

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
November 1, 2018**

Members Present: Jeremy Callahan, Rob Anderson, Daniel Wagner and 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 6:46 P.M.

1) Pending Decisions:

ZBA 19-12 (Marianne)

Application by **Tom Thompson**, on behalf of **347 Commercial, LLC**, requesting a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to add a shed dormer along a pre-existing, non-conforming east elevation, change a roof slope within a pre-existing, non-conforming southeast elevation and add a roof deck within a pre-existing, non-conforming southwest elevation on the property located at **347 Commercial Street (Town Center Commercial Zone)**. **Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case.** The decision was not ready.

ZBA 19-14 (Jeremy)

411 Commercial Street (Residential 3 Zone), **Tom Thompson**, on behalf of **JMC Family Limited Partnership -**

Application by **Tom Thompson**, on behalf of **JMC Family Limited Partnership** requesting a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to reconstruct a multi-level deck and egress stairs at the property located at **411 Commercial Street (Residential 3 Zone)**. **Jeremy Callahan, Rob Anderson, Daniel Wagner, Marianne Clements and Daniel Wagner sat on the case.** Jeremy Callahan read the decision. *Rob Anderson moved to approve the language as written, Daniel Wagner seconded and it was so voted, 4-0.*

2) **Approve minutes of the October 4, 2018 meeting.**

MINUTES: October 4, 2018 – Steven Latasa-Nicks moved to approve the minutes as written, Rob Anderson seconded and it was so voted, 5-0.

3) **Any Other Business that may properly come before the Board.**

Chair Jeremy Callahan adjourned the Work Session at 7:00 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. **Steven Latasa-Nicks moved to take ZBA 19-24 out of order, Rob Anderson seconded and it was so voted, 5-0.**

1) **ZBA 18-69** (*postponed to the meeting of November 15th*)
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.

2) **ZBA 19-09** (*postponed from the cancelled meeting of October 18th*)
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. Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case. **Presentation:** Attorney Robin B. Reid and Pavel Fiodarau appeared to present the application. Attorney Reid stated that the project at the site had been through Site Plan Review by Special Permit with the Planning Board and that the pool has been well-sited, away from the neighbors, in an area that has steep slopes on three sides. It will not create any adverse effects for the neighborhood or Town and will be secured with a fence surrounding it and an electric cover. The equipment area is tucked away close to one of the proposed condominium units on the property. All exterior lighting will be dark sky compliant.

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

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

Board Discussion: The Board questioned Attorney Reid.

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

Rob Anderson 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 170 Bradford Street Extension, Steven Latasa-Nicks seconded and it was so voted, 5-0. Jeremy Callahan will write the decision.

3) **ZBA 19-24**

48 Shank Painter Road (General Commercial Zone), Katherine Braucher Adams, Esq., on behalf of **48 Shankpainter, LLC et al.** –

The applicant seeks a Special Permit pursuant to Article 2, Section 2470, Parking Requirements, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to increase pre-existing, non-conforming lot coverage and for relief from the parking requirements. Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

Presentation: Attorney Katherine Braucher Adams, Attorney Robin B. Reid and Brad Malo, an engineer at Coastal Engineering Co., appeared to present the application. Attorney Adams reviewed the project, which seeks to establish a co-located medical and adult use marijuana dispensary at the site. The premises has two existing residential units, one of which the applicant will convert into a dispensary, leaving the other unit as a three-bedroom residential entity. The exterior changes to the site, excluding parking, will be minor and an exterior ramp installed for greater access for handicapped customers. The existing parking at the site consists of two stalls per residential unit. All four spaces are located within the Town right-of-way and require exiting vehicles to back out onto Shank Painter Road. At a meeting with Town staff, the applicant was advised that since the Town intended to install sidewalks along Shank Painter Road that those spaces should be moved out of the Town right-of-way and should be re-configured to not require backing vehicles out onto Shank Painter Road for public safety reasons. Attorney Adams reviewed the proposed conditions site plan and the new parking configuration, which will consist of three parking stalls, one of which is for handicapped individuals. A dedicated loading area will be located on the site as well. All stalls will be located on the property and are sited in a manner that will include room to allow vehicles to exit onto Shank Painter Road nose first. She said that a parking waiver was being requested, as the Zoning By-Laws required two spaces for the residential unit and three spaces for the dispensary/retail space. The applicant is requesting a waiver for two of the required parking spaces. Attorney Adams indicated that there are ample public parking spaces off-site nearby and that the applicant has also leased parking spaces on Court Street, which is in close proximity to the property. She expects that many customers will access the site by foot or bicycle and a bike rack will be located on the site. Because of the parking reconfiguration on the site, Attorney Adams said that there will be a minor decrease in the green space and a minor increase in lot coverage on the site. The applicant is requesting to extend these non-conformancies in order to improve public safety and accessibility to the site. She argued that this extension is not substantially more detrimental than the existing non-conformancies and that the economic and social benefits, including improving public safety and accessibility, to the neighborhood and Town outweigh any adverse effects such as hazard, congestion or environmental degradation.

