

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
November 21, 2019**

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

Members Absent: None.

Others Present: Amy Kwesell (Town Counsel) 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 19-78 (Steven)

Application by **Dol-Fin Development, LLC** seeking a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, B7, Parking Lots, garages, of the Zoning By-Laws to establish a parking lot on the property located at **3 Cudworth Street (Residential 3 Zone)**. **Jeremy, Daniel, Steven, Susan, and Caleb sat on the case.** Steven Latasa-Nicks read the decision. *Caleb Eigsti moved to approve the language as amended, Robert Nee seconded and it was so voted, 4-0.*

ZBA 20-15 (Caleb)

Application by **Juergen Zimmermann** seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to change a seating plan for the restaurant located at **334 Commercial Street (Town Center Commercial Zone)**. **Jeremy, Steven, Daniel, and Caleb sat on the case.** Caleb Eigsti read the decision. *Steven Latasa-Nicks moved to approve the language as written, Robert Nee seconded and it was so voted, 4-0.*

ZBA 20-18 (Steven)

Application by **Edward Trainor**, on behalf of **Steven Smith**, seeking a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G12, Swimming pool, of the Zoning By-Laws to install a swimming pool on the property located at **21 Kimberly Lane (Residential 1 Zone)**. **Jeremy, Steven, Daniel, Peter, and Caleb sat on the case.** Steven Latasa-Nicks read the decision. *Caleb Eigsti moved to approve the language as written, Peter Okun seconded and it was so voted, 5-0.*

ZBA 20-20 (Jeremy)

Application by **Tom Thompson**, on behalf of **Stephanie Cave et al.**, seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to connect two structures going up and along pre-existing, non-conforming east rear and south side yard setbacks and add a second floor to one of the structures on the property located at **6 Duncan Lane (Residential 3 Zone)**. **Jeremy, Steven, Daniel, Peter, and Caleb sat on the case.** Jeremy Callahan read the decision. *Steven Latasa-Nicks moved to approve the language as written, Peter Okun seconded and it was so voted, 5-0.*

ZBA 20-21 (Robert)

Application by **Ian & Eric Tzeng** seeking a Special Permit pursuant to Article 2, Sections 2450, Permitted Accessory Uses, G12, Swimming pool, of the Zoning By-Laws to install a pool on the property located at **8 Cudworth Street (Residential 3 Zone)**. **Jeremy, Peter, Caleb, and Robert sat on the case.** Robert Nee read the decision. *Caleb Eigsti moved to approve the language as written, Peter Okun seconded and it was so voted, 4-0.*

ZBA 20-22 (Peter)

Application by **KA Bazarian Construction and Development**, on behalf of the **Steven Ballerini**, seeking a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws remove and renovate 200 sq. ft. of a structure located along a pre-existing, non-conforming east side setback on the property located at **72B Commercial Street (Residential 2 Zone)**. **Jeremy, Peter, Caleb, and Robert sat on the case.** The decision was not ready.

ZBA 20-24 (Caleb)

Application by **Chris Hartley**, of **Provincetown Brewing Co.**, seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow indoor entertainment on the property located at **141 Bradford Street (Town Center Commercial Zone)**. **Jeremy, Peter, Caleb, and Robert sat on the case.** The decision was not ready.

ZBA 20-25 (Jeremy)

Application by **James J. Rifino & Harry F. Pihl** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to elevate and renovate a structure, including adding a foundation, up and along a pre-existing, non-conforming front yard setback on the property located at **8 Bradford Street (Residential 3 Zone)**. **Jeremy, Peter, Caleb, and Robert sat on the case.** Jeremy Callahan read the decision. *Peter Okun moved to approve the language as written, Caleb Eigsti seconded and it was so voted, 4-0.*

2) Approval of Minutes:

November 7, 2019: *Caleb Eigsti moved to approve the minutes as written, Peter Okun 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 6:33 P.M.

