

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
November 2, 2017**

**Members Present:** Jeffrey Gould, Jeremy Callahan and Daniel Wagner and Steven Latasa-Nicks.

**Members Absent:** Rob Anderson (excused) and Marianne Clements (excused).

**Others Present:** Attorney Jonathan Silverstein (Town Counsel), Anne Howard (Building Commissioner), Gloria McPherson (Town Planner) and Ellen C. Battaglini (Permit Coordinator).

Vice Chair Jeffrey Gould called the meeting to order at 6:31 P.M.

**EXECUTIVE SESSION**

TMC New England LLC v. Zoning Board of Appeals, Land Court Docket No. 17 MISC 000430. A declaration and vote, under G.L. c.30A, §21(a) (3), are expected, to allow the ZBA to go into executive session to discuss litigation strategy as a discussion in open session may have a detrimental effect on the litigation position of the ZBA. The litigation concerns the appeal of a ZBA decision that denied the Plaintiff's Special Permit application request for a Formula Business use at 132 Bradford Street.

*Vice Chair Jeffrey Gould declared that pursuant to G.L. c.30A, §21(a) (3), the ZBA would go into Executive Session to discuss litigation strategy, as a discussion in Open Session may have a detrimental effect on the litigation position of the ZBA. The litigation concerns the appeal of a ZBA decision that denied the Plaintiff's Special Permit application request for a Formula Business use at 132 Bradford Street. The ZBA will then return to Open Session. Steven Latasa-Nicks moved to go into Executive Session, Jeremy Callahan seconded and the vote by roll call was unanimous.: Jeremy Callahan: Yes; Daniel Wagner: Yes; Steven Latasa-Nicks: Yes and Jeffrey Gould: Yes.*

The Board returned to Open Session at 6:56 P.M.

**WORK SESSION**

Vice Chair Jeffrey Gould called the Work Session to order at 7:00 P.M.

1) Election of Officers:

i. Chair: *Jeremy Callahan moved to elect Jeffrey Gould as Chair of the Zoning Board of Appeals, Steven Latasa-Nicks seconded and it was so voted, 4-0.*

ii. Vice Chair: *Jeffrey Gould moved to elect Jeremy Callahan as Vice Chair of the Zoning Board of Appeals, Steven Latasa-Nicks seconded and it was so voted, 4-0.*

iii. Clerk: *Jeffrey Gould moved to elect Steven Latasa-Nicks as Clerk of the Zoning Board of Appeals, Jeremy Callahan seconded and it was so voted, 4-0.*

2) Request by Attorney Lester J. Murphy to reconsider the application for an appeal by **BPJC, LLC**, aggrieved by a July 12, 2017 decision by the Building Commissioner regarding the height of a structure located at **350 Bradford Street (Residential 3, Zone)**.

**Presentation:** Attorney E. James Veara appeared to request to reconsider. Chair Jeffrey Gould reviewed the matter as discussed at the hearing on October 5, 2017.

**Board Discussion:** The Board discussed the matter. Attorney Jonathan Silverstein weighed in on the issue.

*Steven Latasa-Nicks moved to reconsider the application for an appeal by BPJC, LLC, aggrieved by a July 12, 2017 decision by the Building Commissioner regarding the height of a structure located at 350 Bradford Street (Res 3), Jeremy Callahan seconded and it was so voted, 4-0.*

3) Pending Decisions:

a) **ZBA 18-05 (Jeff)**

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

Jeffrey Gould, Steven Latasa-Nicks, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case. The decision was not read.

b) **ZBA 18-11 (Rob)**

**22 Bangs Street & 6 Upper Miller Hill Road (Residential 3 Zone), Paul Fiore & David Foley -**

Jeffrey Gould, Steven Latasa-Nicks, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case. The decision was not read.

c) **ZBA 18-12 (Rob)**

**22 Bangs Street (Residential 3 Zone), Paul Fiore & David Foley -**

Jeffrey Gould, Steven Latasa-Nicks, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case. The decision was not read.

d) **ZBA 18-13 (Marianne)**

**15 Commercial Street (Residential 1 Zone), David Silva -**

Jeffrey Gould, Steven Latasa-Nicks, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case. The decision was not read.