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

Jeremy Callahan 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 Adams, Attorney Reid and Mr. Malo about the parking re-configuration. Attorney Reid clarified that the handicapped accessible parking space on the premises will be for dispensary customers and the other two spaces will be for the residential unit. The Board discussed the issue and requested that the Special Permit for a parking waiver be for the residential use and that two spaces be provided off site for that unit, and that the three spaces on the premises be for customers of the proposed marijuana dispensary. *Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2470, Parking Requirements, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to increase pre-existing, non-conforming lot coverage and for relief from the parking requirements at the property located at 48 Shank Painter Road (GC) with the conditions that the three spaces on site be provided for the commercial use and that two spaces will be provided off site for the residential use, Rob Anderson seconded and it was so voted, 5-0.*

Jeremy Callahan moved to find that pursuant to Article 5, Section 5330 the economic, social and other benefits of the project to the Town or neighborhood outweigh any adverse effects such as hazard, congestion or environmental degradation, Steven Latasa-Nicks seconded and it was so voted, 5-0. Rob Anderson will write the decision.

4) **ZBA 19-15** (*postponed from the cancelled meeting of October 18th*)

20 Province Road (General Commercial Zone), William N. Rogers, II, on behalf of **Enco Realty Inc.** –

The applicant seeks 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 a second floor addition over an existing storage and loading area, with a ridge to match an existing second floor pre-existing, non-conforming peak, to add three one-story cottages located in two structures along a northwest property line and to enclose existing loading dock areas, adding a new garage door. Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

Presentation: Attorney Lester J. Murphy, Gary Locke, Leonard Enos and Robert Enos appeared to present the application. Attorney Murphy introduced the project, which includes providing space for workforce, dormitory-style housing Mr. Locke reviewed the project, which includes constructing an addition to match a peaked roof that is 5' over the maximum height allowed by the Zoning By-Laws. The principal structure will be sprinkled. A loading dock area will be enclosed and re-configured to add a garage door to benefit the business on site. Attorney Murphy argued that the proposed second floor dormer addition will not be substantially more detrimental to the neighborhood than the existing over-height peaked structure. There is an 11' difference in topography on the site, but the taller structure does not appear out of proportion from Province Road and will not be out of character for the neighborhood, which has several large commercial buildings nearby. He also argued that the economic, social and other benefits, such as providing workforce housing, an important Town goal, to the neighborhood and Town outweigh any adverse effects. He said that the deviation in scale is consistent with Article 2, Section 2640E, subparagraphs 1 and 5. The proposal is in keeping with the goals and objectives of the Local

Comprehensive Plan; Chapter 5, Economic Development, 5.2, Goals and Policies, Goal 4, Policy A and Goal 7 and Chapter 6, Affordable Housing, 6.2, Goals and Policies, Goal 3, Policy C and integrates into its surroundings and is sited in a manner that minimizes mass from the streetscape and will not have a negative effect on views from and natural light to neighboring structures.

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

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

Board Discussion: The Board questioned Attorney Murphy and Mr. Locke.

