

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
March 1, 2018**

Members Present: Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks.

Members Absent: Jeffrey Gould (excused).

Others Present: David Gardner (Assistant Town Manager) and Ellen C. Battaglini (Permit Coordinator).

A. WORK SESSION

Vice Chair Jeremy Callahan called the Work Session to order at 6:45 P.M.

1) PENDING DECISION:

a) **ZBA 18-30 (Steven)**

212 Bradford Street (Residential 3 Zone), PMC Realty, LLC –

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

MINUTES: February 1, 2018 – Marianne Clements moved to approve the minutes as written, Rob Anderson seconded and it was so voted, 5-0.

David Gardner mentioned the workshops offered by the Citizen Planner Training Collaborative on March 17th and asked if any Board members were interested in attending.

B. PUBLIC HEARING

Vice Chair Jeremy Callahan called the Public Hearing to order at 7:00 P.M. There were 5 members of the Board present and 1 absent.

a) **ZBA 18-05**

350 Bradford Street (Residential 3 Zone), Attorney Lester J. Murphy, on behalf of BPJC, LLC –

The applicant seeks a reconsideration of a **Notice of Appeal** regarding a July 12, 2017 decision by the Building Commissioner that a flat-roofed structure was in excess of 23' and was in violation of Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws. The

applicant has requested to postpone the matter until the April 19, 2018 Public Hearing. *Steven Latasa-Nicks moved to grant the request to postpone ZBA 18-05 until the April 19, 2018 Public Hearing at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.*

b) **ZBA 18-21**

53 Commercial Street, Rear (Residential 2 Zone), Don DiRocco, of Hammer Architects, on behalf of Jay Anderson –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions or Alterations, and Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish an existing structure and construct a new structure within a pre-existing, non-conforming east elevation and for an increase in building scale. The applicant has requested to postpone the matter until the April 5, 2018 Public Hearing. *Steven Latasa-Nicks moved to grant the request to postpone ZBA 18-21 until the April 5, 2018 Public Hearing at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.*

c) **ZBA 18-23**

509 Commercial Street (Residential 3 Zone), KA Bazarian on behalf of 509 Commercial, LLC –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to raise a structure 9' to conform with FEMA regulations, going up and along east and west pre-existing, non-conforming elevations, to add and enclose the space below a deck on the south elevation and to add an egress stairway on the west elevation. The applicant has requested to postpone the matter until the April 19, 2018 Public Hearing. *Steven Latasa-Nicks moved to grant the request to postpone ZBA 18-23 until the April 19, 2018 Public Hearing at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.*

q) **ZBA 18-42**

21 Pilgrim Heights Road (Residential 1 Zone), William Ned Munroe & Garry Sabatini –

The applicant seeks 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. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Attorney Lester J. Murphy and Stacy Kanega, of Coastal Engineering, appeared to present the application. Attorney Murphy reviewed the application and said that the location of the pool was chosen in order to minimize disturbance to the site, including to the swale, the native habitat and species and the existing vegetation, and to maximize privacy for the property owner. Additional vegetative screening will be planted to conceal the pool. The site will not be de-stabilized as a result of its installation. The salt water pool will not be visible from the road and other adjacent properties and will measure 30' by 17' and the water to fill it will be trucked in from out of Town. He argued that the social, economic and other benefits of the project will outweigh any detrimental effects, such as hazard, congestion or environmental degradation. The pool will be a significant amenity for the home and increase tax revenue to the Town. Ms. Kanega briefly reviewed some engineering aspects of the project.

Public Comment: None. There was 1 letter of concern from an abutter.

Board Discussion: The Board had no questions.

Jeremy Callahan moved that the social, economic and other benefits of the project would outweigh any detrimental effects, such as hazard, congestion or environmental degradation, Steven Latasa-Nicks seconded and it was so voted, 5-0.

