

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
September 20, 2018**

**Members Present:** Jeremy Callahan, Rob Anderson (arrived at 6:55 P.M.), Daniel Wagner, Steven Latasa-Nicks and Peter Okun.

**Members Absent:** Marianne Clements (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 6:45 P.M.

- 1) **DISCUSSION RE BOARD MEMBER LIABILITY:** Mr. Gardner reviewed the issue. Mr. Latasa-Nicks reviewed his concerns regarding a Planning Board situation that recently occurred. Mr. Gardner said that there was a concern regarding bad faith on the part of some Board members was involved in that circumstance. The focus of the any Board deliberation should be within its authority and the bounds of the Zoning By-Laws and members should not let personal animosity enter into their decision-making process.
- 2) **MINUTES: September 6, 2018** – *Steven Latasa-Nicks moved to approve the minutes as written, Peter Okun 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. There were 5 Board members present and 1 absent.

- 1) **ZBA 18-05** (*request to withdraw*)  
**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 and requested that the Board allow the applicant to withdraw ZBA 18-05. He said that the Building Permit that was the subject of the Appeal and the request for

reconsideration had expired, as had the stop-work order associated with it and a new one had been issued. The appeal is moot. ***Steven Latasa-Nicks moved to grant the request to withdraw ZBA 18-05, Rob Anderson seconded and it was so voted, 5-0.***

2) **ZBA 18-53** (*request to withdraw without prejudice*)

**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. Attorney Lester J. Murphy appeared and requested that the Board allow the applicant to withdraw ZBA 18-53 without prejudice. ***Steven Latasa-Nicks moved to grant the request to withdraw ZBA 18-53 without prejudice, Rob Anderson seconded and it was so voted, 5-0.***

10) **ZBA 19-10**

**51 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 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to re-locate a permitted structure 42' 10" northward of its original pre-existing, non-conforming location. Attorney Lester J. Murphy appeared and requested the Board allow the applicant to continue to the Public Hearing on October 4, 2018 at 6:30 P.M. as staff has recommended that the matter be postponed. There is an issue as to whether the building in question has been deconstructed and moved properly to a new location or has been demolished. ***Steven Latasa-Nicks moved to grant the request to continue ZBA 19-10 to the Public Hearing of October 4, 2018 at 6:30 P.M., Rob Anderson seconded and it was so voted, 5-0.***

***Steven Latasa-Nicks moved to take ZBA 19-07 out of order, Rob Anderson seconded and it was so voted, 5-0.***

7) **ZBA 19-07** (*postponed from the meeting of September 6<sup>th</sup>*)

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

The applicant requests a Variance pursuant to Article 2, Section 2540, Harbor Setback and Article 4, Section 4150, Green Area of the Zoning By-Laws to build a deck on the rear of the structure that intrudes into the Harbor Setback and whose green area does not meet the minimum required by the Zoning By-Laws. Attorney Snow, representing the applicant, said that the application does not include relief from the green area, as the project has been revised to conform to those requirements. Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

**Presentation:** Attorney Christopher J. Snow, Irv Morgan and Tim Klink appeared to present the application. Attorney Snow reviewed the hardship on the site that is one of the criteria of a Variance. Without a deck extension that would allow outside dining, the competitive edge of the restaurant would be lost and the applicant would most likely have to sell the property. This parcel is recessed significantly northward to the point that abutting lots eclipse it and thus the access to views of the water is compromised, unlike other lots on the waterfront. The Harbor Setback, a 35' setback from mean high water, has been scheduled to be eliminated at the Fall

Town Meeting because it has been proven to be ineffective and due to the Town's effort to alter the approved uses allowed in the waterfront district. He argued that allowing the deck to encroach into the Harborfront Setback would not derogate from the intent of the by-law, which was to prevent the creep of massive structures towards the Harbor, interfering with views, air and light from abutting structures. Attorney Snow also pointed out that the Harborfront Setback is based upon constantly changing boundaries, due to erosion and accretion, of the mean high water mark and was potentially illegal. Also unique to this parcel and scheduled for the fall or spring, a Town project to add soil deposits to the area will take place, which will move the boundary line of the Harbor Setback as well. In terms of shape and topography, there is a revetment seaward of the structure that acts as a south boundary and will not be affected by the proposed deck. He concluded that there is a financial hardship, a uniqueness of soil conditions, topography and other elements on the property and unlike any other property in the district, particularly those on either side of the subject property, that would support the granting of a Variance. In addition no detriment to the public good or nullification of the by-law would result from this project. Public benefits of this project would be greater access to water views and beach frontage for patrons while dining on the deck and that the owner of the property would be better able to sustain a year-round business. If the property owner cannot offer outdoor dining, his business will not be viable anymore. He added that the deck has been revised to be 225 sq. ft. smaller than originally proposed.

**Public Comment:** Junior, an employee at the restaurant on the property, spoke in support of the application. There was 1 letter of concern from an abutter.

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

**Board Discussion:** The Board questioned Attorney Snow and asked him to reiterate the criteria for a Variance and how this property and business conformed to those requirements.