PUBLIC HEARING

Chair Jeremy Callahan called the Public Hearing to order at 6:33 P.M. There were 7 members of the Zoning Board of Appeals present and none absent.

1) PUBLIC HEARINGS:

ZBA 20-26

Application by **William N. Rogers, II**, on behalf of **Enco Realty, Inc.**, 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 reconfigure interior space to create a third unit, add two dormers on pre-existing, non-conforming northeast and southwest dimensions and construct a 20' by 5' covered entry deck with stairs and a shed roof on the structure located at **32 Bradford Street, Bldg. 1 (Residential 3 Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun and Caleb Eigsti sat on the case.

Presentation: Attorney Lester J. Murphy, representing Enco Realty, Inc., and Leonard Enos, a principal of Enco Realty, Inc., appeared to present the application. Attorney Murphy reviewed the project, which involves the renovation of the larger of two structures on the site. The building under consideration was the subject of an earlier case, which was ultimately withdrawn without prejudice due to the Board's concern about the building scale. The plans have been revised, in light of this concern, the difference being that the original project proposed the installation of a large exterior stairway on the northeast elevation and the revised one will move that stairway to the inside of the structure, reducing the appearance of mass. The significant alterations to the exterior of the structure are now only the proposed dormers, one of which will encroach into a southwest side yard setback and is the only portion of the proposal that needs relief under s. 3110. Attorney Murphy argued that the dormer would not be substantially more detrimental to the neighborhood than the existing non-dormered building, pursuant to s. 3110, and that the social, economic and other benefits to the neighborhood and Town outweigh any detrimental impacts, pursuant to s. 5330. The dormers' highest points will still be lower than the existing ridge height and they will be set back from the existing façade of the building. The benefits include significant repairs and upgrades to a structure in disrepair. The economic benefits to the Town include an increase in the tax base and the addition of quality housing units to the Town's stock that are modern and comfortable and the development of a structure that will be substantially less detrimental to the neighborhood. The building will be safe, secure and sprinkled. Gary Locke joined the discussion. Attorney Murphy argued that the scale met the requirements of s. 2640E subparagraphs 1, 5 and 6. As the existing building is above the neighborhood average scale, any additions that increase the scale would need relief and deviate from the neighborhood average building scale. He said that there would be no disruption to the character of the neighborhood, as the Bradford Street elevation is amongst structures that are larger in scale than the Pleasant Street elevation. He reviewed some of the larger structures on Bradford Street. He said that the project was in keeping with the goals and objectives of the

Local Comprehensive Plan, Chapter 1, Land Use and Growth Management, Goal 1, Policy B, which encourages the redevelopment of existing structures rather than building new structures, and Chapter 4, Historic Preservation, which encourages the re-use of historic structures and the redevelopment of existing structures. In addition, pursuant to subparagraph 5, the structure will successfully integrate into its surroundings and is sited in a manner that will minimize it's the appearance of mass from the streetscape and will not have a significant negative effect on the light to or views from, neighboring structures. Finally, pursuant to subparagraph 6, the HDC has approved the changes.

Public Comment: Fred Wilson, a direct abutter, and Doug Dolezal spoke in support of the application. *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 questioned Attorney Murphy and Mr. Locke.

Steven Latasa-Nicks moved 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. The Board additionally finds that the proposed additions is consistent with the goals and objectives of the LCP, successfully integrates into its surroundings and minimizes the appearance of mass form the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures and is consistent with HDC guidelines, Peter Okun seconded and it was so voted, 5-0.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2640(E), Building Scale, and Article 3, Section 3110, (2), Change, Extensions or Alterations, of the Zoning By- Laws to reconfigure interior space to create a third unit, add two dormers on pre-existing, non-conforming northeast and southwest dimensions and construct a 20' by 5' covered entry deck with stairs and a shed roof on the structure located at 32 Bradford Street, Bldg. 1 (Res 3), Peter Okun seconded and it was so voted, 5-0. Steven Latasa-Nicks will write the decision.

