

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
December 5, 2019**

**Members Present:** Jeremy Callahan, Daniel Wagner, Peter Okun, Steven Latasa-Nicks, and Robert Nee.

**Members Absent:** Caleb Eigsti (excused) and Susan Peskin (excused).

**Others Present:** Amy Kwesell (Town Counsel) and Ellen C. Battaglini (Permit Coordinator).

**WORK SESSION**

Chair Jeremy Callahan called the Work Session to order at 6:04 P.M.

**1) PENDING DECISIONS:**

**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.** Peter Okun read the decision. *Steven Latasa-Nicks moved to approve the language as written, Daniel Wagner seconded and it was so voted, 4-0.*

**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 20-26 (Steven)**

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.** Steven Latasa-Nicks read the decision. *Peter Okun moved to approve the language as written, Daniel Wagner seconded and it was so voted, 4-0.*

**ZBA 20-27 (Peter)**

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.** Peter Okun read the decision. *Steven Latasa-Nicks moved to approve the language as written, Daniel Wagner seconded and it was so voted, 4-0.*

**ZBA 20-28 (Daniel)**

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.** The decision was not ready.

**ZBA 20-29 (Caleb)**

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.** Jeremy Callahan read the decision. *Peter Okun moved to approve the language as amended, Steven Latasa-Nicks seconded and it was so voted, 4-0.*

**2) Approval of Minutes:**

November 21, 2019: *Steven Latasa-Nicks 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 6:30 P.M.

## PUBLIC HEARING

Chair Jeremy Callahan called the Public Hearing to order at 6:30 P.M. There were 5 members of the Zoning Board of Appeals present and 2 absent.

### 1) PUBLIC HEARINGS:

#### **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 Robert Nee sat on all of the cases related to the property located at 227R Commercial Street proposal.

**Presentation:** Christine Barker, Ginny Binder, Jeffrey Burchard, and Attorney Eliza Cox appeared to discuss the application. Ms. Binder said that the signed and stamped 81X plan requested by the Board had been submitted.

The Chair recognized Attorney Ilana Quirk, who represents Scott Ravelson, an abutter. She asked if the public comment portion of the hearing was still open, as she believed that there were issues that have not been resolved by the Board, including the submission of additional information requested from the applicant regarding traffic, the submission of a development impact statement addressing such issues as fire safety, and that there were Special Permit requirements that had not yet been met. She added that the project should be subject to a mandatory referral to the Cape Cod Commission.

Attorney Christopher J. Snow, representing Patrick Patrick, an abutter, argued that there were numerous infirmities in the application and asked why the project had not been reviewed as a discretionary referral by the CCC.

Attorney Cox responded to Attorney Snow by stating that the prior Town Planner, who had worked for the CCC, had indicated, after reviewing the application, that a mandatory referral would not be necessary. In addition, she said, the chief regulatory officer of the CCC had been contacted and reviewed the project, agreeing with that assessment. She argued that a discretionary referral was not needed because several additional Town Boards would be reviewing the project, and would have the expertise and capacity to do so, and its impact would not be regional, only local. Also, the project will have substantial public benefit and any adverse impacts will be mitigated. She said that the applicant had submitted a letter from the Provincetown Fire Chief indicating that he had reviewed the plans and included some suggestions, which if adopted, would make him comfortable with fire access issues at the property. She said that the applicant's team had updates for the Board.

**Presentation:** Ms. Barker said that the Fire Chief's letter had been submitted and two traffic engineers, one of whom is local, were working on an assessment and that information would be

presented to the Planning Board next week. She said that she was working with the Provincetown Housing Authority to develop 15 affordable housing units off-site, which was more than the one required by the Inclusionary and Incentive By-Law, to which the project is subject.

**Board Discussion:** Attorney Kwesell answered Board questions regarding the Variance request. The Board asked Attorney Cox to review her argument that the three prongs required for a Variance had been met.

