

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
March 7, 2019**

Members Present: Jeremy Callahan, Daniel Wagner, Peter Okun, and Susan Peskin.

Members Absent: Rob Anderson (excused) and 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 6:00 P.M.

1) Pending Decisions:

ZBA 19-33 (Rob)

157 Commercial Street (Town Commercial Center Zone), Kevin O'Shea – Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case. Daniel Wagner read the decision. *Peter Okun moved to approve the language as written, Daniel Wagner seconded and it was so voted, 3-0.*

ZBA 19-34 (Peter)

30 Shank Painter Road (General Commercial Zone), Doug Dolezal, of Design Matters, LLC, on behalf of Brian O'Malley - Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Peter Okun sat on the case. Peter Okun read the decision. *Daniel Wagner moved to approve the language as written, Peter Okun seconded and it was so voted, 3-0.*

ZBA 19-42 (Jeremy)

24 Pearl Street (Residential 3 Zone), Fine Arts Work Center – Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks and Susan Peskin sat on the case. Jeremy Callahan read the decision. *Daniel Wagner moved to approve the language as written, Susan Peskin seconded and it was so voted, 3-0.*

2) **Approve minutes of the February 7, 2019 meeting.**

MINUTES: February 7, 2019 – Rob Anderson moved to approve the minutes as written, Steven Latasa-Nicks seconded and it was so voted, 4-0.

3) **Any Other Business that may properly come before the Board. None.**

Chair Jeremy Callahan adjourned the Work Session at 6:25 P.M.

B. PUBLIC HEARING

Chair Jeremy Callahan called the Public Hearing to order at 6:30 P.M. There were 4 Board members present and two absent.

- 1) **ZBA 19-29** (*request to continue to the meeting of March 21st*)
509 Commercial Street (Residential 3 Zone), 509 Commercial St., 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 by 9', alter it up and along pre-existing, non-conforming east and west elevations and move it 15' to the south of its existing location. There was a request from the applicant to continue to the March 21, 2019 Public Hearing at 6:30 P.M. ***Daniel Wagner moved to grant the request to continue ZBA 19-29 to the Public Hearing of March 21, 2019 at 6:30 P.M., Susan Peskin seconded and it was so voted, 4-0.***
- 2) **ZBA 19-35** (*request to postpone to the meeting of March 21st*)
806 Commercial Street (Residential 1 Zone), Mark Legere, of Marolima East, LLC –
The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a single-family house where the neighborhood average scale has not yet been established. There was a request from the applicant to postpone this matter to the March 21, 2019 Public Hearing. ***Daniel Wagner moved to grant the request to continue ZBA 19-35 to the Public Hearing of March 21, 2019 at 6:30 P.M., Susan Peskin seconded and it was so voted, 4-0.***
- 3) **ZBA 19-36** (*request to postpone to the meeting of March 21st*)
820 Commercial Street (Residential 1 Zone), Mark Legere, of Marolima East, LLC –
The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a single-family house where the neighborhood average scale has not yet been established. There was a request from the applicant to postpone this matter to the February 21, 2019 Public Hearing. ***Daniel Wagner moved to grant the request to continue ZBA 19-35 to the Public Hearing of March 21, 2019 at 6:30 P.M., Susan Peskin seconded and it was so voted, 4-0.***
- 4) **ZBA 19-37** (*request to withdraw without prejudice*)
225 Commercial Street (Town Commercial Center Zone), Topknot Properties, LLC –
Notice of Appeal by the applicant of a decision by the Building Commissioner, dated November 21, 2018, regarding the calculation of a front yard setback on the property. There was a request to withdraw ZBA 19-37 without prejudice. ***Peter Okun moved to grant the request to withdraw ZBA 19-37 without prejudice, Daniel Wagner seconded and it was so voted, 4-0.***

5) **ZBA 19-41** (*postponed from the meeting of February 21st*)

6 Commercial Street (Residential 1 Zone), Ted Smith Architect, on behalf of Thomas Tannariello –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a new single-family structure that will have a volume greater than the maximum allowable scale for the neighborhood. Jeremy Callahan, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.