***Daniel Wagner moved to find that a literal enforcement of the By-Law would cause a substantial hardship, financial or otherwise, to the applicant and the hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located and desirable relief may be granted without either substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this By-Law, Steven Latasa-Nicks seconded and it was so voted, 5-0.***

***Rob Anderson moved, pursuant to Article 5, Section 5222 of the Zoning By-Laws, to approve the Variance request ZBA 19-07 to allow a deck to encroach into the Harbor Setback on the property located at 177 Commercial Street (TCC), Peter Okun seconded and it was so voted, 5-0. Steven Latasa-Nicks will write the decision.***

***Steven Latasa-Nicks moved to take ZBA 19-06 out of order, Rob Anderson seconded and it was so voted, 5-0.***

6) **ZBA 19-06** (*postponed from the meeting of September 6<sup>th</sup>*)

**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 and Alterations, of the Zoning By-Laws to build a deck on the rear of the structure that will

extend along a pre-existing, non-conforming west elevation and increase lot coverage from 57.4% to 72.5%. Attorney Snow corrected a typo related to the existing lot coverage, which should be 51.4%, not 57.4%. Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

**Presentation:** Attorney Christopher J. Snow, Irv Morgan and Tim Klink appeared to present the application. Attorney Snow said that the plan had been redesigned to address some of the concerns that the Board at a previous hearing. The applicant seeks an extension of the deck seaward for the same reasons expressed in the previous case. He said that the alteration of a pre-existing, non-conforming structure requires finding that the economic and other benefits to the Town or neighborhood of the request outweigh any adverse effects such as hazard, congestion or environmental degradation. The benefits of the project include attracting additional patronage looking for outdoor dining and extending and keeping the business viable all year and the generation of additional tax revenue to the Town. He argued that there would be no hazard, congestion or environmental degradation as a result of the deck extension. Dining with a water view is traditional in the Town Center Commercial Zone and the applicant is requesting to be able to take advantage of the property's proximity to the waterfront.

**Public Comment:** None. There was 1 letter of concern from an abutter.

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

**Board Discussion:** The Board had no questions for Attorney Snow.

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

*Rob Anderson moved to grant the pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to build a deck on the rear of the structure that will extend along a pre-existing, non-conforming west elevation and increase lot coverage from 51.4% to 72.5% at the property located at 177 Commercial Street (TCC), Peter Okun seconded and it was so voted, 5-0.* Jeremy Callahan will write the decision.

The Board returned to the regular order of the agenda.

3) **ZBA 18-58** (*postponed from the meeting of September 6<sup>th</sup>*)

**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. Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

**Presentation:** Attorney Christopher J. Snow, Irv Morgan and Tim Klink appeared to present the application. Attorney Snow said that in order to implement the Board's previous votes, the applicant seeks to employ a 30-seat flex-seating plan for the deck. He said that the seating capacity of the restaurant cannot be increased at this time because of septic limitations so in order to utilize the proposed deck, the applicant would like to move seating out to the deck on

sunny days and back inside on rainy days. This is a benefit and of no consequence to any of the protected resources that the Board is tasked with guarding.

**Public Comment:** None. There was 1 letter of concern from an abutter.

*Jeremy Callahan moved to close the public portion of the hearing, Peter Okun seconded and it was so voted, 5-0.*

**Board Discussion:** The Board had no questions for Attorney Snow.

*Steven Latasa-Nicks moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the proposal for the neighborhood or Town outweigh any adverse effects such as hazard, congestion or environmental degradation, Daniel Wagner seconded and it was so voted, 5-0.*

*Steven Latasa-Nicks moved to grant 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 at the property located at 177 Commercial Street (TCC), Peter Okun seconded and it was so voted, 5-0.* Jeremy Callahan will write the decision.

4) **ZBA 18-69** (*request to postpone to the meeting of October 4<sup>th</sup>*)

**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 October 4, 2018 at 7:00 P.M. *Steven Latasa-Nicks moved to approve the request to postpone ZBA 18-69 to the October 4, 2018 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 5-0.*

5) **ZBA 19-01** (*postponed from the meeting of September 6<sup>th</sup>*)

**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. Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case. Mr. Callahan noted that the applicants were requesting to be heard pursuant to the Goldhirsh v. McNear ruling.

*Rob Anderson moved to hear the case under the Goldhirsh v. McNear ruling, Steven Latasa-Nicks seconded and it was so voted, 5-0.*

**Presentation:** Attorney Robin B. Reid, representing the applicants, and Jeanne and Richard Barry, appeared to present the application. Attorney Reid reviewed the project and stated that the existing front setback is 14.7' and the proposed is 6.7'. The existing side yard setback will change from 4.1' to 3.8'. She said that the proposed alteration does not increase the non-conforming nature of the structure.