**Public Comment:** Attorney Quirk, representing Mr. Ravelson, spoke of several of her client's concerns regarding the project, such as adequate fire safety access given the inadequacy of the width of the right of way, the lack of a development impact statement, and the lack of frontage for the property. Attorney Snow, on behalf of Mr. Patrick, argued in opposition to the application, and requested that the Board require a development impact statement and against the granting of a height Variance, as requirements for the latter had not been met. There were 2 new letters of support for the application in the file.

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

**Board Discussion:** The Board discussed the project, including whether a Variance or a Special Permit was appropriate for relief from height, the other Special Permits requested, and the staff report. The Board reviewed the Fire Chief's recommendations. The Board was polled before a vote was taken.

*Robert Nee moved that the Board find, pursuant to Article 5, Section 5222, that with respect to the particular land or structures:*

- a. A literal enforcement of the provisions of the By-Law would involve a substantial hardship, financial or otherwise, to the petitioner or appellant;*
- b. The hardship is owing to the circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures, but not affecting generally the Zoning District in which it is located;*
- c. Desirable relief may be granted without either:*
  - 1. substantial detriment to the public good; or*
  - 2. nullifying or substantially derogating from the intent or purpose of the By-Law.*

*Steven Latasa-Nicks seconded and it was so voted, 5-0.*

*Robert Nee moved to approve a Variance from Article 2, Section 2560 for an increase in the height of the proposed structure at the property located at 227R Commercial Street (TCC), Steven Latasa-Nicks seconded and it was so voted, 5-0.*

*Steven Latasa-Nicks moved to find that the hardship is owing to circumstances related to the soil conditions and topography of the land, in particular the fact that the property is located almost entirely in a Velocity Zone, Base Flood Elevation 15, which would result in substantial hardship, financial or otherwise, for the applicant. In addition, the visibility of the extra height will be minimized, as the structure is set back approximately 170' from Commercial Street, the land slopes down from the latter towards the water, it will provide substantial public benefit, and will not derogate from the intent or purpose of the By-Law, Robert Nee seconded and it was so voted by roll call, 5-0. Town Counsel will write the decision.*

There was a request from Attorney Cox to withdraw without prejudice the Special Permit request pursuant to that portion of Article 2, Section 2630E of the Zoning By-Laws that deals with relief for building height, but not from the portion that allows for a flat roof above the second story.

***Steven Latasa-Nicks moved to grant the request for withdrawal without prejudice of that portion of Article 2, Section 2630 regarding building height, and only that portion specifically, Robert Nee seconded and it was so voted, 5-0.***

The Board discussed conditioning the Special Permits on the applicant's submission of a Chapter 91 license in order to guarantee that the pier would be developed as a public amenity. Ms. Binder said that the project would not be phased and both the hotel and the pier would be developed at the same time. The Board discussed the Chapter 91 issue with Ms. Binder and Ms. Barker. The Board decided to attach five conditions to each Special Permit, several of which were recommendations from the Fire Chief;

- The applicant shall show, upon the filing of an application for a Building Permit, that a Chapter 91 license for the development of the pier portion of the project has been submitted to the Department of Environmental Protection;
- The project shall comply with the requirements of Article 4, Section 4180, Inclusionary and Incentive By-Law;
- A fire hydrant shall be located at the end of the alley and in front of the proposed structure;
- No parking shall be allowed in the alley; and
- A request shall be made to the Select Board to request that the parking spaces across Commercial Street from Seamen's Bank be converted to a fire lane with no parking allowed at any time.

### **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)**.

**Public Comment:** Attorney Christopher J. Snow spoke about the need to clarify the use of the alley and whether the applicant had ownership interest in, or right to regulate, it and argued that the applicant could not implement Chapter 91 to co-opt the use of the private right of way.

Attorney Quirk, representing Scott Ravelson, an abutter, spoke of the access issue due to the property's lack of frontage, argued that the 12' right of way does not provide proper access for the project, said that there was a need for a development impact statement, and asked for a meeting between her client and the applicant. Barbara Dyett spoke in support of the job opportunities that the project would provide to the Town. There were 33 letters in support of the project and 2 in opposition. Scott Ravelson spoke of his concerns about the project, including the potential for congestion in the alleyway caused by vehicles and pedestrians, but said he

supported it. Attorney Freeman, also representing Scott Ravelson, spoke of the lack of written information documenting applicant's discussions with Town staff.