ZBA 20-27

Application by **William N. Rogers, II**, on behalf of the **New Hop Holdings, LLC**, 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 increase building scale by constructing a first floor addition over an existing outdoor kitchen and storage area, incorporating a new enclosed entrance space to replace existing outdoor stairs, creating a new deck access over an existing first floor deck along a pre-existing, non-conforming east elevation, and adding a second floor dormer with an inset deck on a south elevation of the structure on the property located at **429 Commercial Street (Residential 3 Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun and Caleb Eigsti sat on the case.

Presentation: Attorney Lester J. Murphy, Gary Locke and Ron Robin appeared to present the application. Attorney Murphy reviewed the project, which involves a request for building scale relief and for changes or extensions in pre-existing, non-conforming dimensions. The building is already over the average neighborhood scale and thus would need relief for any exterior changes that added volume to the existing structure. The proposal will upgrade and enhance the interior and exterior of the structure. The seating inside will be increased to accommodate a new bar proposed for the second floor. The new bar area will be located in an inset dormer with a deck

opening out onto the south elevation. The building scale increase will be 7,060 cu. ft. and the lot coverage and green area will be increased.

Mr. Locke reviewed the engineering aspects of the project and the structural changes. The egress stair on the east elevation, in a pre-existing, non-conforming dimension will be replaced with a new egress stair for the expanded dwelling unit on the first and second floor. The addition in the front will accommodate kitchen equipment and the existing entrance will be reconfigured and improved. The changes will tighten up the interior space and it will help to make it work more efficiently without creating a lot of mass. Attorney Murphy said that the alterations or additions will not be encroaching farther into pre-existing, non-conforming setbacks. The footprint is only increasing by 29 sq. ft. The HDC has approved the renovations. He argued that the changes will not be more substantially detrimental to the neighborhood or Town than the existing situation and will actually be substantially more beneficial. The social and economic benefits include increasing, by 23 seats, the capacity of a year-round restaurant, which will provide an expanded and enhanced dining experience and more amenities to customers. In addition, there will be an increase in employment opportunities and real estate taxes to the Town. He reviewed the scale numbers, which show a 13% increase. The building already exceeds the average neighborhood scale and is the largest building in the scale radius, so any increase in the building volume would require relief. Attorney Murphy said that there is no provision in the Zoning By-Laws that would prohibit a structure's scale increase if it was already over scale. Pursuant to s. 2640E, the requirements of subparagraphs 1, 5 and 6 are met. Pursuant to the LCP, the project is maintaining and improving an existing building and economically, it will create more year-round jobs. He argued that the structure successfully integrates into its surroundings and is sited in a manner that minimizes mass from the streetscape and will not have a negative impact on neighboring structures. From both the north and south elevation, there is very little change in the size and mass of the structure, as the dormers are set into and below the roof peak, within the footprint of the building. The east and west elevations will be visually affected, but these changes will not be seen from the street. In addition, pursuant to subparagraph 6, the HDC has endorsed the upgrades.

Public Comment: No. There was 1 letter from an abutter in support of the application. *Peter Okun 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 and Mr. Locke. *Peter Okun moved 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. The Board additionally finds that the proposed additions is consistent with the goals and objectives of the LCP, successfully integrates into its surroundings and minimizes the appearance of mass form the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures and is consistent with HDC guidelines, Caleb Eigsti seconded and it was so voted, 5-0.*

Peter Okun moved to grant a Special Permit pursuant to Article 2, Section 2640(E), Building Scale, and Article 3, Section 3110, (2), Change, Extensions or Alterations, of the Zoning By-Laws to increase building scale by constructing a first floor addition over an existing outdoor kitchen and storage area, incorporating a new enclosed entrance space to replace existing

outdoor stairs, creating a new deck access over an existing first floor deck along a pre-existing, non-conforming east elevation, and adding a second floor dormer with an inset deck on a south elevation of the structure on the property located at 429 Commercial Street (Re 3), Caleb Eigsti seconded and it was so voted, 5-0. Peter Okun will write the decision.