Daniel Wagner moved to grant 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 Pilgrim Heights Road, (Res 1), Rob Anderson seconded and it was so voted, 5-0. Marianne Clements will write the decision.

d) **ZBA 18-29**

59 Province Lands Road (Residential 1 Zone), Ellen and Robert Blood –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws for the service of alcohol to guests at the Inn at the Moors. Jeffrey Gould, Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case. This case was previously continued to the meeting of March 15, 2018.

e) **ZBA 18-31**

8D Commercial Street (Residential 3 Zone), KA Bazarian, on behalf of Joanne Canco & Charlene Allen –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to expand a deck on a pre-existing, non-conforming south elevation and to increase the building scale of the structure on the property. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Kevin Bazarian appeared to present the application. He reviewed the non-conformancies on the lot. The proposed 5% deck expansion to the west and east on the south elevation will add only 1,050 cu. ft. to the scale of the structure. The existing scale of the structure is 19,680 cu. ft., the allowable scale is 20,624 cu. ft. and the neighborhood average scale is 17,934 cu. ft. The deck expansion of 1,050 cu. ft. will result in a total of 20,730 cu. ft. Mr. Bazarian argued that the expansion would not be detrimental to the neighborhood.

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

Board Discussion: The Board had no questions for Mr. Bazarian.

Marianne Clements moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to expand a deck on a pre-existing, non-conforming south elevation and to increase the building scale of the structure on the property located at 8D Commercial Street (Res 1), Daniel Wagner seconded and it was so voted, 5-0. Steven Latasa-Nicks will write the decision.

f) **ZBA 18-32**

57A Pleasant Street (Residential 3 Zone), Ted Smith, on behalf of Karl Broussard –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to demolish and rebuild a structure with an expanded footprint and an increased building scale. There was a request to postpone to the Public Hearing of April 5, 2018. *Steven*

Latasa-Nicks moved to grant the request to postpone ZBA 18-32 to the Public Hearing of April 5, 2018 at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.

g) **ZBA 18-33**

9 Arch Street (Residential 3 Zone), Don DiRocco, of Hammer Architects –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to add a dormer on a pre-existing, non-conforming east elevation on the structure. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Leif Hamnquist, of Hammer Architects, appeared to present the application. He requested that the application be heard pursuant to the *Goldhirsh v. McNear* ruling and the Board assented. He reviewed the project that entails the addition of a dormer on the east elevation, adding only 875 cu. ft. to the scale of the existing structure. He argued that the benefits of the project outweigh any detrimental effects.

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

Board Discussion: The Board briefly questioned Mr. Hamnquist.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to add a dormer on a pre-existing, non-conforming east elevation on the structure at the property located at 9 Arch Street (Res 3) pursuant to the Goldhirsh v. McNear ruling, Marianne Clements seconded and it was so voted, 5-0.

h) **ZBA 18-34**

11 Brewster Street (Residential 3 Zone), Mark Kinnane, of Cape Associates, on behalf of Barry Peskin –

The applicant seeks a Special Permit pursuant to Article 2, Sections 2550, Dimensional Schedule, and 2640, Building Scale, and Article 3, Sections 3110, Change, Extensions and Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and rebuild a structure up and along a pre-existing, non-conforming west elevation and to increase building scale on a pre-existing, non-conforming lot. Steven Latasa-Nicks recused himself because of a conflict of interest. Vice Chair Jeremy Callahan informed the applicant that since there was only 4 Board members seated on the case, and an approval of a Special Permit would require a unanimous decision, he could proceed or postpone until 5 members could be seated. Mr. Kinnane chose to proceed. Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case.

Presentation: Mark Kinnane appeared to present the application. He submitted revised plans to the Board and reviewed the project. The front yard setback will be increased from 3” to 2’ 3” and a bulkhead will be added in the front yard setback. The allowable scale is 16, 652 cu. ft., the existing scale is 26,160 cu. ft., the neighborhood average scale is 14,480 cu. ft. the scale of the proposed structure will be reduced by 550 cu. ft., or -2%, for a total of 25,610 cu. ft. and the footprint will be smaller than the existing one. He argued that the project would not be substantially more detrimental to the neighborhood than what exists. The economic benefit is that the value of the structure and property will increase, which will increase the real estate taxes.

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

Board Discussion: The Board questioned Mr. Kinnane.