Presentation: Attorney Robin B. Reid and Jimmy Pallacino appeared to present the application. Attorney Reid reviewed the project, which is for the construction of a single-family residence that will be located on the lowest part of a sloping site. She explained that the applicant could have built the structure higher up the hill, taking advantage of the view corridor at that height, which would have obviated the need to seek building scale relief. However, out of regard for his abutters and in order to respect for the slope and the site, he chose the lower location. The property is in a flood zone, necessitating placing the mechanicals on the first floor of the structure. In addition, the massing appears to be smaller at this location than if the structure were sited farther up the slope. The project has been approved by the Historic District Commission and the Conservation Commission. She said that the allowable neighborhood scale without a Special Permit is 19,261 cu. ft. and the proposed scale is 24,751. She briefly reviewed the building scale of abutting structures in the neighborhood, the largest of which is located right across the street and in calculating building scale, the largest and smallest structures are not considered. However, the character of the neighborhood is still influenced by that large structure across the street. She said that the neighborhood allowable scale is skewed somewhat by the presence of many small cottages on the abutting Delft Haven property, which are within the 250' radius used for building scale calculation. She argued that the project was in keeping with Article 5, Section 5330 in that the social, economic and other benefits outweighed any adverse effects. The benefits include an increase in the tax base of the Town and the addition of a thoughtfully designed and located structure to the neighborhood that is also in keeping with the character of it. There is an onsite septic system and adequate parking and the total green space complies with zoning requirements. She said that the project was consistent with subparagraph 5 of Article 2, Section 2640E in that it integrated into the site and its location minimizes the appearance of mass from the streetscape and does not interfere with the views from, or natural light to, abutting structures. She contended that this was not a neighborhood of small cottages and that the proposed structure would integrate into those surroundings.

Public Comment: Jon Sinaiko spoke in opposition to the project. There were 4 letters in support and 5 letters written in opposition to the project.

Board Discussion: The Board questioned Attorney Reid. Mr. Gardner briefly reviewed the intention of the scale by-law. The Board was concerned about allowing new construction that is already greater than the neighborhood average scale. After a brief discussion regarding the scale of the proposed structure, the Board was polled. Attorney Reid requested a continuance to the March 21, 2019 Public Hearing.

Peter Okun moved to grant the continuance of ZBA 19-41 to the March 21, 2019 Public Hearing at 6:30 P.M., Susan Peskin seconded and it was so voted, 4-0.

6) **ZBA 19-43** (*postponed from the meeting of February 21st*)

Application by **Tom Thompson**, on behalf of **George Sauer**, seeking 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 extend up and along a pre-existing, non-conforming side yard dimension to construct a second floor deck over an existing first floor deck on the property located at **2 Winthrop Place, U2D (Residential 3 Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.

Presentation: Tom Thompson appeared to present the application. He reviewed the project, which is for the construction of a second means of egress on the structure. The egress consists of an exterior second floor deck with a stairway to grade. This would increase the safety of the applicant if a fire occurred in the unit. Mr. Thompson added that the applicant's insurance company was requiring that a second means of egress be created to comply with current building codes. He called the Board's attention to the floor plans where the egress would be located. He said that the creation of the egress required a slight increase in the building scale and that the request was in keeping with the goals of the Local Comprehensive Plan, pursuant to subparagraph 1 of Article 2, Section 2640E and, in addition, subparagraphs 5, as it is sited in a manner that will not increase the appearance of mass from the streetscape and will not affect the light or views of abutting structures, and 6, as it has been approved by the HDC. He argued that pursuant to Article 5, Section 5330, that there would be no adverse effects as a result of the project.

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

Jeremy Callahan 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. Thompson about how the project was in keeping with the goals and objectives of the LCP and about the insurance company's request.

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

Peter Okun moved to find that pursuant to Article 2, Section 2640E that the project met the requirement of subparagraph 5, Daniel Wagner seconded and it was so voted, 4-0.

Peter Okun 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 extend up and along a pre-existing, non-conforming side yard dimension to construct a second floor deck over an existing first floor deck on the property located at 2 Winthrop Place, U2D, Susan Peskin seconded and it was so voted, 4-0. Daniel Wagner will write the decision.

7) **ZBA 19-44** (*request to postpone to the meeting of April 4th*)

Notice of Appeal by the **White Sands Beach Club** aggrieved by a decision of the Building Commissioner dated December 21, 2018, which it believes to be a violation of the Provincetown Zoning By-Laws or the Massachusetts Zoning Act, in reference to the property located at **963 Commercial Street, #10 (Residential 1 Zone)**. There was a request from the applicant to postpone the matter to the April 4, 2019 Public Hearing. *Peter Okun moved to grant the request*

to postpone ZBA 19-44 to the April 4, 2019 Public Hearing at 6:30 P.M., Daniel Wagner seconded and it was so voted, 4-0.

8) **ZBA 19-45** (*postponed from the meeting of February 21st*)

Application by **Lululemon, USA, Inc.**, on behalf of **Marc Roland, LLC**, seeking a Special Permit pursuant to Article 2, Section 2360, Formula Business Regulated District, of the Zoning By-Laws to establish a formula business retail store on the property located at **184 Commercial Street (Town Center Commercial Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.