ZBA 20-28

Application by **Sean Curran**, on behalf of **Michael Goff**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, (2), Change, Extensions or Alterations, of the Zoning By-Laws to construct dormers along an east and a pre-existing, non-conforming west elevation on the front building and add a new foundation with flood vents, construct a single-story addition on the second level, expand a roof deck and add a stairway with access to the roof deck above the addition on the rear building on the property located at **120 Commercial Street (Town Center Commercial Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun and Caleb Eigsti sat on the case.

Presentation: Sean Curran appeared to present the application. He reviewed the project, which includes the addition of two shed dormers and a second story open-air rear deck, which consists of two side walls and a flat roof. The two shed dormers will occupy less than 50% of the total contiguous roof area beneath. The proposed shed dormers will be sited towards the rear of the building, creating less visibility from Commercial Street and will not interfere with existing rooflines. The proposed rear addition is adjacent to the second story roof deck. The improvements will bring the structure back to a more historically accurate styling and detail. The commercial space in the front building will be reinforced with flood-resistant materials, flood vents will be added to the foundation and a dry well located in the front will be able to absorb water in the event of a storm surge. The second-floor rear addition will be shifted and given a foundation and the first floor will be raised to 10'. He said the dormers will not be obtrusive and will allow for the second floor to be more livable for the property owner. He reviewed the scale numbers and said that the project will involve an 11% increase in scale. The addition will have minimal impact on the neighborhood. The renovated structure will remain within the existing footprint.

Public Comment: None.

Caleb Eigsti 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 Mr. Curran.

Caleb Eigsti moved 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. The Board additionally finds that the proposed additions to a structure that successfully integrates into its surroundings and minimizes the appearance of mass form the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures and is consistent with HDC guidelines, Peter Okun seconded and it was so voted, 5-0.

Caleb Eigsti moved to grant a Special Permit pursuant to Article 2, Section 2640(E), Building Scale, and Article 3, Section 3110, (2), Change, Extensions or Alterations, of the Zoning By-Laws to construct dormers along an east and a pre-existing, non-conforming west elevation on the front building and add a new foundation with flood vents, construct a single-story addition on the second level, expand a roof deck and add a stairway with access to the roof deck above

the addition on the rear building on the property located at 120 Commercial Street (TCC), Peter Okun seconded and it was so voted, 5-0. Daniel Wagner will write the decision.

ZBA 20-29

Application by **Robin B. Reid, Esq.**, on behalf of Foxberry Inn, LLC, seeking a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, A3, Employee Housing, of the Zoning By-Laws to renovate an existing basement space to create two suites with non-permanent kitchens for employee housing in the structure on the property located at **29 Bradford Street Extension (Residential 1 Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun and Caleb Eigsti sat on the case.

Presentation: Attorney Robin B. Reid appeared to present the application. She said that the request had been amended to involve only one unit. She reviewed the project and said that the Select Board has endorsed the project by granting Economic Development gallons to the property for the new units. One suite will have a non-permanent kitchen and the second will be added as a guest room and restricted as a workforce housing unit through the Licensing Board. There will be no changes to the exterior structure or property, as this is existing unfinished basement space, and all work will be interior. The project is of social and economic benefit to the Town and will have no adverse effects. There is sufficient parking on the property for the additional units. The project is in accordance with the LCP in that it is creating employee housing, which is a priority of the Town. The property is on the sewer. She recommended conditions, based upon conversations with Town staff, that the workforce housing shall provide non-permanent cooking facilities only, shall be limited to use as employee housing only, and shall be inspected, for health and safety purposes, annually, at the time of the guesthouse licensing inspection.

Public Comment: None.

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

Board Discussion: The Board questioned Attorney Reid.