Rob Anderson moved to find that pursuant to Article 5, Section 5330 the economic, social and other benefits of the project to the Town or 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 that the project was in keeping with the requirements of Article 2, Section 2640, subsection E1, as the proposed addition is consistent with the Town's goals for housing; E3, in that the building is large by necessity as an industrial use; and E5, in that the addition successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape, Peter Okun seconded and it was so voted, 5-0.

Rob Anderson moved to grant 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 a second floor addition over an existing storage and loading area with a ridge to match an existing second floor pre-existing, non-conforming peak, to add three one-story cottages located in two structures along a northwest property line and to enclose existing loading dock areas, adding a new garage door at the property located at 20 Province Road (GC), Peter Okun seconded and it was so voted, 5-0. Jeremy Callahan will write the decision.

5) **ZBA 19-16** (postponed from the cancelled meeting of October 18th)

8D Commercial Street, UB (Residential 1 Zone), Derik Burgess, of Cape Associates, Inc., on behalf of Martha R. Davis Declaration Trust –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to elevate an existing structure pursuant to FEMA regulations. Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

Presentation: Derik Burgess appeared to present the application. He reviewed the project, which involves raising the structure to mitigate the negative effects of flooding and to become compliant with FEMA regulations. He requested that the project be heard pursuant to the *Goldhirsh v. McNear* ruling.

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

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

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

Board Discussion: The Board questioned Mr. Burgess.

Rob Anderson moved to find that pursuant to Article 5, Section 5330 the economic, social and other benefits of the project to the Town or 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 a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to elevate an existing structure pursuant to FEMA regulations at the property located at 8D Commercial Street, U2 (Res 1), Peter Okun seconded and it was so voted, 5-0.

6) **ZBA 19-17** (postponed from the cancelled meeting of October 18th)

7 Anthony Street (Residential 3 Zone), Stephen Hooper –

The applicant seeks a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G10, Artist Studio, of the Zoning By-Laws to change the use of an existing shed to an artist studio. Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

Presentation: Stephen Hooper appeared to present the application. He explained that he wanted to convert his shed to an artist studio, as his residence has outgrown his artistic pursuits.

Public Comment: None. There was 1 letter of support for the project in the file.

Jeremy Callahan 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.

Rob Anderson moved to find that pursuant to Article 5, Section 5330 the economic, social and other benefits of the project to the Town or 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 a pursuant to Article 2, Section 2450, Permitted Accessory Uses, G10, Artist Studio, of the Zoning By-Laws to change the use of a pre-existing, non-conforming structure at the property located at 7 Anthony Street (Res 3), Peter Okun seconded and it was so voted, 5-0. Daniel Wagner will write the decision.

7) **ZBA 19-18** (postponed from the cancelled meeting of October 18th)

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, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

Presentation: Attorney Lester J. Murphy, Lisa Pacheco Robb and Tim Diehl appeared to present the application. The applicant had requested to be heard pursuant to the *Goldhirsh v. McNear* ruling.

Steven Latasa-Nicks moved to hear the matter under the Goldhirsh v. McNear ruling, Peter Okun seconded and it was so voted, 5-0.

Attorney Murphy said that the project involved a small addition to a second floor deck located on the south elevation of the structure. The deck is located on a bump-out in the structure and is

being expanded to the edge of structure. He argued that the proposal would not be substantially more detrimental to the neighborhood than the existing non-conformancy, as a large amount of egress stairs and landings had already been removed from the west elevation of the structure. He noted the photographs that the applicant had submitted showing views of the deck from neighboring properties. He argued that the third floor deck and attendant stairs on the west elevation had a more invasive effect on their privacy and added that the impact on the neighbors' privacy has been lessened due to their removal. He concluded that the net benefit and improvement to the property is the fact that there are significantly reduced deck areas on the structure. He contended that the economic, social and other benefits of the deck expansion outweighed any adverse effects, as the building is being made more attractive, has a cleaner design, and has been approved by the Historic District Commission. He said that a deck is already located on the south elevation and this project seeks to widen it by only 4'. The impact on privacy is minimal at best. The owners of the property are willing to put 30" arborvitaes, of a height of 3-6', on the deck for screening purposes and to protect the occupants' privacy.

Public Comment: Angela Russo and Lucy Siegal, direct abutters, spoke in opposition to the project.

