

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
August 2, 2018**

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

Members Absent: Steven Latasa-Nicks (excused).

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 6:36 P.M.

1) PENDING DECISIONS:

a) ZBA 18-70 (Daniel)

963 Commercial Street (Residential 1 Zone), William N. Rogers, II, on behalf of The Beach Bucket Trust, Lynn Saucier, Trustee –

Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case. Daniel Wagner read the decision. *Rob Anderson moved to approve the language as written, Marianne Clements seconded and it was so voted, 3-0.*

b) ZBA 18-73 (Rob)

13 Creek Round Hill Road (Residential 1 Zone), Ted Smith, Architect –

Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case. Rob read the decision. *Daniel Wagner moved to approve the language as written, Peter Okun seconded and it was so voted, 3-0.*

c) ZBA 18-74 (Peter)

28 Cottage Street (Residential 3 Zone), Steven Cook, of Cotuit Bay Design, on behalf of Kenneth Hale & Steven Wetzler –

Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case. Peter Okun read the decision. *Rob Anderson moved to approve the language as written, Daniel Wagner seconded and it was so voted, 3-0.*

MINUTES: July 19, 2018 – Rob Anderson moved to approve the minutes as written, Daniel Wagner seconded and it was so voted, 3-0.

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. There were 5 Board members present and 1 absent.

1) **ZBA 18-05** (*request to postpone to the meeting of September 6th*)
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 September 6, 2018. ***Marianne Clements moved to approve the request to postpone ZBA 18-05 to the September 6, 2018 Public Hearing at 7:00 P.M., Peter Okun seconded and it was so voted, 5-0.***

2) **ZBA 18-23** (*request to postpone to the meeting of September 6th*)
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 September 6, 2018. ***Marianne Clements moved to approve the request to postpone ZBA 18-23 to the September 6, 2018 Public Hearing at 7:00 P.M., Peter Okun seconded and it was so voted, 5-0.***

3) **ZBA 18-53** (*continued from the meeting of July 19th*)
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. Jeremy Callahan, Marianne Clements, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case. There was a request from the applicant to continue to the Public Hearing of September 6, 2018. ***Marianne Clements moved to approve the request to continue ZBA 18-53 to the September 6, 2018 Public Hearing at 7:00 P.M., Peter Okun seconded and it was so voted, 5-0.***

4) **ZBA 18-58** (*postponed to the meeting of September 6th*)
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.

5) **ZBA 18-69**

199 Bradford Street (Residential 3 Zone), Regina Binder on behalf of 199 Bradford St., LLC -

The applicant seeks a Special Permit pursuant to Article 2, Sections 2450, Permitted Accessory Uses, G17, Accessory Dwelling Unit and 2640, Building Scale and Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to rebuild a foundation, renovate a structure by adding a balcony, a covered porch and stairs on a pre-existing, non-conforming south/southwest elevation, increase building scale by adding a covered porch on a pre-existing, non-conforming north elevation and an accessory dwelling unit. There was a request from the applicant to postpone to the Public Hearing of September 6, 2018 at 7:00 P.M. ***Marianne Clements moved to approve the request to continue ZBA 18-69 to the September 6, 2018 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 5-0.***

6) **ZBA 18-71** (postponed from 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. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Peter Okun sat on the case. Mr. Callahan noted that the applicant had requested that the project be heard pursuant to the *Goldhirsh v. McNear* ruling.

Rob Anderson moved to hear the matter pursuant to the Goldhirsh v. McNear ruling, Marianne Clements seconded and it was so voted, 5-0.

Presentation: Lisa Pacheco-Robb appeared to present the application. She reviewed the project, which involves an existing deck extension on the south elevation of the structure. The existing deck is being expanded by 4' over a flat-roofed addition with a railing and egress stairway being added. This is an extension of a non-conformancy upward. An existing third floor deck on the south elevation has been removed, as has been a deck and stairs system on the west elevation. She argued that the project, which involves a net reduction of 233 sq. ft. of deck, as a whole is less detrimental to the neighborhood than what existed previously and that the proposed extension was in keeping with the Zoning By-Laws.

Public Comment: Angela Russo and Lucy Siegal, both abutters, spoke in opposition to the project. There were 4 letters from abutters in opposition to the project.

Board Discussion: The Board questioned Ms. Pacheco-Robb.

Rob Anderson moved to close the public hearing portion of the application, Peter Okun seconded and it was so voted, 5-0.

The Board discussed whether the extension of the non-conformancy was more detrimental to the neighborhood than what existed. Several Board members were in agreement that the project would be substantially more detrimental to the neighborhood and could not support it. Ms. Pacheco-Robb requested to withdraw ZBA 18-71 without prejudice.

Marianne Clements moved to grant the request to withdraw ZBA 18-71 without prejudice, Rob Anderson seconded and it was so voted, 5-0.