Marianne Clements moved to grant a Special Permit pursuant to Article 2, Sections 2550, Dimensional Schedule, and 2640, Building Scale, and Article 3, Sections 3110, Change, Extensions and Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and rebuild a structure up and along a pre-existing, non-conforming west elevation and to increase building scale on a pre-existing, non-conforming lot on the property located at 11 Brewster Street (Res 3), Rob Anderson seconded and it was so voted, 4-0. Daniel Wagner will write the decision.

i) **ZBA 18-35**

336R Commercial Street (Town Center Commercial Zone), 336R Commercial, LLC – The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to convert a second floor guest gallery back into a cocktail lounge. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Ken Horgan, owner and operator of the Pilgrim House, appeared to present the application. He reviewed the proposed change to the conference/social gathering space on the second floor. Its original use was as a cocktail lounge and the area will conform to a 2013 floor plan, with no additional seating being requested.

Public Comment: None. There were 9 letters from abutters in support of the application.

Board Discussion: The Board questioned Mr. Horgan.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to convert a second floor guest gallery back into a cocktail lounge at the property located at 336R Commercial Street (Town Center Commercial Zone), Rob Anderson seconded and it was so voted, 5-0. Jeremy Callahan will write the decision.

j) **ZBA 18-36**

3 Atkins Lane (Residential 3 Zone) Tom Thompson, on behalf of **George Rogers, III –** The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to extend up and along a pre-existing, non-conforming east and west elevations to install shed dormers and to enclose a screened-in porch on the north elevation of a structure. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Tom Thompson, George Rogers, III and Patrick Watson appeared to present the application. Mr. Thompson requested that the application be heard under the *Goldhirsh v. McNear* ruling. He reviewed the project, citing how it was consistent with the goals and policies of the Local Comprehensive Plan, specifically Chapter 1, Goal 1, Policy B; Goal 2 Policy A and Chapter 4, Goal 2, Policy A. The changes will create no disruption in the character of the neighborhood, will be harmonious with the surrounding area and not substantially more detrimental to the neighborhood than what exists. The benefits will outweigh any detrimental effects, such as hazard, congestion or environmental degradation. The improvements to the structure will result in an increase in the Town's tax base and will increase the headroom in the interior, allowing the owners to continue to live in Town and contribute to the local community and economy.

Public Comment: None. There were 2 letters from abutters in support of the application.

Board Discussion: The Board questioned Mr. Thompson.

Rob Anderson moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to extend up and along a pre-existing, non-conforming east and west elevations to install shed dormers and to enclose a screened-in porch on the north elevation of a structure at the property located at 3 Atkins Lane (Res 3) pursuant to the Goldhirsh v. McNear ruling, Marianne Clements seconded and it was so voted, 5-0.

k) **ZBA 18-37**

166 Commercial Street (Town Center Commercial Zone), Tom Thompson –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to increase building scale for the reconstruction of a roof deck and emergency egress stairs on the north elevation and the reconstruction of an egress landing and stairs on the east elevation of a structure. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Tom Thompson appeared to present the application. He reviewed the project, which involves replacing the existing system of stairs and decks in the rear, or west, of the structure, and argued that it would not only improve access and allow for safe egress from the building, but would minimize mass from the streetscape. The stoop on the east side would be extended to provide better egress. There will only be a slight increase in the building scale. It conforms to the criteria of Article 2, Section 2640E subparagraphs #1 and #5. Pursuant to subparagraph #1, the project was in keeping with the goals and objectives of the LCP, Chapter 1, Goal 2, Policy A and Chapter 4, Goal 2, Policy A. Pursuant to subparagraph #5, the changes will minimize mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures. He argued that, pursuant to Article 5, Section 5330, there will be no adverse effects from these renovations and the economic benefits include an increase in the tax base and providing better accommodations for tourists and the continued contributions of the guesthouse to the Town and its economy.

Public Comment: None. There were no letters in the file. The Building Commissioner, Anne Howard, wrote a memo stating that the deck system was in poor shape and endorsing the project.

Board Discussion: The Board questioned Mr. Thompson.