Steven Latasa-Nicks moved 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, Caleb Eigsti seconded and it was so voted, 5-0.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, A3, Employee Housing, of the Zoning By-Laws to renovate an existing basement space to create one suite with non-permanent kitchens for employee housing in the structure on the property located at 29 Bradford Street Extension (Res 1) with the conditions that the workforce housing shall provide non-permanent cooking facilities only, shall be limited to use as employee housing only, and shall be inspected, for health and safety purposes, annually, at the time of the guesthouse licensing inspection, Peter Okun seconded and it was so voted, 5-0. Caleb Eigsti will write the decision.

The Board heard the following 4 cases together, with questions asked by the Board after each application presentation and public comment taken after all of the presentations were made.

ZBA 20-30

Application by **Christine Barker** seeking a Variance pursuant to Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws to increase the maximum building height allowed for a proposed structure containing 31 hotel units, 4 condominium units, and a restaurant/bar, with a parking area beneath, on the property located at **227R Commercial Street (Town Center Commercial Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun and Caleb Eigsti sat on all of the cases. Mr. Callahan said that there had been a discussion about the hearing with Town staff where it was decided that the applicant would present all of the cases to the Board and public comments would be solicited, however no further action would be taken. The cases would then be continued until a later date, when an 81X site plan had been recorded. Town Counsel weighed in to explain that in regard to the 81X plan, the lot size stated on the applications was 12,783 sq. ft., however the Town has the lot listed as 7,056 sq. ft. The applicant alleges that the increase in lot size is the result of an accretion of sand. The Board is requesting that the applicant submit a plan pursuant to G.L. c. 41, s. 81X, the 81X plan, to be recorded with the Registry of Deeds, showing an accurate lot size. Since that has not yet happened it has been suggested by Town Counsel and staff that the project presentation be continued until such time as the 81X plan has been duly stamped and recorded.

Presentation: Christine Barker, Ginny Binder, a consultant and historic preservationist, Jeffry Burchard, an architect with Machado, Silvetti, and Attorney Eliza Cox, representing the applicant, appeared to present the application. Attorney Cox submitted a draft 81X plan to the Board. Ms. Binder spoke about the project and how it would be of great benefit to the Town and community.

Ms. Barker reviewed the benefits of the project to the Town, including its compliance with the findings of the Camoin Associates report, which was commissioned by the Town to recommend economic development strategies, and the recommendations of the Visitor Services Board. The project will contribute to the economic viability of the Town, provide more hotel rooms and residential units, bolster tourism in the off-season, promote the Blue Economy by developing the pier to the south of the property, and provide more year-round jobs. In addition, she said that the project would help strengthen the year-round economy and provide a space for large events, such as weddings and conferences, in the off-season, was in compliance with the goals and objectives of the Local Comprehensive Plan, and would be attentive to coastal resiliency and the growing effects of climate change.

Mr. Burchard reviewed the architectural features of the proposed building, gave a brief history of the site and explained how the building will fit into its surroundings. It will include a public pier that extends over the water to the south. He explained how the height of the building was determined, given its location in the flood zone, with the finished floor at 19' above sea level. He added that the cupola, according to the Zoning By-Laws, is allowed to be extended 10' above the roof ridge height. He reviewed the scale and height of the building in context of the neighborhood. He said that building will be comprised of two parallel, gabled shed-like structures with a series of elements, such as a shade canopy and boat storage area, to be located on the ADA-accessible pier. The pier is proposed to be on the same plane as the building. There is a cupola, a nod to a widow's walk, which is proposed to be located between the two shed-like structures. He said that the property is accessed from Commercial Street via a right-of-way. He

said that there will be upgrades to the right-of-way to enhance public access to the beach. A green roof is proposed, with tower gardens, and will be located on top of the proposed building in the valley between the two gables. He reviewed building scale, inclusive of the extra height, and how the appearance of the extra height would be mitigated by making it look like it is composed of smaller elements, and how the building will fit into a neighborhood of smaller and larger structures. He reviewed visual representations of the building in comparison to adjacent buildings.

