

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
May 17, 2018**

Members Present: Jeremy Callahan, Rob Anderson, Marianne Clements (arrived at 8:07 P.M.) and Daniel Wagner.

Members Absent: Steven Latasa-Nicks (excused).

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

A. WORK SESSION

Interim Chair Jeremy Callahan called the Work Session to order at 6:45 P.M.

1) **PENDING DECISIONS:**

a) **ZBA 18-51 (Rob)**

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. Rob read the decision. *Daniel Wagner moved to approve the language as written, Jeremy Callahan seconded and it was so voted, 3-0.*

MINUTES: May 3, 2018 – *Jeremy Callahan moved to approve the minutes as written, Rob Anderson seconded and it was so voted, 5-0.*

Interim Chair Jeremy Callahan adjourned the Work Session at 6:50 P.M.

B. PUBLIC HEARING

Interim Chair Jeremy Callahan called the Public Hearing to order at 7:00 P.M.

- 1) **ZBA 18-05** (*request to postpone to the meeting of June 7th*)
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. Attorney Lester J. Murphy appeared to request a postponement to the June 7, 2018 Public Hearing. ***Jeremy Callahan moved to grant the request to postpone ZBA 18-05 to the June 7, 2018 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 3-0.***

2) **ZBA 18-23** (*request to postpone to the meeting of June 7th*)
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. There was a request by the applicant to postpone to the June 7, 2018 Public Hearing. ***Jeremy Callahan moved to grant the request to postpone ZBA 18-23 to the June 7, 2018 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 3-0.***

4) **ZBA 18-53** (*request to postpone to the meeting of June 21st*)
143 Commercial Street (Town Center Commercial Zone), George Tagaris –

The applicant seeks a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions and Alterations, of the Zoning By-Laws to modify a condition related to the installation of a sprinkler system pursuant to an existing Special Permit, FY15-57. There was a request from the applicant to postpone the matter to the June 21, 2018 Public Hearing at 7:00 P.M. ***Jeremy Callahan moved to grant the request to postpone ZBA 18-53 to the June 21, 2018 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 3-0.***

5) **ZBA 18-54** (*request to postpone to the meeting of June 7th*)
143 Commercial Street (Town Center Commercial Zone), George Tagaris –

The applicant seeks a Special Permit pursuant to Article 2, Section 2310, Harborfront Regulation, of the Zoning By-Laws to construct a boardwalk and stairs in the Harborfront Overlay District. There was a request from the applicant to postpone the matter to the June 7, 2018 Public Hearing at 7:00 P.M. ***Jeremy Callahan moved to grant the request to postpone ZBA 18-54 to the June 7, 2018 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 3-0.***

6) **ZBA 18-55**
15 Atwood Avenue (Residential 1 Zone), Don DiRocco, of Hammer Architects, on behalf of Mark Boucher and Peter Gherardi -

The applicants seek a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct two bays and a screened-in porch within a pre-existing, non-conforming southwest elevation on the structure and for an increase in building scale. There was a request from the applicant to postpone to the Public Hearing of June 7, 2018. ***Jeremy Callahan moved to grant the request to***

postpone ZBA 18-55 to the June 7, 2018 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 3-0.

8) **ZBA 18-57** (*request to postpone to the meeting of June 21st*)

177 Commercial Street (Town Center Commercial Zone), Christopher J. Snow, Esq. –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to extend a pre-existing, non-conforming structure southward by adding a deck along a non-conforming west elevation. There was a request by the applicant to postpone to the June 21, 2018 Public Hearing. *Jeremy Callahan moved to grant the request to postpone ZBA 18-57 to the June 21, 2018 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 3-0.*

9) **ZBA 18-58** (*request to postpone to the meeting of June 21st*)

177 Commercial Street (Town Center Commercial Zone), Christopher J. Snow, Esq. –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow 30 exterior flex seats for the service of food and alcohol on the deck. There was a request by the applicant to postpone to the June 21, 2018 Public Hearing. *Jeremy Callahan moved to grant the request to postpone ZBA 18-58 to the June 21, 2018 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 3-0.*

10) **ZBA 18-59** (*request to withdraw without prejudice*)

350 Bradford Street (Residential 3 Zone), BPJC, LLC –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to deviate from building scale for the installation of a pitched roof for the Building containing Units 9 & 10. There was a request by the applicant to withdraw without prejudice. *Jeremy Callahan moved to grant the request to withdraw ZBA 18-59 without prejudice, Rob Anderson seconded and it was so voted, 3-0.*

11) **ZBA 18-60** (*request to withdraw without prejudice*)

350 Bradford Street (Residential 3 Zone), BPJC, LLC –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to deviate from building scale for the installation of a pitched roof for the Building containing Units 7 & 8. *Jeremy Callahan moved to grant the request to withdraw ZBA 18-60 without prejudice, Rob Anderson seconded and it was so voted, 3-0.*

12) **ZBA 18-61** (*request to withdraw without prejudice*)

350 Bradford Street (Residential 3 Zone), BPJC, LLC –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to deviate from building scale for the installation of a pitched roof for the Building containing Units 3 & 4. *Jeremy Callahan moved to grant the request to withdraw ZBA 18-61 without prejudice, Rob Anderson seconded and it was so voted, 3-0.*

Interim Chair Jeremy Callahan postponed the Public Hearing at 7:17 P.M.