Rob Anderson moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to increase building scale for the reconstruction of a roof deck and emergency egress stairs on the north elevation and the reconstruction of an egress landing and stairs on the east elevation of a structure at the property located at 166 Commercial Street (TCC), Steven Latasa-Nicks seconded and it was so voted, 5-0. Rob Anderson will write the decision.

l) **ZBA 18-38**

118 Bradford Street (Town Center Commercial Zone), Kevin A. Bazarian –

The applicant seeks 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. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Kevin Bazarian and Jose Perez appeared to present the application. Mr. Bazarian described the pool as measuring 8½ ‘by 14’ and holding 2100 gallons of water. The pool does not have to conform to setbacks because its size does not qualify it as a structure. The water will be trucked in to fill and trucked out to empty the pool and it will be fenced in on all four sides.

Public Comment: None. There were 4 letters from abutters in support of the project.

Board Discussion: The Board briefly questioned Mr. Bazarian.

Steven Latasa-Nicks moved to grant 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 118 Bradford Street (Res 3 Zone), Marianne Clements seconded and it was so voted, 5-0. Marianne Clements will write the decision.

m) **ZBA 18-39**

7 Bradford Street (Residential 3 Zone), Steven Cook, of Cotuit Bay Design, on behalf of Matthew Metivier & Ricardo Gessa Abreus –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Sections 3110, Change, Extensions and Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and rebuild a cottage up and along a pre-existing, non-conforming east elevation and to increase building scale on an existing principal structure by adding an addition. The applicant has requested to postpone the matter until the April 5, 2018 Public Hearing. *Rob Anderson moved to grant the request to postpone ZBA 18-39 until the April 5, 2018 Public Hearing at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.*

n) **ZBA 18-40**

225 Commercial Street (Town Center Commercial Zone), Top Knot Properties, LLC –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to remove a stairway on the west elevation and re-locate it to a pre-existing, non-conforming east elevation of a second floor deck on the south elevation, extend a first floor deck on a south elevation and to shorten a second floor deck on a west elevation to line up with the side of the structure. Rob Anderson recused himself because of a conflict of interest. Vice Chair Jeremy Callahan informed the applicant’s representative that since there was only 4 Board members seated on the case, and an approval of a Special Permit would require a unanimous decision, he could proceed or postpone until 5 members could be seated. He chose to proceed. Jeremy Callahan, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Loic Rossignon appeared to present the application. He reviewed the project, which will include moving a stairway thereby opening an alleyway on the west side of the property in order to increase the accessibility and flow of customers and decrease the non-conformancy. The stairway will be moved to the east side of the structure to access a second floor deck on the south elevation to improve the safety of the access to that deck. A portion of the deck will be decreased in the area where the west stairway was removed to be flush with that side of the structure.

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

Board Discussion: The Board had no questions.

Marianne Clement moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to remove a stairway on the west elevation and re-locate it to a pre-existing, non-conforming east elevation of a second floor deck on the south elevation, extend a first floor deck on a south elevation and to shorten a second floor deck on a west elevation to line up with the side of the structure at the property located at 225 Commercial Street (TCC), Daniel Wagner seconded and it was so voted, 4-0. Steven Latasa-Nicks will write the decision.

o) **ZBA 18-41**

352 Commercial Street (Town Center Commercial Zone), Pavel Fiodarau, on behalf of Wareham Investment Group, LLC –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to extend a deck into a pre-existing, non-conforming east elevation. Jeremy Callahan, Rob Anderson, Marianne Clements, Daniel Wagner and Steven Latasa-Nicks sat on the case.

Presentation: Jill Rothenberg Simmons appeared to present the application. She reviewed the request, which includes rebuilding a stairway to a deck and a slight widening of that deck to the outer edge of the structure. Ms. Simmons said that there was a safety issue with the size of the deck and increasing this would improve that problem.

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

Board Discussion: The Board briefly questioned Ms. Simmons.

Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to extend a deck into a pre-existing, non-conforming east elevation at the property located at 352 Commercial Street (TCC), Marianne Clements seconded and it was so voted, 5-0. Jeremy Callahan will write the decision.

NEXT MEETING: The next meeting will take place on Thursday, March 15, 2018. It will consist of a Work Session at 6:15 P.M. followed by 7:00 P.M. followed by a Public Hearing.

ADJOURNMENT: *Daniel Wagner moved to adjourn the Public Hearing at 8:30 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2018
Jeffrey Gould, Chair