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

**Board Discussion:** The Board discussed the project and whether, pursuant to Article 5, Section 5330, the benefits of the project outweigh the adverse effects, such as hazard, in particular, those related to fire safety, congestion or environmental degradation.

**s. 2334:** *Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2334, 'V' Zones, of the Zoning By-Laws for development in the Velocity Zone above the mean high tide mark on the property located at 227R Commercial Street (TCC), subject to the 5 conditions previously discussed, Peter Okun seconded and it was so voted by roll call, 4-0-1 (Robert Nee abstaining).*

**s. 2640:** *Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2640E, Building Scale, of the Zoning By-Laws to increase the height and for the roof design of a proposed structure, as the proposed alterations successfully integrate into the surroundings and minimize the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures at the property located at 227R Commercial Street (TCC), subject to the 5 conditions previously discussed, Peter Okun seconded and it was so voted by roll call, 4-0-1 (Robert Nee abstaining).*

**s. 3110 & s. 3115:**

*Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws for the demolition and reconstruction of a structure up and along pre-existing, non-conforming dimensions at the property located at 227R Commercial Street (TCC), subject to the 5 conditions as previously discussed, Peter Okun seconded and it was so voted by roll call, 4-0-1 (Robert Nee abstaining).*

**s. 2630E2:**

*Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2630, Roofs, E2, of the Zoning By-Laws for a flat roof design on a new structure at the property located at 227R Commercial Street (TCC), subject to the 5 conditions as previously discussed, Peter Okun seconded and it was so voted by roll call, 4-0-1 (Robert Nee abstaining).*

**s. 2440, B3, footnote 2:**

*Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, s. 2440, Permitted Principal Uses, B3, Hotel, motel or inn, footnote 2, of the Zoning By-Laws to allow food service associated with a hotel use at the property located at 227R Commercial Street (TCC), subject to the 5 conditions as previously discussed, Peter Okun seconded and it was so voted by roll call, 4-0-1 (Robert Nee abstaining).*

**s. 5330:**

*Steven Latasa-Nicks moved the Board find that pursuant to Article 5, Section 5330, Special Permit Consideration, of the Zoning By-Laws 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 at the property located at 227R Commercial Street (TCC), Peter Okun seconded and it was so voted by roll call, 4-0-1 (Robert Nee abstaining).*  
Town Counsel will write the decision for the previous five Special Permits.

#### **ZBA 20-42**

Application by **Christine Barker** seeking a 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)**.

**Public Comment:** Attorney Quirk, representing Scott Ravelson, an abutter, spoke about the inadequacy of access, fire safety issues and requested that the Board require a development impact statement from the applicant and a mandatory referral to the CCC. She also objected to a previous presentation by the applicant to the Planning Board and the ZBA because her client was not duly notified. Attorney Snow spoke in opposition to the application, speaking of the economic, social and other benefits not outweighing the adverse effects of congestion in the right of way. Jack Berrigan spoke in support of the restaurant/bar proposal related to the project. *Steven Latasa-Nicks moved to close the public portion of the hearing, Robert Nee seconded and it was so voted, 5-0.*

**Board Discussion:** The Board briefly discussed the benefits of the proposal for the Town.

*Steven Latasa-Nicks moved the Board find that pursuant to Article 5, Section 5330, Special Permit Consideration, of the Zoning By-Laws 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 at the property located at 227R Commercial Street (TCC), subject to the 5 conditions as previously stated, Peter Okun seconded and it was so voted by roll call, 4-0-1 (Robert Nee abstaining).*

*Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to provide alcohol and food service and entertainment at a hotel restaurant/bar on the property located at 227R Commercial Street (TCC), Peter Okun second and it was so voted by roll call, 4-0-1 (Robert Nee abstaining).*

Town Counsel will write the decision.

