

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
May 2, 2019**

Members Present: Jeremy Callahan, Rob Anderson, Daniel Wagner, Steven Latasa-Nicks, Peter Okun, Susan Peskin, and Caleb Eigsti.

Members Absent: None.

Others Present: Amy Kwesell (Town Counsel), Jeff Ribeiro (Town Planner) and Ellen C. Battaglini (Permit Coordinator)

WORK SESSION

Chair Jeremy Callahan called the Work Session to order at 6:00 P.M.

1) PENDING DECISIONS:

ZBA 19-50 (Susan)

698 Commercial Street (*Residential 1 Zone*), Christopher J. Snow, Esq., on behalf of Linchris Hotel Corp. –

Jeremy Callahan, Rob Anderson, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case. Susan Peskin read the decision. *Rob Anderson moved to approve the language as written, Peter Okun seconded and it was so voted, 5-0.*

ZBA 19-56 (Rob)

361 Commercial Street (*Town Commercial Center Zone*), Steven L. Benjamin –

Jeremy Callahan, Rob Anderson, Daniel Wagner, and Susan Peskin sat on the case. Rob Anderson read the decision. *Daniel Wagner moved to approve the language as written, Susan Peskin seconded and it was so voted, 4-0.*

ZBA 19-59 (Rob)

258 Commercial Street (*Town Commercial Center Zone*), Steven Schnitzer –

Jeremy Callahan, Rob Anderson, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case. Rob read the decision. *Peter Okun moved to approve the language as written, Susan Peskin seconded and it was so voted, 5-0.*

ZBA 19-62 (Susan)

237 Commercial Street (Town Commercial Center Zone), Provincetown Film Society – Jeremy Callahan, Rob Anderson, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case. Susan Peskin read the decision. ***Rob Anderson moved to approve the language as written, Peter Okun seconded and it was so voted, 5-0.***

ZBA 19-63 (Peter)

29 Bradford Street Extension (Residential 1 Zone), Matthew Verge, dba Foxberry Inn, LLC -

Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks, Peter Okun, and Caleb Eigsti sat on the case. Peter Okun read the decision. ***Rob Anderson moved to approve the language as written, Steven Latasa-Nicks seconded and it was so voted, 5-0.***

2) Approval of Minutes:

April 18, 2019 – ***Susan Peskin moved to approve the minutes as written, Caleb Eigsti seconded and it was so voted, 5-0.***

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

Chair Jeremy Callahan adjourned the Work Session at 6:30 P.M.

PUBLIC HEARING

Chair Jeremy Callahan called the Public Hearing to order at 6:30 P.M. There were 7 Board members present and none absent.

1) PUBLIC HEARINGS:

ZBA 19-29 (continued from the meeting of April 18th)

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.

Jeremy Callahan, Steven Latasa-Nicks, Rob Anderson, and Daniel Wagner sat on the case. The Chair reminded the Board that the case is being heard under the *Goldhirsh v. McNear* ruling.

Presentation: Attorney Lester J. Murphy and Lyn Plummer appeared to discuss the application. Attorney Murphy requested that since there were only 4 members seated on the case, he would like to take a poll before a vote was taken. The Chair agreed to the request. Attorney Murphy reviewed the project and the issue that arose during the last hearing of the case in January. He said that he had informed the Board at that time that the applicant wanted to explore whether the structure could obtain a waiver from the FEMA requirements to raise the structure through a ruling by the Massachusetts Historic Commission. The Board decided at the time that it did not want to proceed until that option had been explored. As it turned out, despite the submission of

an application and supporting documentation, the MHC refused to act and told the applicant it could not give that waiver. He said that despite the time and efforts of both the Building Commissioner and the applicant, the structure would have to be raised. He explained that this was as a result of the necessity of replacing more than 50% of the foundation due to its derelict condition. The structure will have to be raised 9' to meet the base flood elevation in this area and relocated 15' south, away from the street, the latter in order to maintain the visual conformity of the neighborhood from the streetscape. The applicant is requesting relief from Article 3, s. 3110 because of the relocation of the structure farther south and because the non-conformity on the east side of the structure is being reduced, but not to conforming status. Attorney Murphy said that neither the Building Commissioner nor the applicant had a choice in the raising of the structure and not doing so would jeopardize the Town's position under the flood insurance program. Attorney Kwesell reiterated the necessity of raising the structure and the fact that the Building Commissioner did not have an option and explained the Board's purview in the matter. She said that the Board could not deny the relief based upon the decision by the MHC.

Public Comment: Kristin Hein, an abutter, spoke in opposition to the application.

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

Board Discussion: The Board questioned Attorney Murphy, Ms. Plummer, and Attorney Kwesell.

Steven Latasa-Nicks moved to find that pursuant to Article 5, Section 5330, Special Permit Considerations, the social, economic or 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.

