage unattached. The neighborhood average scale is 15,559 cu. ft., the maximum allowable is 19,449 cu. ft. and the total proposed scale is 24,254 cu. ft., 25% above the maximum allowable. He argued that the attached garage will provide both economic and other benefits without creating any hazard, congestion or environmental damage. Attaching the garage will move it farther away from the setbacks and it would be less likely to block the views of, and the light to, abutting property owners.

**Board Discussion:** The Board questioned Mr. Abbiuso. The Board asked about floor plans for the proposed garage. Mr. Abbiuso requested a continuance in order to submit floor plans. The public portion of the hearing remains open.

*Jeremy Callahan moved to grant the request to continue ZBA 18-49 to the Public Hearing of April 19, 2018 at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.* Jeffrey Gould will write the decision when it has been rendered.

The Board requested that a Work Session on scale be scheduled for May 3, 2018.

**NEXT MEETING:** The next meeting will take place on Thursday, April 19, 2018. It will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Steven Latasa-Nicks moved to adjourn the Work Session at 8:15 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2018  
Jeffrey Gould, Chair