#### **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)**. Jeremy Callahan recused himself because of a conflict of interest. Steven Latasa-Nicks chaired the hearing and the applicant requested to continue this matter to the December 19, 2019 Public Hearing at 6:30 P.M. *Peter Okun moved to grant the request to continue ZBA 20-43 to the Public Hearing of December 19, 2019 at 6:30 P.M., Robert Nee seconded and it was so voted, 4-0.*

### **ZBA 20-32**

Application by **Ted Smith**, on behalf of **Mitchell Klein**, seeking a Special Permit pursuant to Article 2, Sections 2470, Parking Requirements, and 2640, Building Scale, of the Zoning By-Laws for relief from parking requirements and an increase in building scale due to the addition of a new dwelling unit in the structure located at **26 Bradford Street (Residential 3 Zone)**. There was a request from the applicant to postpone to the Public Hearing of December 19, 2019 at 6:30 P.M. *Steven Latasa-Nicks moved to grant the request to postpone ZBA 20-32 to the Public Hearing of December 19, 2019 at 6:30 P.M., Peter Okun seconded and it was so voted, 5-0.*

The Board decided to hear the 2 Variance applications for the property located at 7 Commercial St. first and then the remaining Special Permits requested.

### **ZBA 20-34**

Application by **Don DiRocco**, of **Hammer Architects**, on behalf of **Delft Haven II Condominium Association**, seeking a Variance pursuant to Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws for the construction of a new landing and egress stairs on a structure that will encroach farther into a pre-existing, non-conforming north front yard setback and an east side yard setback on the property located at **7 Commercial Street, U1-5 (Residential 1 Zone)**. Jeremy Callahan, Steven Latasa-Nicks, Daniel Wagner, Peter Okun and Robert Nee sat on all of the cases related to the property located at 7 Commercial Street. **Presentation:** Don DiRocco and Leif Hamnquist, of Hammer Architects, and John Vasconcellos, a unit owner and Trustee, appeared to present the application. Mr. DiRocco reviewed the project to elevate the cottages on the property by 2.8'. This is less than FEMA requires and thus was being done on a discretionary basis by the unit owners. He said that no additional space is being created and the applicant needs 2 Variances in order to install egress stairs in pre-existing, non-conforming setbacks that would need only Special Permits if the cottages were being raised to FEMA standards. Mr. Hamnquist argued that the discretionary lift of 2.8' is consistent with the intent of Article 3, s. 3110, subsection 3, even though the cottages were not being raised to the height mandated by FEMA. If the cottages were being raised to meet FEMA standards, they would have to be elevated by 6.5'. Mr. DiRocco reviewed a color-coded site plan and the project for each of the units. The applicant is asking for relief pursuant to s. 3115 for demolition, as some units have breezeways that may need to be rebuilt after the lifting process. He argued that the conditions met the requirements of a Variance, as the continued flooding of the property has caused substantial economic hardship for the unit owners and the Town, devaluing the property and lowering the Town's real estate tax base, and the cottages would otherwise be uninhabitable if denied the elevation request. In addition, pursuant to a Variance requirement, the hardship is owing to the topography and soil conditions of the property, in that the shape of the property uniquely provides a pathway for flood waters from the Harbor during a storm surge and, in addition, the proposed elevation will allow for the cottages to be preserved for future use, which is a benefit to the public good.

**Public Comment:** None. There was 1 letter in support of the application.

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

**Board Discussion:** The Board questioned Mr. DiRocco and Mr. Hamnquist.

*Steven Latasa-Nicks moved that the Board find pursuant to Article 5, Section 5222, that with respect to the particular land or structures at the property located at 7 Commercial Street, U1-5 (Res 1):*

- a. A literal enforcement of the provisions of this By-Law would involve a substantial hardship, financial or otherwise, to the petitioner or appellant;*
- b. The hardship is owing to the circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures, but not affecting generally the zoning district in which it is located;*
- c. Desirable relief may be granted without either:*
  - 1. substantial detriment to the public good; or*
  - 2. nullifying or substantially derogating from the intent or purpose of this By-Law.*

