

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
September 6, 2018**

Members Present: Jeremy Callahan, Marianne Clements (arrived at 6:56 P.M.), Daniel Wagner, Steven Latasa-Nicks and Peter Okun.

Members Absent: Rob Anderson (excused).

Others Present: David Gardner (Assistant Town Manager), Ellen C. Battaglini (Permit Coordinator) and Amy E. Kwesell (Town Counsel).

A. WORK SESSION

Chair Jeremy Callahan called the Work Session to order at 6:33 P.M.

1) **DISCUSSION RE BOARD MEMBER LIABILITY:** Tabled to the next meeting.

2) **PENDING DECISIONS:**

a) **ZBA 18 18-76 (Daniel)**

225 Commercial Street (Town Center Commercial Zone), Topknot, LLC – Jeremy Callahan, Marianne Clements, Daniel Wagner and Peter Okun sat on the case. Daniel Wagner read the decision. *Jeremy Callahan moved to approve the language as written, Peter Okun seconded and it was so voted, 3-0.*

b) **ZBA 18-78 (Jeremy)**

25 Cottage Street (Residential 3 Zone), Mark Sellers and Najjia Mahmoud – Jeremy Callahan, Rob Anderson, Daniel Wagner and Peter Okun sat on the case. Jeremy Callahan read the decision. *Daniel Wagner moved to approve the language as written, Peter Okun seconded and it was so voted, 3-0.*

c) **ZBA 19-02**

20 Court Street, #3 (Residential 3 Zone), Ken Ross – Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Peter Okun sat on the case. Peter Okun read the decision. *Daniel Wagner moved to approve the language as written, Marianne Clements seconded and it was so voted, 4-0.*

MINUTES: August 2, 2018 – Marianne Clements moved to approve the minutes as written, Daniel Wagner seconded and it was so voted, 5-0.

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 7:05 P.M. There were 5 Board members present and 1 absent.

1) **ZBA 18-05** (*request to postpone to the meeting of September 20th*)

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 20, 2018. **Marianne Clements moved to approve the request to postpone ZBA 18-05 to the September 20, 2018 Public Hearing at 7:00 P.M., Peter Okun seconded and it was so voted, 5-0.**

2) **ZBA 18-23** (*request to withdraw without prejudice*)

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 withdraw ZBA 18-23 without prejudice. **Steven Latasa-Nicks moved to approve the request to withdraw ZBA 18-23 without prejudice, Daniel Wagner seconded and it was so voted, 5-0.**

3) **ZBA 18-53** (*request to continue to the meeting of September 20th*)

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 20, 2018. **Marianne Clements moved to approve the request to continue ZBA 18-53 to the September 20, 2018 Public Hearing at 7:00 P.M., Peter Okun seconded and it was so voted, 5-0.**

4) **ZBA 18-58** (*request to postpone to the meeting of September 20th*)

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. **Marianne Clements moved to approve the request to continue ZBA 18-58 to the September 20, 2018 Public Hearing at 7:00 P.M., Peter Okun seconded and it was so voted, 5-0.**

5) **ZBA 18-69** (*request to postpone to the meeting of September 20th*)

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 20, 2018 at 7:00 P.M. *Marianne Clements moved to approve the request to continue ZBA 18-69 to the September 20, 2018 Public Hearing at 7:00 P.M., Peter Okun seconded and it was so voted, 5-0.*

6) **ZBA 18-77** (*request to withdraw without prejudice*)

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. There was a request from the applicant to withdraw without prejudice. *Steven Latasa-Nicks moved to grant the request to withdraw ZBA 18-77 without prejudice, Marianne Clements seconded and it was so voted, 5-0.*

7) **ZBA 19-01** (*request to postpone to the meeting of September 20th*)

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 20, 2018. *Marianne Clements moved to approve the request to postpone ZBA 19-01 to the September 20, 2018 Public Hearing at 7:00 P.M., Peter Okun seconded and it was so voted, 5-0.*

8) **ZBA 19-04**

99 Commercial Street (Residential 3 Zone), Michela Carew-Murphy, on behalf of 99 Commercial St. Realty Trust, Siobhan Carew, Trustee –

The applicant seeks a Variance from Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws to rebuild a pre-existing, non-conforming deck located in the east elevation setback. Jeremy Callahan, Marianne Clements, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case. Mr. Callahan reviewed the criteria for a Variance.

