

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
December 7, 2017**

Members Present: Jeffrey Gould, Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner.

Members Absent: Steven Latasa-Nicks (excused).

Others Present: David Gardner (Assistant Town Manager), Attorney Jonathan Silverstein (Town Counsel), Anne Howard (Building Commissioner) and Ellen C. Battaglini (Permit Coordinator).

Chair Jeffrey Gould called the meeting to order at 6:35 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.

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.

Marianne Clements moved to go into Executive Session, Jeremy Callahan seconded and the vote by roll call was unanimous: Jeremy Callahan: Yes; Rob Anderson: Yes; Daniel Wagner: Yes; Marianne Clements and Jeffrey Gould: Yes.

The Board returned to Open Session at 7:03 P.M.

PUBLIC HEARING

Chair Jeffrey Gould called the Public Hearing to order at 7:05 P.M. There were 5 members of the Board present and 1 absent.

1) **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 until the January 4, 2018 Public Hearing. **Rob Anderson moved to grant the request to postpone ZBA 18-05 until the January 4, 2018 Public Hearing at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.**

2) **ZBA 18-17**

15 Hobson Avenue (Residential 1 Zone), Lisa Pacheco Robb, on behalf of Deborah Graeber -

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a second floor addition with a dormer on the south elevation of a structure, going up and along pre-existing, non-conforming east and north dimensions. Jeffrey Gould, Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case.

Presentation: Lisa Pacheco Robb and Deborah Graeber appeared to present the application. Ms. Pacheco Robb requested that the matter be heard under the *Goldhirsh v. McNear* ruling. She reviewed the proposal, which involves winterizing a seasonal structure in order that the applicant can live in it for a longer period of time during the year. The proposed extension southward will accommodate a new kitchen.

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

Board Discussion: The Board had no questions.

Jeremy Callahan moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a second floor addition with a dormer on the south elevation of a structure, going up and along pre-existing, non-conforming east and north dimensions at the property located at 15 Hobson Avenue (Res 1) under the *Goldhirsh v. McNear* ruling, Daniel Wagner seconded and it was so voted, 5-0.

3) **ZBA 18-19 (postponed from the meeting of November 16th)**

2 Schueler Boulevard (Residential 1 Zone), William N. Rogers, II, on behalf of Brendan P. O'Brien et al. –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to remove an existing cottage and reconstruct a new two-story structure with an expanded footprint up and along pre-existing, non-conforming side yard dimensions. Daniel Wagner recused himself because of a conflict of interest. Jeffrey Gould, Jeremy Callahan, Rob Anderson and Marianne Clements sat on the case. The Board discussed whether the Special Permit should include Article 3, Section 3115, Demolition and Reconstruction. **Jeremy Callahan moved to include a request for a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction of the Zoning By-Laws in ZBA 18-19, Marianne Clements seconded and it was so voted, 4-0.** Chair Jeffrey Gould asked the applicant's representatives if they would like to proceed, as there were only 4 Board members

seated on the matter, necessitating a unanimous decision in order to be granted a Special Permit. They could wait until 5 Board members were available. They elected to proceed

Presentation: Gary Locke, Brendan P. O'Brien and Luke Manning, a contractor, appeared to present the application. Mr. Locke reviewed the project, which includes extending along a pre-existing, non-conforming dimension to add a second floor and increase the footprint of the first floor by 167 sq. ft. by adding a covered porch. The existing cottage was improperly renovated and is not in conformity with the State Building Code. The new structure will be well below the neighborhood average scale. Since the structure is only 5.5' from Schueler Blvd., the proposed second floor will only have a small window facing the abutting property to minimize the impact on their privacy. There will be no increase in the number of bedrooms in the structure and the structure is hooked up to the Town sewer system. Mr. Locke said that any adverse effects such as hazard, congestion or environmental degradation would be minimal. Roof runoff will be directed towards subsurface drains. He argued that the project was in keeping with the goals and policies of the Local Comprehensive Plan, Section 1, Goal 1, Policy B and Goal 2, Policy A. Mr. Manning reviewed the structural issues of the project.

Public Comment: None. There were 2 letters from an abutter in opposition to the project and with concerns and 1 letter from another abutter with concerns.

Board Discussion: The Board questioned Mr. Locke and Mr. Manning.

Jeremy Callahan 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 to remove an existing cottage and reconstruct a new two-story structure with an expanded footprint up and along pre-existing, non-conforming side yard dimensions at the property located at 2 Schueler Boulevard (Res 1), Marianne Clements seconded and it was so voted, 4-0. Jeremy Callahan will write the decision.

4) 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 January 4, 2018 Public Hearing. ***Marianne Clements moved to grant the request to postpone ZBA 18-21 to the January 4, 2018 Public Hearing at 7:00 P.M., Jeremy Callahan seconded and it was so voted, 5-0.***

5) ZBA 18-22

51 Commercial Street, Front (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, of the Zoning By-Laws to separate an addition from the south elevation of a structure and re-attach it via a breezeway, to add roof dormers and to increase the building scale. Jeffrey Gould, Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case.