*Peter Okun seconded and it was so voted, 5-0.*

*Steven Latasa-Nicks moved to grant a Variance pursuant to Article 2, Section 2560 of the Zoning By-Laws to allow egress stairs and a landing within a front yard setback as shown on the plans for the property located at 7 Commercial Street, U1-5 (Res 1), Peter Okun seconded and it was so voted, 5-0.*

#### **ZBA 20-36**

Application by **Don DiRocco**, of **Hammer Architects**, on behalf of **Delft Haven II Condominium Association**, seeking a Variance pursuant to Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws for the construction of a new landing and egress stairs on a structure that will encroach farther into a pre-existing, non-conforming north front yard setback on the property located at **7 Commercial Street, U2 (Residential 1 Zone)**.

**Public Comment:** None.

*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 further questions.

*Peter Okun moved that the Board find pursuant to Article 5, Section 5222, that with respect to the particular land or structures at the property located at 7 Commercial Street, U2:*

- a. A literal enforcement of the provisions of this By-Law would involve a substantial hardship, financial or otherwise, to the petitioner or appellant;*
- b. The hardship is owing to the circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures, but not affecting generally the zoning district in which it is located;*
- c. Desirable relief may be granted without either:*
  - 1. substantial detriment to the public good; or*
  - 2. nullifying or substantially derogating from the intent or purpose of this By-Law.*

*Steven Latasa-Nicks seconded and it was so voted, 5-0.*

*Peter Okun moved to grant a Variance pursuant to Article 2, Section 2560 of the Zoning By-Laws to allow egress stairs and a landing within a front yard setback as shown on the plans for the property located at 7 Commercial Street, U2 (Res 1), Steven Latasa-Nicks seconded and*

*it was so voted, 5-0.* Town Counsel will write all decisions regarding 7 Commercial Street requests for Variances and Special Permits.

### **ZBA 20-33**

Application by **Don DiRocco**, of **Hammer Architects**, on behalf of **Delft Haven II Condominium Association**, 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 increase the building height up and along a pre-existing, non-conforming north front yard setback and an east side yard setback on the property located at **7 Commercial Street, U1-5 (Residential 1 Zone)**.

**Public Comment:** None.

*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 had no questions.

*Steven Latasa-Nicks moved the Board find that pursuant to Article 5, Section 5330, Special Permit Consideration, of the Zoning By-Laws 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 at the property located at 7 Commercial Street, U1-5 (Res 1), Peter Okun seconded and it was so voted, 5-0.*

*Steven Latasa-Nicks moved to grant a Special Permit a Special Permit pursuant to Article 3, Sections 3110 (1), Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to increase the building height up and along a pre-existing, non-conforming north front yard setback and an east side yard setback on the property located at 7 Commercial Street, U1-5 (Res 1), Peter Okun seconded and it was so voted, 5-0.*

### **ZBA 20-35**

Application by **Don DiRocco**, of **Hammer Architects**, on behalf of **Delft Haven II Condominium Association**, 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 increase the building height up and along a pre-existing, non-conforming north front yard setback on the property located at **7 Commercial Street, U2 (Residential 1 Zone)**.

**Public Comment:** None.

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

**Board Discussion:** The Board had no questions.

*Steven Latasa-Nicks moved the Board find that pursuant to Article 5, Section 5330, Special Permit Consideration, of the Zoning By-Laws 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 at the property located at 7 Commercial Street, U2 (Res 1), Peter Okun seconded and it was so voted, 5-0.*

*Steven Latasa- Nicks a Special Permit pursuant to Article 3, Sections 3110 (1), Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws*

*to increase the building height up and along a pre-existing, non-conforming north front yard setback on the property located at 7 Commercial Street, U2 (Res 1), Peter Okun seconded and it was so voted, 5-0.*

#### **ZBA 20-37**

Application by **Don DiRocco**, of **Hammer Architects**, on behalf of **Delft Haven II Condominium Association**, 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 increase the height of structures and decks, within their existing footprints, and to construct new egress stairs up and along a pre-existing, non-conforming west side yard setbacks on the property located at **7 Commercial Street, U3-4 (Residential 1 Zone)**.