Presentation: Michela Carew-Murphy appeared to present the application. She gave a brief history of the property since the applicant purchased it from the previous owner and why she is requesting a Variance from the Board. She argued that without the deck, the restaurant on the premises would not be economically viable to operate, as the profit margin on restaurants operating during the summer season is small and the season is short. She said that the 16 seats on the deck represented 15% of the restaurant's capacity.

She said that throughout the lengthy permitting process to replace the deck, which was removed without the applicant's permission and with appeals by an abutting property owner filed at every step, has taken an emotional and financial toll on the applicant. She added that the deck has always served as a second means of egress for the restaurant and the cottages, which are part of the condominium property, on the pier to the south. The restaurant has had permission to serve diners in the area of the deck and has made the best of the lack of the deck for the last several years by putting tables directly on the beach, however that presents issues when the tide comes in. She indicated that this was an example of a hardship based upon the topography of the property. She argued that the Board could grant relief without it being a detriment to the public good, as the deck is accessible to the public pursuant to the property's Chapter 91 license, as well as to diners in the restaurant. She is asking the Board to allow the deck to remain, as it has for countless years in the past.

Public Comment: Linda Glen, Ann McGuire, A.J. Santos, Steven Score, all abutters, Peter Manso, Jennifer Cabral, John Yingling, Ian Leahy, Michael Chute, Diarmuid O'Neill, Don Murphy, Thanassi Kuliopulos, Joe Centrella, Daniel Epstein, Paul Brown and Guy Busa spoke in support of the application. There were 26 letters in favor of, and 1 in opposition to, the proposal. *Steven Latasa-Nicks moved to close the public hearing, Peter Okun seconded and it was so voted, 5-0.*

Board Discussion: The Board questioned Ms. Carew-Murphy about her argument in support of the application and discussed whether the criteria for a Variance had been met. Mr. Callahan polled the Board. Each member agreed after discussion that the applicant had satisfied all three criteria for a Variance. Taking away seating on the deck is a substantial financial hardship to the applicant and removing the deck, which is a safety feature, along with the topography of the property, would prevent handicap accessibility to the cottages on the pier and would potentially create public safety issues if there was an medical emergency or fire either at the restaurant or on the pier. Granting a Variance would be of substantial benefit to the public good because of these reasons, because of the public accessibility to the beach and a great deal of support has been generated given the public attendance at the hearing. In addition, the operating restaurant, a unique and unusual feature of the premises unlike other properties in the zoning district, is vital to the character of the Town and the west end neighborhood.

Marianne Clements moved to approve a Variance from Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws to rebuild a pre-existing, non-conforming deck located in the east elevation setback at the property located at 99 Commercial Street (Res 3), Peter Okun seconded and it was so voted, 5-0. Steven Latasa-Nicks will write the decision.

9) **ZBA 19-05**

99 Commercial Street (Residential 3 Zone), Michela Carew-Murphy, on behalf of Siobhan Carew –

The applicant seeks an appeal of a decision, dated July 16, 2018, of the Building Commissioner, which the applicant believes to be in violation of the Provincetown Zoning By-Laws or the Massachusetts Zoning Act, M.G.L. c. 40A. The applicant requested to withdraw the application without prejudice. *Steven Latasa-Nicks moved to grant the request to withdraw ZBA 19-05 without prejudice, Marianne Clements seconded and it was so voted, 5-0.*

NEXT MEETING: The next meeting will take place on Thursday, September 20, 2018. It

will consist of a Work Session at 6:45 P.M. followed by a Public Hearing at 7:00 P.M. A special Work Session will also be convened on Tuesday, September 18, 2018 at 8:30 A.M.

ADJOURNMENT: *Steven Latasa-Nicks moved to adjourn the Public Hearing at 9:00 P.M, Marianne Clements seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2018
Jeremy Callahan, Chair