7) **ZBA 18-76** (postponed from the meeting of July 19th)

225 Commercial Street (Town Center Commercial Zone), Topknot, 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. Rob Anderson recused himself because of a conflict of interest. Chairman Jeremy Callahan explained to the applicant's agent that since only 4 members could be seated and the vote would have to be unanimous in order for the approval of a Special Permit that he could choose to postpone until 5 members could be seated or proceed with 4 members. He chose to proceed. Jeremy Callahan, Marianne Clements, Daniel Wagner and Peter Okun sat on the case.

Presentation: Loic Rossignon appeared to present the application. He reviewed a revised seating plan that shows 115 seats. All of the changes involve the rearrangement of the exterior seating area. He indicated that the gallons for the increase in seats were awarded through an Economic Development permit, the grease trap has been upgraded to handle the increase and the Chapter 91 license for the property has been approved.

Public Comment: None.

Peter Okun moved to close the public hearing portion of the application, Marianne Clements seconded and it was so voted, 4-0.

Board Discussion: The Board questioned Mr. Rossignon.

Marianne Clements moved to approve a Special Permit pursuant to Article 2, Section 2460, - Special Permit Requirements, of the Zoning By-Laws to revise a seating plan at the property located at 225 Commercial Street (TCC), Daniel Wagner seconded and it was so voted, 4-0. Daniel Wagner will write the decision.

8) **ZBA 18-77** (*postponed from the hearing of July 19th*)

132 & 134 Bradford Street (Town Center Commercial Zone) and 10 Conwell Street (Residential 3 Zone), Riley Brothers Realty, LLC –

The applicant seeks a Special Permit pursuant to Article 3, Section 3432 c., Illumination Standards, of the Zoning By-Laws for the installation of exterior lighting fixtures mounted on lighting poles. Rob Anderson said that he was an abutter to the project, however the applicant had no issue with his being seated on the case. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Peter Okun sat on the case.

Presentation: Steve and Mike Riley appeared to present the application. Mike Riley reviewed the proposed lighting plan. He said that the proposed lighting fixtures were dark sky compliant and energy efficient. He said that the parking lot was frequently utilized by pedestrians in-season by both customers of the lot and those cutting through the property and that the previous lighting was sub-par and unsafe. The lights will be placed at a height of 30' and provide good coverage of the lot. He said that they hired an engineering firm to review the site and make recommendations regarding the location of the new lighting. He said that since the first night that the lights were used, they have been re-angled due to complaints from abutters and Mr. Riley said that the applicant has not received complaints since then. He seeks permission to leave the light pole height at 30'.

Public Comment: Al Olszewski, on behalf of 5 abutters, and Allan Roth, an abutter, spoke in opposition to the project.

Board Discussion: The Board noted that the application indicated that the lights would be installed at a height of 20', however Mr. Riley, in his presentation, requested a height of 30'. Mr. Riley said that the height on the application was a typo and requested the latter height. The Board questioned Mr. Riley. Mr. Callahan noted that the staff report written by Town Planner Jeff

Ribeiro was based upon the height of 20' as stated in the application. He requested that the Board get feedback from Mr. Ribeiro concerning the proposed 30' height and that the applicant meet with him concerning the height issue. The Board also suggested that they meet with the abutters to try to come to an agreement and explore the use of dimmers, or other adaptive controls. In addition, the Board requested information regarding the light fixtures that the applicant said were dark sky compliant. The matter was continued.

Rob Anderson moved to continue ZBA 18-77 to the September 6, 2018 Public Hearing at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.

9) **ZBA 18-78** (*postponed from the hearing of July 19th*)

25 Cottage Street (Residential 3 Zone), Mark Sellers and Najjia Mahmoud –

The applicants seek a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions and Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and rebuild a structure located in pre-existing, non-conforming southwest and northwest elevations and to increase its building scale. Marianne Clements recused herself because of a conflict of interest. Chairman Jeremy Callahan explained to the applicant's agent that since only 4 members could be seated and the vote would have to be unanimous in order for the approval of a Special Permit that he could choose to postpone until 5 members could be seated or proceed with 4 members. He chose to proceed. Jeremy Callahan, Rob Anderson, Daniel Wagner and Peter Okun sat on the case.

Presentation: Attorney Lester J. Murphy appeared to present the application. He reviewed the project, which includes the demolition and reconstruction of a single-family structure and two sheds. The new two-story structure will have a different footprint and the scale will be increased. He reminded the Board that it must find that relief is appropriate in that the social, economic and other benefits of the proposal outweigh any adverse effects such as hazard, congestion or environmental degradation and that the structure will not be substantially more detrimental to the Town or neighborhood than the existing one. And in addition, that relief from building scale is justified by the by-law criteria. A new variance Title 5 septic system will replace an existing cesspool. Attorney Murphy stated that the lot area is pre-existing, non-conforming, as are the front and side yard setbacks. The lot coverage, although increasing, will still remain below the 40% maximum and the 51.6% green area is well above the minimum. The Select Board has already approved a new curb cut in order to accommodate a legal parking space. He reviewed the benefits of the proposal to the neighborhood, including a new septic system, a new structure that is conforming with the state building and safety codes, the addition of a legal parking space and a new structure that will be more attractive, enhancing the value of the property. He argued that pursuant to Section 2640E, subparagraph 5, the Board can grant relief as the increase in scale successfully integrates into its surroundings and is sited in a manner that does not increase massing from the streetscape and does not negatively impact the natural light to or views from neighboring structures. There are structures in the neighborhood that vary in scale and the scale of this new structure will be disruptive, but will be harmonious and in keeping with the character of the neighborhood.

