

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
April 19, 2018**

Members Present: Jeffrey Gould, Jeremy Callahan (left at 8:00 P.M.), Rob Anderson, Marianne Clements (arrived at 7:14 P.M.), Daniel Wagner and Steven Latasa-Nicks.

Members Absent: None.

Others Present: David Gardner (Assistant Town Manager) and Ellen C. Battaglini (Permit Coordinator).

A. WORK SESSION

Chair Jeffrey Gould called the Work Session to order at 6:32 P.M.

1) PENDING DECISIONS:

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. Mr. Anderson read the decision. *Jeremy Callahan moved to approve the language as written, Daniel Wagner seconded and it was so voted, 4-0.*

b) **ZBA 18-47 (Jeremy)**

7 Johnson Street (Town Commercial Center Zone), White Porch Inn – Jeffrey Gould, Jeremy Callahan, Daniel Wagner, Marianne Clements and Steven Latasa-Nicks sat on the case. Mr. Callahan read the decision. *Jeremy Callahan moved to approve the language as written, Steven Latasa-Nicks seconded and it was so voted, 4-0.*

c) **ZBA 18-48 (Daniel)**

304 Bradford Street (Residential 3 Zone), Mary Ann Bragg – Jeffrey Gould, Jeremy Callahan, Daniel Wagner, Marianne Clements and Steven Latasa-Nicks sat on the case. Mr. Wagner read the decision. *Daniel Wagner moved to approve the language as written, Rob Anderson seconded and it was so voted, 4-0.*

2) MINUTES: April 4, 2018 – *Jeffrey Gould moved to approve the minutes as written, Jeremy Callahan seconded and it was so voted, 4-0.*

3) Any other business that may properly come before the Board: A Work Session at 6:00 P.M. on May 3rd will include a discussion on building scale.

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 May 17th*)
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 May 17, Public Hearing. **Jeff Gould moved to grant the request to postpone ZBA 18-05 to the Public Hearing of May 17, 2018 at 7:00 P.M., Rob Anderson seconded and it was so voted, 4-0.**

9) **ZBA 18-50**

Application by **Vida Richter**, on behalf of **Nor'east Beer Garden**, requesting a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws for an awning that increases the scale of the structure. Rob Anderson recused himself because of a conflict of interest. Mr. Gould explained that since there were only 4 members available to be seated on the case and given the fact that a unanimous decision would be needed for the granting of a Special Permit, the applicant could choose to go forward or postpone until 5 members could be seated on the case. Ms. Richter chose to proceed. Jeffrey Gould, Rob Anderson, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Vida Richter appeared to present the application. She described the canopy that has been attached to the structure for a couple of years and she is now seeking relief for the increase in building scale that resulted from its installation.

Public Comment: None.

Board Discussion: The Board questioned Ms. Richter. The Board found that the canopy was in keeping with subparagraph #5 of Article 2, s. 2640.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws for an awning that increases the scale of the structure at the property located at 206 Commercial Street (TCC), finding the canopy consistent with the requirements of subparagraph #5 of Article 2, s. 2640 and Article 5, s. 5330 of the Zoning By-Laws, Jeremy Callahan seconded and it was so voted, 4-0. Jeremy Callahan will write the decision.

2) **ZBA 18-21**

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. There was a request from the applicant to withdraw this application

without prejudice. **Jeremy Callahan moved to grant the request to withdraw ZBA 18-21 without prejudice, Rob Anderson seconded and it was so voted, 5-0.**

3) **ZBA 18-23** (*request to postpone to the meeting of May 3rd*)
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 May 3, 2018 Public Hearing. **Jeremy Callahan moved to grant the request to postpone ZBA 18-23 to the Public Hearing of May 3, 2018 at 7:00 P.M., Steven Latasa-Nicks seconded and it was so voted, 5-0.**

4) **ZBA 18-32** (*postponed from the meeting of April 5th*)
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. Jeffrey Gould, Jeremy Callahan, Rob Anderson, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Ted Smith appeared to present the application. He had submitted a revised site plan and reviewed the project, which was revised due to a request from the Conservation Commission to move the structure closer to Pleasant St and farther away from a resource area. The principal structure is being torn down and rebuilt with a larger footprint. The scale proposed is 65% in excess of the neighborhood average, but it fits into the neighborhood. He argued that the structure successfully integrates in its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a negative impact on views or light from surrounding structures.

Public Comment: None.

Board Discussion: The Board questioned Mr. Smith.

Jeremy Callahan moved to grant 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 at the property located at 57A Pleasant Street (Res 3), Steven Latasa-Nicks seconded and it was so voted, 5-0. Steven Latasa-Nicks will write the decision.

5) **ZBA 18-39** (*continued to the meeting of May 3rd*)
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.

8) **ZBA 18-49** (continued from the meeting of April 5th)

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 Christopher Fiset appeared to discuss the application. Mr. Abbiuso submitted floor plans for the garage as requested by the Board. He also submitted a picture of foliage on the property that would be removed if the Board did not approve attaching the garage to the structure. The proposed attached garage would be smaller than a free-standing garage and would not require siting nearer, and not parallel to, the road and the removal of vegetation, both of which would lessen the curb appeal on that side of the property. Attorney Fiset underscored the same benefits to attaching the garage.

Public Comment: None.

Board Discussion: The Board questioned Mr. Abbiuso and Attorney Fiset about how the building scale would not be detrimental to the neighbors. The Board decided that since the attached garage would be smaller than an unattached one closer to the lot line that the latter would be better integrated on the site and in the neighborhood.