Attorney Cox reviewed the relief requested. She reviewed the request for a proposed gabled height of 38' above the first floor, or about 48.7' above the average existing grade, and a request for a 35' high, or about 45.7' above the average existing grade, flat portion of the roof that will be located between the gables. She explained how the request met the requirements for a Variance, M.G.L. c.40A, s.10, for relief to allow the proposed height. There are three prongs that must be shown. She said the first prong is that there has to be a demonstration of unique circumstances related to soil conditions, shape, or topography of land or structures. In this case, there are unique circumstances related to the soil conditions and topography. She argued that there was evidence of a hardship owing to circumstances relating to the soil conditions and topography of the land, as the property is, uniquely, almost entirely within the FEMA Velocity Zone and has a base flood elevation of 13'. In addition, there are unique circumstances relating to the structure on the property, in that it has been developed as a multi-storied building, and is now in very poor condition, is dangerous and is not structurally sound such that it could be feasibly elevated. As to the second prong, as a direct result of these unique circumstances and conditions, a literal enforcement of the provisions of the Zoning By-Law is a substantial hardship. She said that the Courts have characterized a 'hardship' as not being able to reasonably use a property for the purposes or in a manner allowed by the Zoning B-Law, due to unique circumstances affecting the property. She gave several examples from case law. Here, she said, because of the unique soil conditions, that the subject land is in a Velocity Zone, a literal enforcement of the height By-Law, i.e., calculating the building height from average existing grade, dramatically reduces the amount of usable space, cause the loss of an entire story. A literal enforcement would only allow 16' of height to the top of the roof. The substantial costs associated with re-developing the property and the permitting of the building in this location, and given the additional costs of elevating and designing the structure to accommodate storm surges and flooding events to comply with FEMA requirements, there is a substantial hardship created, as the project would be economically impractical and would result in a loss of usable space that would otherwise be allowed absent these particular conditions. In addition, the unique condition of the building results in a substantial hardship, as the By-Law does provide for a height allowance for existing developed sites, such as this property, wherein existing structures can be elevated and the height is not measured from grade, but from the base flood elevation. Here though, because of the shape and dilapidated condition of this structure, and the infeasibility raising it, the applicant is not able to take advantage of the height bonus under the By-Law, which is a substantial hardship. Finally, she stated, the Courts have recognized that a hardship exists if a literal enforcement of the By-Law increases the risk of harm. In this case, as FEMA flood maps change frequently and coastal storm zone impact models are constantly updated, not having adequate freeboard creates a substantial risk with the ever-increasing intensity of coastal storms. Given the financial investment required to redevelop this property, a literal application would drastically reduce the size of the building, resulting in a loss of usable space, which would

limit its mixed use potential, and would nullify the economic feasibility of its proposed public amenities. In addition, she added, it would subject any redevelopment to greater safety risks in that flood protection would have to be traded for additional height. She argued that there would be no substantial detriment to the public good or substantial derogation from the intent or purpose of the By-Law. There would be no detriment, as the building is set back 160' from Commercial Street, minimizing its visibility, and the topography slopes downward to the south. The form of the building also contributes to minimize the visibility of the flat roof, as the gables will hide it. She argued that the granting of a Variance will provide valuable public benefits and will be consistent with the purposes and intents of the By-Law, for example, the project will result in the elimination of a dangerous structure that provides no benefit or economic return to the Town and in its stead, create a development that will revitalize an underutilized site and provide for year-round employment opportunities, add needed hotel rooms and a valuable meeting space, provide more associated room taxes to the Town, improve coastal resiliency, benefit the Town's flood insurance rating system, improve public safety in regard to fire hazards, and incorporate environmental sustainability features into its design. She said that the project will promote the health, safety and welfare of the community and support and will implement the goals and policies of the LCP as is stated as a purpose of the By-Law.

Board Discussion: The Board questioned Attorney Cox, Mr. Burchard, Ms. Binder and Ms. Barker. The Board discussed whether the height should be granted via a Variance of a Special Permit. Attorney Cox added that granting a Special Permit would not be substantially more detrimental to the Town or neighborhood than the existing situation.