Moved to grant 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 at the property located at 509 Commercial Street (Res 3), Rob Anderson seconded and it was so voted, 4-0.

ZBA 19-35 (request to withdraw without prejudice)

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 withdraw ZBA 19-35 without prejudice. **Steven Latasa-Nicks moved to grant the request to withdraw ZBA 19-35 without prejudice, Rob Anderson seconded and it was so voted, 5-0.**

ZBA 19-36 (request to withdraw without prejudice)

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 withdraw ZBA 19-36 without prejudice. **Steven Latasa-Nicks moved to grant the request to withdraw ZBA 19-36 without prejudice, Rob Anderson seconded and it was so voted, 5-0.**

ZBA 19-46 (*request to postpone to the meeting of May 16th*)

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 May 16, 2019 Public Hearing. *Steven Latasa-Nicks moved to grant the request to postpone ZBA 19-46 to the May 16, 2019 Public Hearing at 6:30 P.M., Rob Anderson seconded and it was so voted, 5-0.*

ZBA 19-48 (*request to postpone to the meeting of May 16th*)

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 from the applicant to postpone the matter to the May 16, 2019 Public Hearing. *Steven Latasa-Nicks moved to grant the request to postpone ZBA 19-48 to the May 16, 2019 Public Hearing at 6:30 P.M., Rob Anderson seconded and it was so voted, 4-0.*

ZBA 19-54 (*request to withdraw without prejudice*)

Application by **Olivier Jamin Changeart** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a deck on the south elevation of a structure up and along a pre-existing, non-conforming east elevation dimension on the property located at **259-263 Commercial Street (Town Commercial Center Zone)**. There was a request from the applicant to withdraw ZBA 19-54 without prejudice. *Steven Latasa-Nicks moved to grant the request to withdraw ZBA 19-54 without prejudice, Rob Anderson seconded and it was so voted, 5-0.*

ZBA 19-64

Application by **The Galley Catering, LLC** seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to revise a seating plan on the property located at **225 Commercial Street (Town Center Commercial Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun and Caleb Eigsti sat on the case. **Presentation:** Rob Anderson presented the application. He reviewed the proposed seating plan. He said that the Canteen changed its seating arrangements every year in an effort to make things better and as a result of public input. There will be no changes in the number of seats, but only in their positions on the site. He said that they were trying to make the existing funky, bohemian seating more comfortable and traditional and to create a more clearly defined bar space in the rear of the site. The proposed plan will include public amenity seats, where anyone, not just customers, can sit. The front dining room will remain the same. The bar area will be more clearly defined and beyond the seawall, there will be two-tops and picnic tables and two fire pits. **Public Comment:** There was 1 letter of support for the application from an abutter if more specific plans showing elevations are submitted.

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 briefly questioned Mr. Anderson.

Steven Latasa-Nicks moved to find that pursuant to Article 5, Section 5330, Special Permit Considerations, the social, economic or other benefits of the proposal for 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.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to revise a seating plan on the property located at 225 Commercial Street (TCC), Peter Okun seconded and it was so voted, 5-0. Caleb Eigsti will write the decision.

ZBA 19-65 (*request to postpone to the meeting of June 6th*)

Application by **George Tagaris** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to modify a condition of Special Permit #FY15-57 requiring the installation of a sprinkler system in a structure on the property located at **143 Commercial Street (Town Center Commercial Zone)**. There was a request to postpone ZBA 19-65 to the June 6, 2019 Public Hearing at 6:30 P.M. *Steven Latasa-Nicks moved to grant the request to postpone ZBA 19-65 to the June 6, 2019 Public Hearing at 6:30 P.M., Rob Anderson seconded and it was so voted, 5-0.*

ZBA 19-66

Application by **Jonathan Sinaiko** seeking a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G11, Other customary accessory uses, of the Zoning By-Laws to increase the size of an existing shed on the property located at **292 Bradford Street (Residential 3 Zone)**. Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks, Peter Okun, and Caleb Eigsti sat on the case.

Presentation: Jonathan Sinaiko presented the application. He seeks to expand an existing shed on his property for additional storage space for artwork.

Public Comment: None.

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

Board Discussion: The Board questioned Mr. Sinaiko.

Steven Latasa-Nicks moved to find that pursuant to Article 5, Section 5330, Special Permit Considerations, the social, economic or other benefits of the proposal for 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.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G11, Other customary accessory uses, of the Zoning By-Laws to increase the size of an existing shed on the property located at 292 Bradford Street (Res 3), Peter Okun seconded and it was so voted, 5-0.

Peter Okun will write the decision.

NEXT MEETING: The next meeting will take place on Thursday, May 16, 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 7:30 P.M., Caleb Eigsti seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2019
Jeremy Callahan, Chair