Board Discussion: The Board questioned Attorney Murphy and Ms. Pacheco Robb. The Board discussed whether the increase in the size of the deck, specifically the width, was substantially more detrimental to the neighborhood than the deck that existed. Attorney Murphy offered, on behalf of the applicant, to revise the plans and work on a compromise with the neighbors, such as decreasing the width of the proposed deck and/or placing vegetative screening on the deck. The Board continued the hearing of the application.

Steven Latasa-Nicks moved to continue ZBA 19-18 to the Public Hearing of November 15, 2018 at 7:00 P.M., Rob Anderson seconded and it was so voted, 5-0.

8) **ZBA 19-20** (*postponed from the cancelled meeting of October 18th*)

3, 4, & 8 Harbor Hill Road & 37 Bradford Street Extension (Residential 1 Zone), Michelle Jarusiewicz, on behalf of the Provincetown Year-Round Market Rate Rental Housing Trust –

The applicant seeks a Special Permit pursuant to Article 2, Section 2470, Parking Requirements, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to provide 2 new accessible rental units to a pre-existing, non-conforming use, to increase the pre-existing, non-conforming density of a lot and for relief from the residential parking requirements. Rob Anderson recused himself because of a conflict of interest. Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case. The applicant agreed to proceed with 4 members seated, as 5 were not available and understood that a unanimous decision would be required in order to be granted a Special Permit.

Presentation: Michelle Jarusiewicz, Treff LaFleche and Amanda O'Malley appeared to present the application. Ms. Jarusiewicz stated that the Town would like to add two handicap-accessible residential units, within the footprint of two of the existing buildings on the property, and two additional parking spaces adjacent to the new units. An office and a maintenance space will be converted into the new units, both of which are located on a flatter part of the lot. The property includes 26 residential units, and was formerly a time-share condominium association. Mr. LaFleche reviewed the relief requested. The two proposed units would increase the density of residential units on the property, which is already pre-existing, non-conforming in that respect.

The existing development is pre-existing, non-conforming as to the required number of parking spaces for the units. And, in addition, Mr. LaFleche noted that one of the additional parking spaces would need to be located in the public right-of-way due to a re-configuration of the parking to accommodate the two handicap spaces. Mr. Gardner explained that the project requires that parking be provided for the two additional units and that the relief from the parking requirements is due to the off-site accommodation of the one parking space. The requested waiver is not for the parking requirement, but for the off-site accommodation of the space and has the permission of the Select Board to be located in the public right-of-way.

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

Steven Latasa-Nicks 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.

Steven Latasa-Nicks moved to find that pursuant to Article 5, Section 5330 the economic, social and other benefits of the project 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.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2470, Parking Requirements, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to provide 2 new accessible rental units to a pre-existing, non-conforming use, to increase the pre-existing, non-conforming density of a lot and for relief from the residential parking requirements at the property located at 3, 4, & 8 Harbor Hill Road and 37 Bradford Street Extension (Res 1), Peter Okun seconded and it was so voted, 4-0. Steven Latasa-Nicks will write the decision.

9) ZBA 19-22

473 Commercial Street (Residential 3 Zone), William N. Rogers, II, on behalf of Christopher Pula et al. –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to extend a pre-existing, non-conforming first floor deck with a 4' semi-circular addition and add a semi-circular, cantilevered 14 sq. ft. addition with a deck above to an existing second floor sunroom on the south elevation and to construct a 4' 6" doghouse dormer on the west elevation. Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

Presentation: Gary Locke appeared to present the application. He reviewed the project, which includes a bay window addition on the second floor and a semi-circular 4' addition to the existing deck on the south elevation. He reviewed the south elevation on the site plan. He said the increase in scale is 2%, or 625 cu. ft., higher than what is allowed without a Special Permit, is modest and that the existing building is already in excess of the allowed scale. The only visible part of this project from the street would be the doghouse dormer on the west elevation.

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 Mr. Locke.

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

Peter Okun moved to find that consistent with subparagraph 5 of Article 2, Section 2640E of the Zoning By-Laws the proposed project successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape, Rob Anderson seconded and it was so voted, 5-0.

