

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

Members Present: Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner
Steven Latasa-Nicks and Peter Okun.

Members Absent: None.

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

A. WORK SESSION

Chair Jeremy Callahan called the Work Session to order at 6:34 P.M.

1) PENDING DECISIONS:

a) ZBA 18-45 (Rob)

78 Bradford Street (Town Commercial Center Zone), Eliot Parkhurst, on behalf of **Thomas Walter** and **David Sanford, dba Crowne Pointe Inn & Spa** – Jeffrey Gould, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case. Rob read the decision. *Steven Latasa-Nicks moved to approve the language as written, Marianne Clements seconded and it was so voted, 4-0.*

b) ZBA 18-46 (Rob)

78 Bradford Street (Town Commercial Center Zone), Eliot Parkhurst, on behalf of **Thomas Walter** and **David Sanford, dba Crowne Pointe Inn & Spa** – Jeffrey Gould, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case. Rob read the decision. *Steven Latasa-Nicks moved to approve the language as written, Marianne Clements seconded and it was so voted, 4-0.*

c) ZBA 18-68

963 Commercial Street, #24 (Residential 1 Zone), William Drake - Jeremy Callahan, Rob Anderson, Steven Latasa-Nicks and Peter Okun sat on the case. Jeremy Callahan read the decision. *Rob Anderson moved to approve the language as written, Steven Latasa-Nicks seconded and it was so voted, 4-0.*

d) ZBA 18-67

99 Commercial Street (Residential 3 Zone), Michela Carew Murphy -

Jeremy Callahan, Rob Anderson, Steven Latasa-Nicks and Peter Okun sat on the case. Steven Latasa-Nicks read the decision. ***Jeremy Callahan moved to approve the language as written, Rob Anderson seconded and it was so voted, 4-0.***

MINUTES: June 21, 2018 – Rob Anderson moved to approve the minutes as written, Steven Latasa-Nicks seconded and it was so voted, 4-0.

Chair Jeremy Callahan adjourned the Work Session at 6:55 P.M.

B. PUBLIC HEARING

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 August 2nd*)
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. There was a request from the applicant to postpone to the Public Hearing of August 2, 2018. ***Steven Latasa-Nicks moved to approve the request to postpone ZBA 18-05 to the August 2, 2018 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 5-0.***

2) **ZBA 18-23** (*request to postpone to the meeting of July 19th*)
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 from the applicant to postpone to the Public Hearing of July 19, 2018. ***Rob Anderson moved to approve the request to postpone ZBA 18-23 to the July 19, 2018 Public Hearing at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.***

3) **ZBA 18-53** (*postponed from 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. Rob Anderson recused himself because of a conflict of interest. Jeremy Callahan, Marianne Clements, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

Presentation: Attorney Lester J. Murphy and George Tagaris appeared to present the application. Attorney Murphy reviewed the request to remove a condition of a previously approved Special Permit. The condition required the installation of a sprinkler system. He said

that Mr. Tagaris researched installing a sprinkler system and found out that it needed a certain water pressure in order to function properly and when he contacted the water department system he found out that the existing water pressure to the site alone could not supply sufficient pressure. There is a moratorium on digging up Commercial Street, so he was not able to replace the size of the water pipe. The other option was to put a tank and pump system in the basement of the structure to provide additional water and pressure to run the sprinkler. The problem with that option is that this structure is built on pilings. However, he found out that the additional weight of the tank would sink the pilings into the ground. Mr. Tagaris then modified the construction and installed fire-rated dry wall on the east side of the structure and he talked to the east side neighbor, who, because of the recent flooding over the winter, is planning on raising his building. The circumstance that called for the use of a sprinkler system may be alleviated in the future. Mr. Tagaris indicated that he had installed extra wood

Public Comment: None. There were 2 letters, 1 in support of the application and 1 from the neighbor stating that he may be lifting his building.

Board Discussion: The Board questioned Attorney Murphy and Mr. Tagaris. The Board requested that the Fire Chief and the Building Commissioner both weigh in on the fire rating for the east wall that has been constructed and is that fire rating is a sufficient fire deterrent. *Steven Latasa-Nicks moved to continue ZBA 18-53 to the July 19, 2018 Public Hearing at 7:00 P.M., Daniel Wagner seconded and it was so voted, 5-0.*

4) **ZBA 18-54** (*postponed from the meeting of June 21st*)

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. Jeremy Callahan, Marianne Clements, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

Presentation: Attorney Lester J. Murphy and George Tagaris appeared to present the application. Attorney Murphy explained that there was a deck on the south elevation with stairs located on the west elevation of the structure as originally designed. The winter storm in January, there was a significant amount of erosion that rendered that design unworkable. As a result, what is now being proposed is to put a boardwalk along the west elevation of the building up to the deck on the south elevation, with stairs to the ground. The original design was based upon old FEMA maps that were in place when the project was being drawn up.

Public Comment: None. There was 1 letter of no objection from an abutter and 1 letter in support of the application.

Board Discussion: The Board questioned Attorney Murphy and Mr. Tagaris. Mr. Callahan referred to the staff report on this application.

Steven Latasa-Nicks moved to close the public hearing, Daniel Wagner seconded and it was so voted, 5-0.

Jeremy Callahan moved to find that pursuant to Article 5, Section 5331, Development Impact Statements, j. of the Zoning By-Laws that the boardwalk will likely have a positive impact on the dune system by reducing disturbance from pedestrians, Marianne Clements seconded and it was so voted, 5-0.