**Public Comment:** None.

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

**Board Discussion:** The Board had no questions.

*Peter Okun moved the Board find that pursuant to Article 5, Section 5330, Special Permit Consideration, of the Zoning By-Laws 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 at the property located at 7 Commercial Street U3-4 (Res 1), Robert Nee seconded and it was so voted, 5-0.*

*Peter Okun moved to grant a Special Permit pursuant to Article 3, Sections 3110 (1), Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to increase the height of structures and decks, within their existing footprints, and to construct new egress stairs up and along a pre-existing, non-conforming west side yard setbacks on the property located at 7 Commercial Street, U3-4 (Res 1), Robert Nee seconded and it was so voted, 5-0.*

#### **ZBA 20-38**

Application by **Don DiRocco**, of **Hammer Architects**, on behalf of **Delft Haven II Condominium Association**, 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 increase the height of structures and decks, within their existing footprints, and to construct new egress stairs up and along a pre-existing, non-conforming west side yard setbacks on the property located at **7 Commercial Street, U7-8 (Residential 1 Zone)**.

**Public Comment:** None.

*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 the Board find that pursuant to Article 5, Section 5330, Special Permit Consideration, of the Zoning By-Laws 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 at the property located at 7 Commercial Street, U7-8 (Res 1), Peter Okun seconded and it was so voted, 5-0.*

*Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 3, Sections 3110 (1), Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to increase the height of structures and decks, within their existing footprints, and to construct new egress stairs up and along a pre-existing, non-conforming west side yard setbacks on the property located at 7 Commercial Street, U7-8 (Res 1), Peter Okun seconded and it was so voted, 5-0.*

#### **ZBA 20-39**

Application by **Don DiRocco**, of **Hammer Architects**, on behalf of **Delft Haven II Condominium Association**, 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 increase the height of a building and deck, within its existing footprint, and to construct a new egress stair up and along a pre-existing, non-conforming east side yard setback on the property located at **7 Commercial Street, U17 (Residential 1 Zone)**.

**Public Comment:** None.

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

**Board Discussion:** The Board had no questions.

*Peter Okun moved the Board find that pursuant to Article 5, Section 5330, Special Permit Consideration, of the Zoning By-Laws 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 at the property located at 7 Commercial Street U17 (Res 1), Robert Nee seconded and it was so voted, 5-0.*

*Peter Okun moved to grant a Special Permit pursuant to Article 3, Sections 3110 (1), Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to increase the height of a building and deck, within its existing footprint, and to construct a new egress stair up and along a pre-existing, non-conforming east side yard setback on the property located at 7 Commercial Street, U17 (Res 1), Robert Nee seconded and it was so voted, 5-0.*

#### **ZBA 20-40**

Application by **Tom Thompson**, on behalf of **Luis & Vanessa Ruelas**, seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, and Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to construct a deck extension and an addition up and along pre-existing, non-conforming east side and south rear elevations and to extend a porch up and along a pre-existing, non-conforming north elevation, thereby increasing the building scale of a structure and to demolish a shed on the property located at **419**

**Commercial Street (Residential 3 Zone)**. Steven Latasa-Nicks recused himself because of a conflict of interest. Since there were only 4 members seated on the case, the Chair informed the applicant that he could proceed or continue until 5 members could be seated. The applicant chose to proceed. Jeremy Callahan, Daniel Wagner, Peter Okun and Robert Nee sat on the case.