ZBA 20-31

Application by **Christine Barker** seeking Special Permits pursuant to Article 2, Sections 2334, 'V' Zones, 2440, Permitted Principal Uses, B3, Hotel, motel or inn, footnote 2, 2560, Dimensional Schedule, 2630E2, Roofs, 2640, Building Scale, and Article 3, Sections 3110, Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to construct a building containing 31 hotel units, 4 condominium units, and a restaurant/bar, with a parking area beneath, on the property located at **227R Commercial Street (Town Center Commercial Zone)**.

Presentation:

s. 2334: Attorney Cox reviewed the relief requested under s. 2334, stating that there will be no manmade alteration of a sand dune in a 'V' Zone, however the location of the proposed structure would be landward of the mean high tide mark. The draft site plan submitted shows that high tide line and all of the proposed development is located landward of mean high tide. The property is pre-existing, non-conforming as to this provision, in that it is already developed and is located in a 'V' Zone and there is no Special Permit on record related to that situation. The location of the proposed building increases the landward distance from the mean highwater mark. The benefits of the proposed location outweigh any adverse effects as previously enumerated.

s. 2440, E3, footnote 2: Attorney Cox said that a hotel, motel or inn is an allowed use in the TCC Zone, but the footnote 2 provides that food service associated with it may be allowed with a Special Permit. She reviewed the plans for the restaurant/bar area. The seating area is less than the seating area that was in the restaurant previously on the site. She reviewed its economic benefit to the Town.

s. 2630E: Attorney Cox said that the Special Permit is to allow for a flat roof above the second floor and that the criteria is met, in that the roof configuration is not disruptive to the character of the neighborhood, as the flat roof will essentially be hidden by the gable ends, and it will serve a function as a space for tower gardens.

s. 2640E: Ms. Binder said that the circumference of the circle includes a portion of the water, so there were only 7 buildings included in the building scale analysis. The biggest building, Whaler's Wharf, was excluded because it was the largest in the circle. Attorney Cox reviewed the issue of scale, reiterating that the proposed building will be smaller than the Crown & Anchor. Pursuant to the requirements of this section, the project is in keeping with the LCP and this has been elaborated in a document submitted to the Board. Ms. Binder reviewed how the project was consistent with the goals and objectives of the LCP and reviewed some of them related to preserving community and historic character, expansion of public access and interest to coastal resources, minimization of vehicular disruption and further land consumption, and the encouragement of the public's utilization of the beach for walking and other recreational purposes.

s. 3110 & 3115: Attorney Cox reviewed these provisions. The project meets the requirements of Article 5, Section 5330, such as safer conditions and an improvement in coastal resiliency, which have already been stated.

Board Discussion: The Board had no questions.

ZBA 20-42

Application by **Christine Barker** seeking Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to construct a building containing 31 hotel units, 4 condominium units, and a restaurant/bar on the property located at **227R Commercial Street (Town Center Commercial Zone)**.

Presentation: Attorney Cox reviewed the criteria for the restaurant/bar use that will hold a license and again is dependent upon satisfying the criteria of s. 5330. The benefits of the project outweigh an adverse effects and that argument has been made previously.

Board Discussion: The Board asked if the applicant would have any interest in providing entertainment, as that should be part of the relief requested. Ms. Barker said that she would like to add that to the application.

ZBA 20-43

Application by **Christine Barker** seeking Special Permit pursuant to Article 2, Section 2470, Parking Requirements, of the Zoning By-Laws to construct a building containing 31 hotel units, 4 condominium units, and a restaurant/bar, with a parking area beneath, on the property located at **227R Commercial Street (Town Center Commercial Zone)**.

Presentation: Attorney Cox reviewed the request to waive the parking requirements. The project proposed 14 parking spaces below the building, including a handicapped one. The remainder of the required spaces is proposed for an off-site location. She said that other options were still being discussed, including a valet shuttle, utilizing an electric-powered car and installing signage at Commercial Street informing the public of the parking restrictions. There was no clear plan to manage traffic to and from the site and the parking alternative for the lack of the requisite number of spaces needed. There are 50 required and 14 proposed parking spaces. No decision had been made yet if any spaces would be assigned to the proposed condominium units on the site. Ms. Barker said that she would consult with a traffic engineer to deal with these issues.