Presentation: Attorney Robin B. Reid and Ronald Cram, a principal of Marc Roland, LLC, appeared to present the application. Attorney Reid reviewed the proposal and said that Marc Jacobs, a formula business of a similar nature, the sale of retail clothing, had occupied the premises previously. This use is permitted in the TCC district. She said that the applicant is a formula business and meets four out of the five criteria in the definition of such in the Zoning By-Laws. The only change to the exterior of the building will be the signage and the exterior lighting fixtures. She noted that pursuant to Article 2, Section 2362, subsection 3, which concerns the distinctive character of the Town, this business is just replacing a previous formula business and will implement very few changes to the exterior of the existing retail space. Lululemon will offer high quality ath-leisure clothing, a distinctive and unique line of clothing that is not currently available in the Town, and argued that there will be no negative impact on the Town as a result of its presence. The existing architecture of the building will not be impacted and the intensity of use will not increase. There will be no interference with pedestrian or vehicular traffic or with other uses in the neighborhood and the store meets the criteria of the by-law. She argued that the social, economic and other benefits, as outlined in her presentation, outweighed any adverse effects.

Public Comment: Bob O'Malley, the leasing agent, spoke in support of the application. There was 1 letter written in opposition to the project.

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

Board Discussion: The Board questioned Attorney Reid and Mr. Cram. The Board was concerned about the company's designation as a "pop-up" store and its implications regarding commitment to the Town and contributions to local charitable causes. Mr. O'Malley clarified that the "pop-up" designation refers to a division within the company and that Lululemon fully intends upon becoming part of the community and making contributions to local charities. It also hopes to extend its short-term lease at the end of the summer. Attorney Reid read a letter from a regional manager, Christine D'Ambrosia, of Lululemon, stating how the business intends to integrate into, benefit, and support the community.

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

Peter Okun moved to grant a Special Permit pursuant to Article 2, Section 2360, Formula Business Regulated District, of the Zoning By-Laws to establish a formula business retail

store on the property located at 184 Commercial Street (Town Center Commercial Zone), Daniel Wagner seconded and it was so voted, 4-0. Peter Okun will write the decision. Attorney Reid volunteered to submit a draft decision for the Board's consideration.

9) **ZBA 19-46** (*request to postpone to the meeting of April 4th*)

Application by **Stanley Sikorski & Eva Sikorski**, on behalf of **David Mayo**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, to construct a single-family structure that will exceed the allowable building scale on the property located at **294 Bradford Street (Residential 3 Zone)**. There was a request from the applicant to postpone the matter to the April 4, 2019 Public Hearing. *Peter Okun moved to grant the request to postpone ZBA 19-46 to the April 4, 2019 Public Hearing at 6:30 P.M., Daniel Wagner seconded and it was so voted, 4-0.*

10) **ZBA 19-47** (*postponed from the meeting of February 21st*)

Application by **John Love Yingling** seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to add a canopy to a structure that exceeds the allowable building scale on the property located at **183-185 Commercial Street (Town Center Commercial Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.

Presentation: Tom Thompson and Guillermo Yingling appeared to present the application. Mr. Thompson described the proposed weatherproof roofing covering that will be placed over an outside dining patio. The applicant seeks relief from the neighborhood average building scale. The canopy design description includes steel vertical posts supporting a simple open-steel and/or wood truss framing system, with a corrugated metal or opaque and translucent fiberglass roof panel to provide protection from the weather and natural light and air to customers dining under it. It will complement the roof system and the height will be less than that of the existing restaurant. He briefly reviewed the building scales of the structures in the neighborhood and noted that many of the commercial ones are larger than the one in question. He said that the volume of the canopy has already been reduced per the request of the HDC. Pursuant to Article 2, Section 2640E, he argued that the project is in keeping with subparagraphs 1-5, in that it is in keeping with the goals and objectives of the LCP, Chapter 4, Goals and Policies 4.2, Goal 2 and Policy A and B, that the building was an important structure in the Town and is a destination, that the building is large by necessity and that the location is suited to a larger building, that the building scale deviation is warranted due to the size of the lot and will discourage subdivision of the lot into smaller parcels, that the building and canopy integrated into its surroundings and is sited in a manner that minimized mass from the streetscape and did not interfere with the light to, and views from, neighboring structures and, the canopy had been approved by the HDC.

Public Comment: None. An attorney for an abutter voiced concerns about the application, including that it was not a permanent structure, but a tent and since it was metal would not fit into the historical character of the neighborhood or Town.