**Presentation:** Tom Thompson appeared to present the application. He submitted a revised site plan. He noted that the relief for building scale, as had been advertised, was not needed. The structure is a multi-family dwelling use. He reviewed the proposed extensions along pre-existing, non-conforming dimensions as requested. He said that a dilapidated shed will be demolished and

reconstructed in a different location, maintaining a 12' distance from the main building. He argued that the project was in keeping with the goals of the Local Comprehensive Plan, Chapter 1, Goal 1 Policy B, Goal 2, Policy A, and Chapter 4, Goal 2, Policy A. He said that no hazard would be created or increased. The proposed changes to the structure will not disrupt the character of the neighborhood, are harmonious with other abutting structures, and are not visible from the street, however they are from the beach. He also argued that the changes will not be substantially more detrimental than the existing situation. He argued that the benefits, which include an increase in the Town's tax base and the fact that the family will contribute to the local economy and businesses, outweigh any adverse effects.

**Public Comment:** None.

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

**Board Discussion:** The Board had no questions Mr. Thompson.

*Peter Okun moved that the Board find pursuant to Article 5, Section 5330, Special Permit Consideration, of the Zoning By-Laws 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 at the property located at 419 Commercial Street (Res 3), Robert Nee seconded and it was so voted, 4-0.*

*Peter Okun moved to grant a Special Permit pursuant to Article 3, Section 3110 (2), Change, Extensions or Alterations, and Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to construct a deck extension and an addition up and along pre-existing, non-conforming east side and south rear elevations and to demolish and relocate a shed on the property located at 419 Commercial Street (Res 3), Robert Nee seconded and it was so voted, 4-0. Peter Okun will write the decision.*

#### **ZBA 20-41**

Application by **William N. Rogers, II**, on behalf of **Sandmark Management, 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 construct a 20' by 46' retractable awning over an existing outdoor seating area (deck) on the property located at **328 Commercial Street (Town Center Commercial Zone)**. Peter Okun disclosed that he was an abutter to the property, but not a direct abutter, and would be able to render a fair and unbiased decision. Jeremy Callahan, Daniel Wagner, Peter Okun, Steven Latasa-Nicks and Robert Nee sat on the case.

**Presentation:** Attorney Lester J. Murphy, Gary Locke, and Joachim Sandbichler appeared to present the application. Attorney Murphy said that the proposal was to construct a retractable awning, comprised of 2 sections, which will cover an area from the front of building outward about 20' towards Commercial Street and will protect customers from inclement weather. It will measure 46' wide by 20' long. The existing umbrellas do not adequately protect customers when it rains and are unstable in windy weather. Since the awning will be attached to the existing structure, it will become part of it, and as such, will need relief from encroachment into the front yard setback. The awning will also add to the existing building scale, even though it is retractable and only extended during inclement weather. He argued that the awning would not be substantially more detrimental to the neighborhood or Town than the existing building and deck alone. The awning will be white and blend into the structure when retracted. He also argued that

the social, economic and other benefits of the proposal outweigh any adverse effect. It will allow the applicant to earn more money by the ability to utilize his outdoor area during rainy weather. The awning will be an enhanced amenity for both residents and tourists, increasing meals taxes and will have no negative benefits. As to the building scale, there will be an increase of 24% when the awning is extended. Most of the time, however, it will not be extended. There are some very large structures in the area and when the awning is extended, the entire structure would not be disruptive to the character of the neighborhood. He said that the proposal would meet the requirements of subparagraph 5 of Article 2, Section 2640E and not increase the appearance of mass from the streetscape.

**Public Comment:** None.

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

**Board Discussion:** The Board had no questions for the applicant or his representatives.

***Steven Latasa-Nicks moved that the Board find pursuant to Article 5, Section 5330, Special Permit Consideration, of the Zoning By-Laws 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 at the property located at 328 Commercial Street (TCC), Robert Nee seconded and it was so voted, 5-0.***

***Steven Latasa-Nicks 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 20' by 46' retractable awning over an existing outdoor seating area (deck) on the property located at 328 Commercial Street (TCC), Robert Nee seconded and it was so voted, 5-0. Robert Nee will write the decision.***

**NEXT MEETING:** The next meeting will take place on Thursday, December 19, 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:** *Peter Okun moved to adjourn the Public Hearing at 10:15 P.M., Robert Nee seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2020  
Jeremy Callahan, Chair