Board Discussion: The Board questioned Ms. Binder, Ms. Barker and Attorney Cox. The Board was concerned with access to the site when Commercial Street is closed for a certain period of time on Friday and Saturday nights during July and August. The Board questioned Attorney Cox about the applicant's use of the alleyway accessing the property from Commercial Street. She said that there is an easement over the abutting property that is for benefit of the applicant's lot and that provides for passing and re-passing of traffic in connection with the conduct of the business and the use of the wharf. The Board questioned the panel about the viability of the alleyway for the passage of emergency vehicles. Ms. Barker said that she had consulted with the Fire Chief and he had said that a fire truck could maneuver the 16' wide alleyway. He said that an alternative would be to use the Seamen's Bank parking lot to access the building to fight a fire. The Board had concerns about public safety, considering the less than ideal width of the alleyway, and given that both vehicles and pedestrians would be sharing the access. Ms. Barker said that signage would be an important part of public safety in relation to vehicles and pedestrians sharing the access. She said that she would discourage driving by customers and encourage the use of valet services.

Attorney Cox reviewed and explained the 81X plan, showing the additional accreted land that has been added to the property and that is now part of its ownership. She said that Ms. Barker has received a title commitment to insure the accreted land as part of the property. She said the plan will be filed at the Registry at the closing of the purchase of the property by Ms. Barker. The Board discussed requiring the applicant to record the 81X plan before the closing and Attorney Cox said that it was not possible because Ms. Barker didn't yet own the property. The Board asked why the current owner would not record the plan. Town Counsel advised the Board that it would need a stamped plan before making a decision. She said that to make the property legally part of the lot would require a stamped plan. The Board could make it a condition of the Special Permit that the plan be recorded, but the stamped plan should be required. The issue was discussed. The Board asked if the current property owner could record the plan. The applicant's representatives agreed to approach him about recording the 81X plan.

Public Comment: Attorney Peter Freeman, representing Scott Ravelson, the owner of the abutting property to the north, had concerns, such as overburdening the easement, which he claimed is not a general access easement and is not open to the public, safety and design issues regarding the structure, the lack of frontage for the property, disagreement with the calculation of the elevation, the increase in building scale, the change in the use of the property, the implications for preserving the pre-existing, non-conforming status of the building given the plan to demolish it, and he disagreed with the applicant's argument regarding the Variance. Robert Davis also had concerns about the project and spoke in opposition to the application. Christine Walker, speaking on behalf of an abutting business, Herman Rojas, John Yingling, Kristin Becker, John Swanson, Bill Docker, and Doug Dolezal spoke in support of the application. Patrick Patrick, the owner of the business directly abutting the property, had concerns about access and maneuverability by emergency vehicles, about the Chapter 91 license for the property, and the building height, but added that he would like to see the property developed. There were 33 letters in favor and 1 letter opposed. The letters will be available in the Building Dept. for Board members and the public to review before the next hearing.

The Board briefly discussed with the applicant if any other material should be submitted before the next hearing of the matter. Town Counsel suggested that the applicant submit a letter from her traffic consultant about the parking issues of concern to the Board.

Caleb Eigsti moved to continue ZBA 20-30, 20-31, 20-42 & 20-43 until the Public Hearing of December 5, 2019 at 6:30 P.M., Susan Peskin seconded and it was so voted, 5-0.

NEXT MEETING: The next meeting will take place on Thursday, December 5, 2019 in the Judge Welsh Room. It will consist of a Work Session at 6:00 P.M. and a Public Hearing at 6:30 P.M.

ADJOURNMENT: ***Caleb Eigsti moved to adjourn the Public Hearing at 10:45 P.M., Peter Okun seconded and it was so voted unanimously.***

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2019
Jeremy Callahan, Chair