Public Comment: None. There were 2 letters from abutters in support of the project.

Daniel Wagner moved to close the public portion of the hearing be closed, Rob Anderson seconded and it was so voted, 4-0.

Board Discussion: The Board questioned Attorney Murphy.

Rob Anderson moved to find that pursuant to Article 2, Section 2640E of the Zoning By-Laws, the proposed building or addition successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures, Peter Okun seconded and it was so voted, 4-0.

Rob Anderson moved that pursuant to Article 5, Section 5330 of the Zoning By-Laws that the social, economic and other benefits of the proposal for the Town or neighborhood outweigh any adverse effects such as hazard, congestion or environmental degradation, Peter Okun seconded and it was so voted, 4-0.

Peter Okun 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 located in pre-existing, non-conforming southwest and northwest elevations and to increase its building scale at the property located at 25 Cottage Street (Res 3), Rob Anderson seconded and it was so voted, 4-0.

Peter Okun moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and rebuild a structure located in pre-existing, non-conforming southwest and northwest elevations and to increase its building scale at the property located at 25 Cottage Street (Res 3), Rob Anderson seconded and it was so voted, 4-0. Jeremy Callahan will write the decision.

10) ZBA 19-01

10 Whorf's Court (Residential 3 Zone), Robin B. Reid, Esq., on behalf of Jeanne and Richard Barry –

The applicants seek a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to increase length of a porch on a south elevation and along a pre-existing, non-conforming east elevation. There was a request from the applicant to continue to the Public Hearing of September 6, 2018. *Marianne Clements moved to approve the request to postpone ZBA 19-01 to the September 6, 2018 Public Hearing at 7:00 P.M., Peter Okun seconded and it was so voted, 5-0.*

11) ZBA 19-02

20 Court Street, #3 (Residential 3 Zone), Ken Ross –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to increase building scale to construct a 136 sq. ft. addition on the west elevation. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Peter Okun sat on the case.

Presentation: Attorney Robin B. Reid and Ken Ross appeared to present the application.

Attorney Reid reviewed the project, which involves the construction of an addition of 136 sq. ft. that will increase the scale of the existing structure requiring relief from the Board. The applicant seeks to add a bathroom to the first floor of his condominium for age-related accessibility purposes. She argued that the Local Comprehensive Plan does speak to accessibility and aging issues and for a sense of community in the Town. The applicant has spent many years in Town

and had built a successful business, which he has since sold, and is a great asset to the community. The project is also in keeping with subparagraph 5 of Section 2640E, as the addition is barely visible from Court Street. She said that there would be no adverse effects on the neighborhood or Town as a result of the addition.

Public Comment: None. There was 1 letter from another unit owner in the condominium in support of the application.

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

Board Discussion: The Board questioned Attorney Reid.

Peter Okun moved to find that pursuant to Article 5, Section 5330, the social, economic and other benefits of the proposal on the neighborhood or Town outweighed any adverse effects such as hazard, congestion or environmental degradation, Rob Anderson seconded and it was so voted, 5-0.

Peter Okun moved that pursuant to Article 2, Section 2640E of the Zoning By-Laws that the proposed building or addition successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures, Marianne Clements seconded and it was so voted, 5-0.

Marianne Clements moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to increase building scale to construct a 136 sq. ft. addition on the west elevation at the property located at 20 Court Street, #3 (Res 3), Rob Anderson seconded and it was so voted, 5-0. Peter Okun will write the decision.

12) 174 Commercial Street (Town Commercial Center Zone), John Copell –

The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws for the outside display of candles and artwork at the gazebo. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Peter Okun sat on the case.

Presentation: The applicant did not appear.

Public Comment: None

Board Discussion: The Board briefly discussed the application. The Board was concerned about the amount of items on site and will condition the Special Permit.

Marianne Clements moved to approve a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws for the outside display of candles and art work at the gazebo at the property located at 174 Commercial Street (TCC) with the condition that a minimum of 4' of clearance be maintained on the stairs on the property and that the artwork remain on the right side of the table display and the candles on the left, Peter Okun seconded and it was so voted, 4-0-1 (Rob Anderson abstaining).

NEXT MEETING: The next meeting will take place on Thursday, September 6, 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
Jeremy Callahan, Chair