Peter Okun moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to extend a pre-existing, non-conforming first floor deck with a 4' semi-circular addition and add a semi-circular, cantilevered 14 sq. ft. addition with a deck above to an existing second floor sunroom on the south elevation and to construct a 4' 6" doghouse dormer on the west elevation at the property located at 473 Commercial Street (Res 3), Rob Anderson seconded and it was so voted, 5-0. Rob Anderson will write the decision.

10) ZBA 19-23

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

The applicant seeks a Variance pursuant to Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws for the construction of a flat roof that exceeds the maximum allowed height of 23' by 6.2' on the Building containing Units 9 and 10. Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

Presentation: Attorney Lester J. Murphy appeared to present the application. He reviewed the background of the project at the site and why the applicant is seeking a Variance, a resolution, he noted, that will bring the Units 9 and 10 into compliance with the Zoning By-Laws. He said that the applicant has always been committed to working with the neighbors to minimize the impact of the building containing the units on the views from the abutting properties. Even though approval from the Town was received for peaked roofs, which increased the height of the building in question, the applicant has come to an agreement with a neighbor that he would seek a Variance to maintain the roof as flat, at it currently exists. He reviewed the height issues that were contested by the applicant and the Town during the original permitting process. At present, he said, the building is not in compliance with the Zoning By-Laws, but if raised to a peaked roof, would comply. The applicant is asking for a Variance to let building remain at its existing height. He argued that the reconfiguration of the roof would create a financial hardship and cost the applicant about \$50-60,000 to remedy. The lot is unique in that the topography of the rear of the site is steep and not usually the type found in the Residential 3 Zoning District and there is a 6' to 21' change in elevation from the front of the property to the rear where this particular building is located. He contended that the hardship is directly owing to the particular topography of the land and the height of the building. He argued that changing the height would make the building inconsistent design-wise with other buildings on the site. There would also be a detrimental impact on the neighbors if the roof height is increased, as views would be blocked and would negatively impact the value of their properties. He said that granting a Variance would not nullify or substantially derogate from the intent or purpose of the Zoning By-Laws

and would not be detrimental to the public good. He read a letter from 40 neighbors of the project to show that the neighbors were in favor of the application and maintaining the existing flat roof to buttress the argument.

Public Comment: Joe Joyce, an abutter, spoke in support of the application. There was a letter signed by 40 neighbors in support of the application.

Jeremy Callahan 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 Murphy. The Board discussed whether the requirements of a Variance had been met.

Rob Anderson moved to grant a Variance pursuant to Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws for the construction of a flat roof that exceeds the maximum allowed height of 23' by 6.2' on the Building containing Units 9 and 10 at the property located at 350 Bradford Street (Res 3), Daniel Wagner seconded and it was so voted, 4-0-1 (Peter Okun abstaining). Jeremy Callahan will write the decision.

11) ZBA 19-25

14 Schueler Blvd. (Residential 1 Zone), Kaye McFadden, of Cape Tip Construction, on behalf of Laura Seabury –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to add a second floor dormer on the north elevation and to modify an existing dormer to include a roof over a deck to create a covered porch area. Daniel Wagner recused himself because of a conflict of interest. Chair Jeremy Callahan explained to the applicant that since there were only 4 members seated on the case and a unanimous decision would be necessary in order to be granted a Special Permit, she could postpone until 5 members were available or proceed with 4 members. She chose to proceed. Jeremy Callahan, Rob Anderson, Steven Latasa-Nicks and Peter Okun sat on the case.

Presentation: Kaye McFadden, Laura Seabury and Debra Poletto appeared to present the application. Ms. McFadden reviewed the project, which includes the addition of a dormer and the alteration of a dormer on the south elevation. She reviewed the building plans stating that the roofline will be extended to create a covered porch and the project will not be substantially more detrimental to the neighborhood than the existing non-conforming situation.

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

Public Comment: None. There were 3 letters from abutters in support of the application.

Board Discussion: The Board questioned Ms. McFadden.