Steven Latasa-Nicks moved to find that the project was consistent with Article 2, Section 2315, Waterfront Special Permit Uses, G11, Other Customary Accessory Uses, of the Zoning By-Laws, Jeremy Callahan seconded and it was so voted, 5-0.

Steven Latasa-Nicks moved to grant 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 at the property located at 143 Commercial Street (TCC), Marianne Clements seconded and it was so voted, 5-0. Jeremy Callahan will write the decision.

5) **ZBA 18-57** (postponed from 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. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Attorney Christopher J. Snow, Irv Morgan and Donald Vafides, the property owners, and Tim Klink appeared to present the application. Attorney Snow reviewed the project that will involve constructing a deck in the rear of the building. No outside bar service is being proposed to be located on the deck. The deck is an extension of a pre-existing, non-conforming use in terms of a structural extension. The deck will be an extension along a pre-existing, non-conforming west elevation line. An existing generator, referred to by Attorney Snow as being a pre-existing, non-conforming structure located in the west elevation and is connected to the main structure, will be removed and the area landscaped in its stead. The green area on the site will be maintained and, pursuant to a request from the Conservation Commission, increased with the addition of a swale. The area under the deck will be vegetated and qualifies, according to Attorney Snow, as green area. He argued that the sunlight reflects off the water in the bay to reach the vegetation under the deck. The lot coverage percentage is pre-existing, non-conforming and greater than that allowed by the Zoning By-Laws. Attorney Snow claimed that the location of the generator in the west elevation setback allows the deck to maintain and extend that pre-existing, non-conforming line southward. He also argued that the mean high water mark that determines the Harbor setback, and from which no structure can be located less than 35', is always changing. He said that any boundary line in a zoning district that changes would require a vote at Town Meeting and that the by-law was flawed for that reason. He claimed that the deck would not impact any of those areas protected by the 35' setback. He informed the Board that the Town intends to undertake beach nourishment in this area in the fall, which would add sand and again change the mean high water line, changing again the boundary of the Harbor setback. He argued that the social and economic benefits of the project outweigh any adverse effects, of which he said there would be none, no hazard, congestion or environmental degradation will result from the addition of the deck.

Public Comment: Mark Valois spoke in support of the application. There were 8 letters in support, 1 letter of no objection and 1 letter with concerns.

Board Discussion: The Board questioned Attorney Snow. The staff report suggested that the generator was an accessory structure, not part of the principal structure, and that the deck extension could not be justified as extending along a pre-existing, non-conforming line based upon the location of a structure in the west elevation setback. The Board discussed whether the

project created new non-conformancies because of the decrease in the green space percentage and the deck's proposed intrusion into the Harbor setback and would require variances. Attorney Snow argued that the generator was installed in 2002 and that a structure, after 10 years in existence, becomes legal and non-conforming and not able to be removed for its non-conformance. He said that his contention is been supported by case law. The Town and the neighbors had 10 years to enforce the structural non-conformity and to have the generator removed. As to the Harbor setback, he argued that the future beach nourishment would render the deck conforming as to that setback. He argued that the benefits of the project were compelling, as the neighborhood was in support of the application. Mr. Klink said that he designed the project to allow sufficient sunlight and air to reach beneath the deck and allow plant material to grow and the boards will be gapped to allow rainwater and sunlight to get through to the ground. He said that the deck, at its furthest point from the structure, would be 6' off the ground.

Steven Latasa-Nicks moved to close the public portion of the hearing, Marianne Clements seconded and it was so voted, 5-0.

Chair Jeremy Callahan polled the Board. A majority of the Board supported the staff report that two new non-conformancies would be created as a result of the project.

Jeremy Callahan moved to approve the 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 at the property located at 177 Commercial Street (TCC), Marianne Clements seconded. The motion was not voted on. Attorney Snow requested to withdraw the application without prejudice and will seek to submit an application for a variance.

Steven Latasa-Nicks moved to grant the request to withdraw ZBA 18-57, Marianne Clements seconded and it was so voted, 5-0.

6) **ZBA 18-58** (request to postpone to the meeting of July 5th)

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 from the applicant to postpone the matter to the September 6, 2018 Public Hearing at 7:00 P.M. ***Steven Latasa-Nicks moved to grant the request to postpone ZBA 18-58 to the September 6, 2018 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 5-0.***

7) **ZBA 18-71** (request to postpone to the meeting of July 19th)

155 Bradford Street (Residential 3 Zone), Lisa Pacheco-Robb –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to extend a deck along a pre-existing, non-conforming south elevation. There was a request from the applicant to postpone to the Public Hearing of July 19, 2018. ***Steven Latasa-Nicks moved to approve the request to postpone ZBA 18-71 to the July 19, 2018 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 5-0.***

8) **ZBA 18-72**

308 Commercial Street (Town Center Commercial Zone), DFlax, Inc. –

The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws for the outside display of clothing. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Jonathan Guerra appeared to present the application.

Public Comment: None.

Board Discussion: The Board had no questions.

Marianne Clements moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws for the outside display of clothing at the property located at 308 Commercial Street (TCC), Rob Anderson seconded and it was so voted, 5-0.

NEXT MEETING: The next meeting will take place on Thursday, July 19, 2018. It will consist of a Work Session at 6:45 P.M. followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Rob Anderson moved to adjourn the Public Hearing at 8:30 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2018
Jeremy Callahan, Chair