Presentation: Attorney Lester J. Murphy and Don DiRocco appeared to present the application. Mr. DiRocco reviewed the project, which proposes separating two buildings, one of which is a shack, but keeping them connected with a breezeway. The slight increase in the scale is as a result of the installation of the breezeway. This project originally was approved by the Zoning Board in ZBA 17-40 for a dormer addition and the removal of the shack, which would have resulted in a decrease in scale. The change in the proposal was prompted by the project's review by the Historic District Commission and its request that the historic shack be preserved. This iteration of the project serves to preserve the shack, minimize its mass from the streetscape and upgrade the main structure. The neighborhood average scale is 17,317 cu. ft., the maximum allowable scale is 19,914 cu. ft., the existing scale is 20,880 cu. ft., the proposed addition of scale is 1,695 cu. ft. for a total of 22,575 cu. ft. This is an 8.1% increase in scale. Attorney Murphy argued that the social economic and other benefits of the project outweigh any adverse effects such as hazard, congestion and environmental degradation. The changes will increase the tax base and retain the historic look of the structures. Under Article 2, Section 2640E, the project meets the criteria of subparagraphs #5 and #6.

Public Comment: None. There were 2 letters in support of the project.

Board Discussion: The Board questioned Attorney Murphy and Mr. DiRocco.

Jeremy Callahan moved to find that pursuant to Article 5, Section 5330 of the Zoning By-Laws, the social, economic and other benefits of the project to the neighborhood or Town outweigh any adverse effects such as hazard, congestion or environmental degradation, Marianne Clements seconded and it was so voted, 5-0.

Jeremy Callahan moved to find that pursuant to Article 2, Section 2640E, subparagraph 6, of the Zoning By-Laws, the property is located in the Historic District and the proposed project is consistent with the HDC guidelines and the deviation would further the purpose and intent of the by-law, Marianne Clements seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.

6) **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 January 4, 2018 Public Hearing.

Jeremy Callahan moved to grant the request to postpone ZBA 18-23 to the January 4, 2018 Public Hearing at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0.

7) **ZBA 18-24**

51 Harry Kemp Way, #UR1 (Residential 3 Zone), Ed Dusek on behalf of Scott Shields and Jim Woods –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to add an 18' wide shed dormer on a northeast elevation. Jeffrey Gould, Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case.

Presentation: Ed Dusek appeared to present the application. Mr. Dusek reviewed the project to install an 18' shed dormer for more room and to install a master bathroom. The maximum allowable scale is 33,091 cu. ft. and the total requested scale is 33,725 cu. ft. He stated that the Planning Board had reviewed the project several years ago, as it was in a high elevation protection district. The applicants postponed the project and in the last several years, the allowed scale for the neighborhood had decreased, necessitating the relief sought.

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

Board Discussion: The Board questioned Mr. Dusek.

Jeremy Callahan moved to find that the project meets the requirement of Article 2, Section 2640E, subparagraph 5, of the Zoning By-Laws, Rob Anderson seconded and it was so voted, 5-0.

Jeremy Callahan moved to find that pursuant to Article 5, Section 5330 of the Zoning By-Laws, the social, economic and other benefits to the neighborhood or the Town, the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Rob Anderson seconded and it was so voted, 5-0.

Jeremy Callahan moved to grant a Special Permit pursuant to Article 2, Section 2640E, Building Scale, of the Zoning By-Laws to add an 18' wide shed dormer on a northeast elevation at the property located at 51 Harry Kemp Way, UR1 (Res 3), Rob Anderson seconded and it was so voted, 5-0. Daniel Wagner will write the decision.

8) ZBA 18-25

62 Mayflower Avenue (Residential 1 Zone), Lisa Pacheco Robb on behalf of Miriam Gallardo and Courtney Spitz –

The applicant seeks 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 an addition up and along a pre-existing, non-conforming north and west elevation and a small addition on the east elevation and to increase the building scale. Jeffrey Gould, Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case.

Presentation: Lisa Pacheco Robb and Courtney Spitz appeared to present the application. Ms. Pacheco Robb reviewed the project and submitted photographs to the Board. The foundation on the front part of the house needs upgrading and the proposal includes extending the west side, non-conforming part of the structure back to fill in a void. In regard to the need for scale relief, she said that the scale calculation included several small cottages and outbuildings on Commodore Avenue, which resulted in lowering the allowable neighborhood scale. She argued that the project is in keeping with the spirit of the scale by-law. The structure cannot be seen from either Route 6 and has a minimal presence on Mayflower Avenue as shown on the photographs submitted.

Public Comment: None. There were 7 letters in support of the project.

Board Discussion: The Board questioned Ms. Pacheco Robb.

Jeremy Callahan moved to find that the alterations as proposed will not be substantially more detrimental or increase the existing non-conformancies, Rob Anderson seconded and it was so voted, 5-0.

Jeremy Callahan moved to find that the project meets the requirement of Article 2, Section 2640E, subparagraph 5, of the Zoning By-Laws, Rob Anderson seconded and it was so voted, 5-0.