Steven Latasa-Nicks moved to find that pursuant to Article 5, Section 5330 the economic, social and other benefits of the project for the Town or neighborhood outweigh any adverse effects such as hazard, congestion or environmental degradation, Rob Anderson seconded and it was so voted, 4-0.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to add a second floor dormer on the north elevation and to modify an existing dormer to include a roof over a deck to create a covered porch area at the property located at 14 Schueler Blvd. (Res 1), Rob Anderson seconded and it was so voted, 4-0.

12) **ZBA 12-26**

225 Commercial Street (Town Commercial Center Zone), The Galley Catering –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow flex-seating by moving 9 seats from the backyard service area to the front outdoor service area during the holiday market and in the winter. Rob Anderson recused himself because of a conflict of interest. Chair Jeremy Callahan explained to the applicant that since there were only 4 members seated on the case and a unanimous decision would be necessary in order to be granted a Special Permit, he could postpone until 5 members were available or proceed with 4 members. He chose to proceed. Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

Presentation: Loic Rossignon appeared to present the application. He said that adding seats to the front of the property would better serve customers in the winter. The flex-seating plan proposed would allow seats from the rear of the property that are not used in the winter to be moved to the front of the property.

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

Steven Latasa-Nicks moved to close the public portion of the hearing, Peter Okun seconded and it was so voted, 4-0.

Board Discussion: The Board questioned Mr. Rossignon. The Board requested that a seating plan showing the areas of service for both scenarios. The Board agreed to allow the flex-seating from November 1st through April 30th.

Peter Okun moved to find that pursuant to Article 5, Section 5330 the economic, social and other benefits of the project for the Town or neighborhood outweigh any adverse effects such as hazard, congestion or environmental degradation, Steven Latasa-Nicks seconded and it was so voted, 4-0.

Peter Okun moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow flex-seating by moving 9 seats from the backyard service area to the front outdoor service area during the holiday market and in the winter, from November 1st through April 30th, at the property located at 225 Commercial Street (TCC), Steven Latasa-Nicks seconded and it was so voted, 4-0. Steven Latasa-Nicks will write the decision.

13) **ZBA 19-27**

225 Commercial Street (Town Commercial Center Zone), Loic Rossignon –

The applicant seeks a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, E3e., Temporary Carnivals, Festivals & Fairs, of the Zoning By-Laws for an annual holiday festival to include temporary structures for artists and food, gift and craft vendors and a temporary synthetic ice skating rink. Rob Anderson recused himself because of a conflict of interest. Chair Jeremy Callahan explained to the applicant that since there were only 4 members seated on the case and a unanimous decision would be necessary in order to be granted a Special Permit, he could postpone until 5 members were available or proceed with 4 members. He chose to proceed. Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case.

Presentation: Loic Rossignon appeared to present the application. Mr. Rossignon said that the holiday market has been a successful venture for 3 years now and he is requesting that the Board

allow it to continue without having to return to the Board for permission on a yearly basis. He is requesting that the conditions be the same as previous Special Permit conditions, save for changes in the time of the event to run from Thanksgiving weekend to after the New Year's celebration, in the definition of the area where the market occurs as the property as a whole, not just the rear of the property, and in allowing the Special Permit to run indefinitely.

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

Steven Latasa-Nicks moved to close the public portion of the hearing, Peter Okun seconded and it was so voted, 4-0.

Board Discussion: The Board questioned Mr. Rossignon.

Steven Latasa-Nicks moved to find that pursuant to Article 5, Section 5330 the economic, social and other benefits of the project for the Town or neighborhood outweigh any adverse effects such as hazard, congestion or environmental degradation, Daniel Wagner seconded and it was so voted, 4-0.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, E3e., Temporary Carnivals, Festivals & Fairs, of the Zoning By-Laws for an annual holiday festival to include temporary structures for artists and food, gift and craft vendors and a temporary synthetic ice skating rink at the property located at 225 Commercial Street (TCC), Daniel Wagner seconded and it was so voted, 4-0. Peter Okun will write the decision.

NEXT MEETING: The next meeting will take place on Thursday, November 15, 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 10:00 P.M., Peter Okun seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2018
Jeremy Callahan, Chair

Posted: www.provincetown-ma.gov 11/16/18 9:10 am lf