Jeremy Callahan moved to find that the economic, social and other benefits to the neighborhood of the proposed project outweigh any adverse effects such as hazard, congestion and environmental degradation, Marianne Clements seconded and it was so voted, 5-0.

Jeremy Callahan moved to find that the project met the requirement of Article 2, Section 2640E, subparagraph 5 of the Zoning By-Laws, Steven Latasa-Nicks seconded and it was so voted, 5-0.

Jeremy Callahan moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to add a garage to a structure located on the property at 15 Race Road (Res 3), Marianne Clements seconded and it was so voted, 5-0.

Jeffrey Gould will write the decision.

10) **ZBA 18-51**

51 Commercial Street, Residential 2 Zone, Mark Kinnane, of Cape Associates, Inc., on behalf of Jay Anderson -

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alterations, of the Zoning By-Laws to raise the foundation of three structures on the property by 1' up a pre-existing, non-conforming west elevation. Jeffrey Gould, Jeremy Callahan, Marianne Clements, Rob Anderson and Daniel Wagner sat on the case.

Presentation: Mark Kinnane appeared to present the application. He said that the property and the three structures at the site, which were undergoing renovation, had been flooded in the winter storms and the applicant seeks to raise the foundations by 1'. The rear building will be moved outside the velocity zone.

Public Comment: None.

Board Discussion: The Board questioned Mr. Kinnane.

Jeremy Callahan moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alterations, of the Zoning By-Laws to raise the foundation of three structures on the property by 1' up a pre-existing, non-conforming west elevation at the property located

at 51 Commercial Street (Res 2), Marianne Clements seconded and it was so voted, 5-0. Rob Anderson will write the decision.

11) **ZBA 18-52**

20 Winthrop Street, Residential 3 Zone, Rhian Cull -

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alterations, of the Zoning By-Laws to extend a deck along a pre-existing, non-conforming south elevation. Jeffrey Gould, Jeremy Callahan, Marianne Clements, Rob Anderson and Daniel Wagner sat on the case.

Presentation: Maria Cull, Rhian Cull and Jeff Hennemuth appeared to present the application. Ms. Cull requested that the application be heard under the *Goldhirsh v. McNear* ruling.

Jeremy Callahan moved to hear ZBA 18-52 pursuant to the Goldhirsh v. McNear ruling, Marianne Clements seconded and it was so voted, 5-0.

Ms. Cull reviewed the deck replacement and expansion, which she said would not increase the non-conformity of the deck. She said that the social, economic and other benefits would outweigh any adverse effects such as hazard, congestion and environmental degradation. The economic benefit would be that the property would increase in value and the real estate taxes collected would increase as well. The new deck will not be substantially more detrimental to the Town and neighborhood than the existing situation.

Public Comment: None.

Board Discussion: The Board briefly questioned Ms. Cull and Jeff Hennemuth.

Jeremy Callahan moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alterations, of the Zoning By-Laws to extend a deck along a pre-existing, non-conforming south elevation (Res 3), Marianne Clements seconded and it was so voted, 5-0.

6) **ZBA 18-45** (*postponed from the meeting of April 5th*)

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. Jeffrey Gould, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on both cases.

7) **ZBA 18-46** (*postponed from the meeting of April 5th*)

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.

Presentation: Attorney Eliot Parkhurst and Tom Walter appeared to present the applications. Attorney Parkhurst reviewed the history of the structure on the site. The applicants seek to convert the single-family house to commercial accommodations and to become part of the Crowne Pointe Inn abutting the property. A bedroom will be added, for a total of four bedrooms. This conversion requires a waiver from the parking requirements, which he argued, is possible for the Board to approve, as there is on-site parking next door at Crown Pointe, the applicants

rent parking spaces from the Catholic Church down the street and there is a public lot in close proximity. Crowne Pointe has a permit to serve alcohol and the applicants seek to include this property and allow guests to bring alcohol to these rooms as well. There will be no change in the point of sale for the alcohol on the property. When the property was renovated and enlarged in 2003, there was only one means of egress from the structure and the applicants seek to construct a second means for safety reasons. The location of the egress stairs proposed is the only feasible one on the site and, as it is on the west elevation, would encroach further into the pre-existing, non-conforming side setback. The relief sought from the Board would be in the form of a Variance from the dimensional schedule. In addition, when the SP was granted in 2003, the ZBA imposed a condition that a deed restriction in perpetuity be placed on the property stating that the structure would remain a single- or two-family dwelling with three bedrooms. That was subsequently reduced to 20 years and this is the 15th year of that time period. The applicants are seeking to have that condition removed in order to convert it to a commercial use.

Public Comment: None.

Board Discussion: The Board questioned Attorney Parkhurst and Mr. Walter.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Sections 2440, Permitted Principal Uses and 2460, Special Permit Requirements, of the Zoning By-Laws to change the use of a structure to commercial accommodations serving alcoholic beverages at the property located at 78 Bradford Street (TCC), Rob Anderson seconded and it was so voted, 5-0.

Steven Latasa-Nick moved to grant a Special Permit pursuant to Article 2, Section 2470, Parking Requirements, of the Zoning By-Laws for relief from parking requirements at the property located at 78 Bradford Street (TCC), Rob Anderson seconded and it was so voted, 5-0.

Steven Latasa-Nicks moved to grant 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 at the property located at 78 Bradford Street (TCC), Rob Anderson seconded and it was so voted, 5-0. Marianne Clements will write the decisions.

NEXT MEETING: The next meeting will take place on Thursday, May 3, 2018. It will consist of a Work Session at 6:00 P.M. followed by a Public Hearing at 7:00 P.M.

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

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2018
Jeffrey Gould, Chair