Interim Chair Jeremy Callahan reconvened the Public Hearing at 8:08 P.M.

3) **ZBA 18-39**

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. Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case. ZBA Marianne disclosed that she is an abutter however she sat on the last hearing of the matter with the agreement of the applicant.

Presentation: Steven Cook appeared to discuss the application. He reviewed the last hearing of the application and the new proposed revisions to the project. He stated that the cottage will not be demolished at this time, as previously proposed, and the plan for the main building has been scaled down. The applicant is asking now only for relief under s. 3110 for a 6' by 18' addition on the pre-existing, non-conforming south elevation of the main building and there will be no additions on the east side as previously proposed. Now that there is only a single addition on the main building, scale relief is not needed. Mr. Cook argued that the addition would not be substantially more detrimental to the neighborhood than the existing situation.

Public Comment: None.

Board Discussion: The Board had no questions for Mr. Cook. The Board agreed that the matter as revised could be heard under the *Goldhirsh v. McNear* ruling. ***Jeremy Callahan moved to consider the matter under Goldhirsh v. McNear, Marianne seconded and it was so voted, 4-0.***

Marianne moved to approve a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions and Alterations, 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, Rob seconded and it was so voted, 4-0.

7) **ZBA 18-56**

331 Commercial Street, UB (Town Center Commercial Zone), Gabriel Rivera Aguilar –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws for a change in a seating plan for the service of food. Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case.

Presentation: Gabriel and Dulce Rivera Aguilar appeared to present the application. Ms. Rivera Aguilar said that the same seating plan is being proposed.

Public Comment: None.

Board Discussion: The Board asked no questions.

Marianne Clements moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws for a seating plan for the service of food, Rob seconded and it was so voted, 4-0. Jeremy Callahan will write the decision.

13) **ZBA 18-62**

44 Franklin Street (Residential 3 Zone), Ted Smith, Architect, LLC, on behalf of Mark Albert –

The applicant seeks a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions and Alterations, of the Zoning By-Laws for an addition on the west elevation of a structure going up and along a pre-existing, non-conforming north elevation. Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case.

Presentation: Ted Smith and Mark Albert appeared to present the application. Mr. Smith requested that the project be heard under the *Goldhirsh v. McNear* ruling. He reviewed the project, which involves the construction of two additions; one as an extension along a pre-existing, non-conforming setback on the west elevation, and the other on the south elevation and in conformity with the zoning setbacks. In addition, the existing roof is being replaced and raised to accommodate a 2' kneewall. He added that there were structural issues with the foundation. Mr. Smith argued that this is a modest proposal and will not be substantially more detrimental than what exists.

Public Comment: Alex Brown, an abutter, spoke in support of the application.

Board Discussion: The Board had no questions. The Board found that the project was not substantially more detrimental to the neighborhood or Town than what existed.

Jeremy Callahan moved to hear the matter under the Goldhirsh v. McNear ruling, Rob Anderson seconded and it was so voted, 4-0.

Daniel Wagner moved to grant a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions and Alterations, of the Zoning By-Laws for an addition on the west elevation of a structure going up and along a pre-existing, non-conforming north elevation, Rob Anderson seconded and it was so voted, 4-0.

14) ZBA 18-63

336R Commercial Street (Town Center Commercial Zone), 336R Commercial St., LLC –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to revise a seating plan to add patio seats for the service of food and alcohol. Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case.

Presentation: Ken Horgan appeared to present the application. He reviewed the proposal to add seating to the patio area on the south elevation of the building. He said that he wanted to make official the outdoor patio seating plan that had been in effect for the past 5 years. He had submitted a revised seating proposal for the patio area for the record and to put in the street file. The outdoor seating is an integral part of the business plan for the property. The interior floor plan will remain the same. He said that there would be constant supervision of guests in bar and dining areas to make sure no one walked out with an alcoholic drink.

Public Comment: None.

Board Discussion: The Board questioned Mr. Horgan. The Board requested that the applicant maintain a 10:00 P.M. closing time for the patio seating area.

Rob Anderson moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to revise a seating plan to add patio seats for the service of food and alcohol, Daniel Wagner seconded and it was so voted, 4-0.

Rob Anderson will write the decision.

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

ADJOURNMENT: *Rob Anderson moved to adjourn the Public Hearing at 8:45 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2018
_____, Chair