Chair Jeffrey Gould adjourned the Work Session at 7:19 P.M.

## PUBLIC HEARING

Chair Jeffrey Gould called the Public Hearing to order at 7:19 P.M. There were 4 members of the Board present and 2 absent.

### 1) ZBA 18-16

**6 Cottage Street (Residential 2 Zone), Wesley Price, of C.H. Newton-Builders, on behalf of Neil Jacobs and Eric Ganz –**

The applicant is requesting a Special Permit pursuant to Article 2, Section 2450, G12, Permitted Accessory Uses, Swimming Pools, of the Zoning By-Laws to install a pool on the property. Jeffrey Gould, Jeremy Callahan, Daniel Wagner and Steven Latasa-Nicks sat on the case.

**Presentation:** Wesley Price appeared to present the application. He reviewed the project, which involves the construction of a water feature. Anne Howard, the Building Commissioner, clarified why the project is being heard pursuant to the zoning by-law regarding swimming pools, even though it was not a swimming pool, but a water feature. She explained that it will be constructed in the same manner as a swimming pool, however it is not considered a structure and would therefore not be subject to setback requirements.

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

**Board Discussion:** The Board questioned Mr. Price and discussed the issue.

*Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2450, G12, Permitted Accessory Uses, Swimming Pools, of the Zoning By-Laws to install a pool on the property at 6 Cottage Street (Res 2) with the condition that the water be trucked in from out of town, Jeremy Callahan seconded and it was so voted, 4-0.* Daniel Wagner will write the decision.

### 2) ZBA 18-18

**353 Commercial Street (Residential 3 Zone), Christopher Rego, of Rego Construction & Remodeling, on behalf of Studio Realty Trust -**

The applicant requests a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions and Alterations, of the Zoning By-Laws to replace a deck on a pre-existing, non-conforming west elevation and construct a second floor deck and stairway to the third floor as a second means of egress on a pre-existing, non-conforming south elevation. Chair Jeffrey Gould explained to the applicant that since there were only 4 members of the Board seated, a unanimous decision was required for a Special Permit. The applicant had the choice of proceeding or postponing until there were 5 members seated. Mr. Gould offered to poll the Board before it voted. The applicant chose to proceed. Jeffrey Gould, Jeremy Callahan, Daniel Wagner and Steven Latasa-Nicks sat on the case.

**Presentation:** Chris Rego and Margaret Gifford appeared to present the application. Mr. Rego reviewed the project, which included replacing a deck on the south elevation of a structure and extending a second floor deck along the west side. A second means of egress from the third floor will be added.

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

**Board Discussion:** The Board questioned Mr. Rego.

*Steven Latasa-Nicks moved to find that no new non-conformancy will be created on the south elevation, Jeremy Callahan seconded and it was so voted, 4-0.*

*Steven Latasa-Nicks moved that pursuant to Article 5, Section 5330, the social, economic and other benefits of the project, such as ensuring greater safety and an increase in the Town tax base, outweigh any adverse effects such as hazard, congestion or environmental degradation, Jeremy Callahan seconded and it was so voted, 4-0.*

*Jeremy Callahan moved to grant a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions and Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to replace a deck on a pre-existing, non-conforming west elevation and construct a second floor deck and stairway to the third floor as a second means of egress on a pre-existing, non-conforming south elevation at the property located at 353 Commercial Street based upon the findings of the Board, Daniel Wagner seconded and it was so voted, 4-0.*  
Jeremy Callahan will write the decision.

Steven Latasa-Nicks thanked Ms. McPherson for her support of the Board over her tenure as the Town Planner.

**MINUTES: October 19, 2017** – *Steven Latasa-Nicks moved to approve the minutes as written, Jeremy Callahan seconded and it was so voted, 4-0.*

**NEXT MEETING:** The next meeting will take place on Thursday, November 16, 2017. It will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Daniel Wagner moved to adjourn the Public Hearing at 8:00 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2017  
Jeffrey Gould, Vice Chair