Jeremy Callahan 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. Thompson and Mr. Yingling. Mr. Thompson clarified that the HDC had continued its hearing of the canopy design and has not yet approved it, but has approved other aspects of the project as a whole. He said that the canopy is actually

smaller than the dining area, as the tables closest to the street will not be covered. The Board was not convinced that it met the requirement of minimizing the canopy's mass from the streetscape. *Peter Okun moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the project for the neighborhood or Town outweighed any adverse effects such as hazard, congestion or environmental degradation, Daniel Wagner seconded and it was so voted, 4-0.*

Peter Okun moved to find that pursuant to Article 2, Section 2640E that the project met the requirement of subparagraph 1 in that it is in keeping with the goals and objectives of the LCP, Daniel Wagner 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 add a canopy to a structure that exceeds the allowable building scale on the property located at 183-185 Commercial Street (Town Center Commercial Zone), Susan Peskin seconded and it was so voted, 4-0. Jeremy Callahan will write the decision.

11) **ZBA 19-48** (*request to postpone to the meeting of April 4th*)

Application by **Don DiRocco**, of **Hammer Architects**, on behalf of **Steve Tait & Dave Cook**, seeking a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and rebuild portions of a structure up and along a pre-existing, non-conforming dimensions, including height and side yard setbacks, at the property located at **425 Commercial Street (Residential 3 Zone)**. There was a request to postpone the matter to the April 4, 2019 Public Hearing. *Peter Okun moved to grant the request to postpone ZBA 19-48 to the April 4, 2019 Public Hearing at 6:30 P.M., Daniel Wagner seconded and it was so voted, 4-0.*

12) **ZBA 19-49**

Application by **Tom Thompson**, on behalf of **Frank Christopher**, seeking a Special Permit pursuant to Article 3, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the service of food and alcohol and to provide entertainment at the property located at **193 Commercial Street, #AU6 (Town Commercial Center Zone)**. Jeremy Callahan, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.

Presentation: Tom Thompson and Frank Christopher appeared to present the application. Mr. Thompson reviewed the project and the flex-seating plan for what is proposed to be a cabaret and explained that the project would be phased over a couple of years, with the first phase to be implemented for this summer season. The property can support 110 restaurant seats, reflected in the flex-seating plan for this season, and the applicants seek to acquire more seats for the second phase of the project. The latter phase will entail the installation of a grease trap in order to increase the selection of food to be offered to patrons. A limited menu will be available during the first phase. The flex seats in the plans submitted will migrate between the indoor and outdoor areas, depending upon the weather and the entertainment demands. Two seating schemes for the 110 seats will be utilized this year. Mr. Thompson reviewed each of the seating plans. For the second phase, after acquiring the additional 26 economic development seats, the interior seating will have 80 plus 6 bar seats and the exterior seating will equal 46, for a total of 132. The first

phase flex-seating plans would be comprised of a Plan A of 80 seats, plus 6 bar seats inside and 24 outdoor seats, or a Plan B of 66 seats, plus 6 bar seats, inside and 38 outdoor seats. The choice of seating arrangements would depend upon the nature of the entertainment, so if more interior seats are needed for a more popular performer, they would be available. Mr. Gardner reviewed the seating plans.

Public Comment: None.

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 questioned Mr. Thompson and Mr. Christopher. Mr. Christopher reviewed the proposed schedule and entertainment ideas for the cabaret.

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

Peter Okun moved to grant a Special Permit pursuant to Article 3, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the service of food and alcohol and to provide entertainment at the property located at 193 Commercial Street, #AU6 (TCC), Susan Peskin seconded and it was so voted, 4-0. Susan Peskin will write the decision.

13) **ZBA 19-50** (request to postpone to the meeting of March 21st)

Application by **Christopher J. Snow, Esq.**, on behalf of **Linchris Hotel Corp.**, seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to provide entertainment, including movies, pool tables, karaoke, dancing, live entertainment with amplified music, and theatrical shows, at the property located at **698 Commercial Street (Residential 1 Zone)**. There was a request from the applicant to postpone the matter to the March 21, 2019 Public Hearing. *Peter Okun moved to grant the request to postpone ZBA 19-50 to the March 21, 2019 Public Hearing at 6:30 P.M., Daniel Wagner seconded and it was so voted, 4-0.*

NEXT MEETING: The next meeting will take place on Thursday, March 21, 2019 in the Judge Welsh Room. It will consist of a Work Session at 6:00 P.M. followed by a Public Hearing at 6:30 P.M.

ADJOURNMENT: *Peter Okun moved to adjourn the Public Hearing at 9:00 P.M., Susan Peskin seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2019
Jeremy Callahan, Chair