**Public Comment:** None. There were no letters in the file.

*Jeremy Callahan moved to close the public portion of the hearing, Peter Okun seconded and it was so voted, 5-0.*

**Board Discussion:** The Board had no questions for Attorney Reid.

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

*Rob Anderson moved to approve 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 at the property located at 10 Whorf's Court (Res 3) under the Goldhirsh v. McNear ruling, Peter Okun seconded and it was so voted, 5-0.*

#### 8) ZBA 19-08

**425 Commercial Street (Residential 3 Zone), Don DiRocco, of Hammer Architects, on behalf of Steve Tait & Dave Cook –**

The applicants request a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G12, Swimming Pool, and Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws for changes to an existing structure within pre-existing, non-conforming east and west elevations and the installation of a pool. Steven Latasa-Nicks recused himself because of a conflict of interest. Jeremy Callahan, Rob Anderson, Daniel Wagner and Peter Okun sat on the case. Mr. Callahan informed the applicant that since only 4 members would be seated on the case and the vote would have to be unanimous in order for a Special Permit could be granted, the applicant could choose to proceed or postpone until 5 members were available. He chose to proceed.

**Presentation:** Don DiRocco, Leif Hamnquist, Steve Tait and Dave Cook appeared to present the application. Mr. DiRocco said that there was a minor change to the drawings, as the pool now is not being connected to the foundation of the structure as previously proposed. The pool contains less than 4000 gallons and does not need relief under Article 3, Section 3110, as was suggested by the Building Commissioner. Mr. DiRocco and Mr. Hamnquist had a meeting with the Building Commissioner where it was determined that due to a miscalculation in the volume of water in the pool, that relief was not needed. Mr. Gardner reminded the Board that the plans submitted should not be signed as presented, but Hammer Architects, LLC, would have to submit new plans showing the pool not connected to the main structure and noted on the plans should be the volume of water held by the pool. Mr. DiRocco reviewed the project, which includes making the structure less non-conforming on the east side, as it currently extends over the east lot line. No work will be done on the south, or beach, side of the structure. All work will be on the north, or street, side.

**Public Comment:** None. There was 1 letter from an abutter in opposition to the application.

*Jeremy Callahan moved to close the public portion of the hearing, Daniel Wagner seconded and it was so voted, 4-0.*

**Board Discussion:** The Board had no questions for the applicants or their representatives.

*Peter Okun moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the proposal for the neighborhood or Town outweigh any adverse effects*

*such as hazard, congestion or environmental degradation, Rob Anderson seconded and it was so voted, 4-0.*

*Rob Anderson moved that pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to make modifications to an existing three-story multi-family structure within pre-existing, non-conforming east and west setbacks at the property located at 425 Commercial Street (Res 3) with the condition that new plans showing the pool no longer connected to the main structure, a revised foundation plan and noting that the depth dimensions and the volume of water held by the pool, Daniel Wagner seconded and it was so voted, 4-0.*

*Peter Okun moved to grant a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G12, Swimming Pool, of the Zoning By-Laws for the installation of a pool at the property located at 425 Commercial Street (Res 3), Rob Anderson seconded and it was so voted, 4-0. Daniel Wagner will write the decision.*

9) **ZBA 19-09** (request to postpone to the meeting of October 4<sup>th</sup>)

**170 Bradford Street Extension (Residential 3 Zone), Pavel Fiodarau on behalf of PV Development, LLC –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G12, Swimming Pool, of the Zoning By-Laws for the installation of a pool. There was a request from the applicant to postpone the matter to the Public Hearing of October 4, 2018. **Rob Anderson moved to grant the request to postpone ZBA 19-09 to the Public Hearing of October 4, 2018 at 7:00 P.M., Peter Okun seconded and it was so voted, 5-0.**

11) **ZBA 19-11**

**35B Franklin Street (Residential 3 Zone), Alan R. Cabral, of ARC Designs, LLC, on behalf of Mark J. Dougherty –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the zoning By-Laws to construct a two-story 60 sq. ft. addition to an existing dwelling. Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

**Presentation:** Alan Cabral appeared to present the application. He reviewed the project, which involves the construction of a two-story addition on a structure that is already over the neighborhood average scale. The applicant is requesting an increase of 5% over that.

**Public Comment:** None. There were 6 letters in favor of the application.

**Peter Okun moved to close the public portion of the hearing, Rob Anderson seconded and it was so voted, 4-0.**

**Board Discussion:** The Board had no questions for Mr. Cabral.

**Rob Anderson moved to find that the project was in conformity with subparagraph #5 of Article 2, Section 2640E of the Zoning By-Laws, Peter Okun seconded and it was so voted, 5-0.**

**Rob Anderson moved to approve a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the zoning By-Laws to construct a two-story 60 sq. ft. addition to an existing**

*dwelling at the property located at 35B Franklin Street (Res 3), Peter Okun seconded and it was so voted, 5-0. Rob Anderson will write the decision.*

**NEXT MEETING:** The next meeting will take place on Thursday, October 4, 2018. It will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Steven Latasa-Nicks moved to adjourn the Public Hearing at 8:30 P.M, Peter Okun seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2018  
Jeremy Callahan, Chair