Jeremy Callahan 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 an addition up and along a pre-existing, non-conforming north and west elevation and a small addition on the east elevation and to increase the building scale at the property located at 62 Mayflower Avenue (Res 1), Rob Anderson seconded and it was so voted, 5-0. Rob Anderson will write the decision.

9) **ZBA 18-27**

315A Commercial Street (Town Center Commercial Zone), William N. Rogers, II on behalf of Luco Realty, Inc. –

The applicant seeks 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 restore a fire-damaged structure, including re-locating a second floor dwelling unit, constructing a roof structure for a new second floor restaurant/bar and seating area and adding two egress decks and stairways on the east elevation. Jeffrey Gould, Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case.

Presentation: Attorney Lester J. Murphy, Gary Locke and Leonard Enos appeared to present the application. Attorney Murphy reviewed the damage done to the building as a result of a fire and the reconstruction proposal, including upgrades and expansion of the structure. The HDC and this Board approved a similar project in 2006 in Case #2006-73, but due to financial constraints and Chapter 91 issues, the work was never started. The applicant is seeking re-approval for the same plans. The structure is non-conforming as to the front and side yard set backs and lot coverage. He said that the proposal increases the lot coverage slightly in order to accommodate a second means of egress. All other revisions would conform to the dimensional requirements of the Zoning By-Laws. He argued that the changes would not be more substantially detrimental to the Town or neighborhood than the existing structure and that the economic, social and other benefits outweigh any adverse effects such as hazard, congestion or environmental degradation. The benefits include a new second floor seating that would provide a nice place to sit and watch harbor activities in the summer season, the improvement and upgrade of a waterfront amenity, the creation of more year-round employment opportunities and a significant visual enhancement of a structure in the center of Town. Regarding the scale, the average neighborhood is 31,730 cu. ft., the existing structure is 71,580 cu. ft., the allowable scale is 36,490 cu. ft., the proposed increase is 20,560 cu. ft., for a total of 92,100 cu. ft. Pursuant to Article 2, Section 2640E, the project meets the requirements of subparagraphs 1 and 6 in that it is in keeping with the goals and policies of the LCP, Section 1, Goal 1, Policy B, Goal 2, Policy A and Section 5, Goal 1, Policies A, B and E and the project has been approved by the HDC. He added that the new structure will not disrupt the character of the neighborhood despite its scale. He reviewed the findings made by the Board in 2006 to justify the scale increase, which he stated were still relevant. He concluded by informing the Board that an Economic Development Permit has been submitted for the proposed increase in septic flow.

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

Board Discussion: The Board questioned Attorney Murphy, Mr. Locke and Mr. Enos. *Jeffrey Gould moved to find that the project is not substantially more detrimental to the Town or neighborhood than the existing situation, Marianne Clements seconded and it was so voted, 5-0.*

Jeremy Callahan moved to find that the project meets the requirement of Article 2, Section 2640E, subparagraphs 1 and 6, of the Zoning By-Laws, Marianne Clements seconded and it was so voted, 5-0.

Jeremy Callahan moved to find that pursuant to Article 5, Section 5330 of the Zoning By-Laws, the social, economic and other benefits to the neighborhood or the Town, the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Rob Anderson seconded and it was so voted, 5-0.

Marianne Clements 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 restore a fire-damaged structure, including re-locating a second floor dwelling unit, constructing a roof structure for a new second floor restaurant/bar and seating area and adding two egress decks and stairways on the east elevation at the property located at 315A Commercial Street (TCC), Jeremy Callahan seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.

Chair Jeffrey Gould adjourned the Public Hearing at 8:36 P.M.

WORK SESSION

Chair Jeffrey Gould called the Work Session to order at 8:36 P.M.

1) Pending Decisions:

- a) **ZBA 18-13 (Marianne)**
15 Commercial Street (Residential 1 Zone), David Silva -
Jeffrey Gould, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case. *Jeremy Callahan moved to accept the language as written, Rob Anderson seconded and it was so voted, 4-0.*
- b) **ZBA 18-16 (Daniel)**
6 Cottage Street (Residential 2 Zone), Wesley Price, of C.H. Newton-Builders, on behalf of Neil Jacobs and Eric Ganz –
Jeffrey Gould, Jeremy Callahan, Daniel Wagner and Steven Latasa-Nicks sat on the case. Daniel Wagner read the decision. *Jeremy Callahan moved to accept the language as written, Rob Anderson seconded and it was so voted, 3-0.*

MINUTES: November 16, 2017 – Jeffrey Gould moved to approve the minutes as written, Jeremy Callahan seconded and it was so voted, 5-0.

Building Commissioner Anne Howard reviewed the Town’s water shedding regulations and asked the Board to be aware of the issue when reviewing proposals and to condition gutters for relevant projects.

NEXT MEETING: The next meeting will take place on Thursday, January 4, 2018. It will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Daniel Wagner moved to adjourn the Public Hearing at 9:00 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2018
Jeffrey Gould, Chair