

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
April 4, 2019**

**Members Present:** Jeremy Callahan, Rob Anderson, Daniel Wagner, Peter Okun, and Susan Peskin.

**Members Absent:** Steven Latasa-Nicks (excused).

**Others Present:** David Gardner (Assistant Town Manager), Ellen C. Battaglini (Permit Coordinator) and Amy Kwesell (Town Counsel) (left at 8:30 P.M.).

Chair Jeremy Callahan called the Meeting to order at 6:02 P.M.

**A. BOARD APPOINTMENTS**

**B. EXECUTIVE SESSION**

Chair Jeremy Callahan declared that under G.L. c. 30A, §21(a)(3) that the purpose of the Executive Session is to discuss litigation strategy with respect to litigation known as *Deckelbaum v. Clements, et al. (Town of Provincetown Zoning Board of Appeals)*, Land Court No 18 MISC 00512-MDV regarding the appeal of the ABZ's grant of a Variance for the property located at 99 Commercial Street. A discussion of the foregoing in Open Session could have a detrimental effect on the litigative position and negotiating position of the Town and the ZBA; and the Board will then return to Open Session at the conclusion of the Executive Session.

***Rob Anderson moved that the Board go into Executive Session pursuant to M.G.L. c. 30A, §21(a)(3) for the purposes and reasons declared by the Chair, with the Board to return to Open Session at the conclusion of the Executive Session, Peter Okun seconded. There was a roll call vote: Rob Anderson: Yes; Jeremy Callahan: Yes; Daniel Wagner: Yes; Peter Okun: Yes; and Susan Peskin: Yes.***

**C. PUBLIC HEARING**

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

1) **ZBA 19-29** (*request to continue to the meeting of April 18<sup>th</sup>*)

**509 Commercial Street (Residential 3 Zone), 509 Commercial St., 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 by 9', alter it up and along pre-existing, non-conforming east and west elevations and move it 15' to the south of its existing location.

There was a request from the applicant to continue to the April 18, 2019 Public Hearing at 6:30 P.M. **Rob Anderson moved to grant the request to continue ZBA 19-29 to the Public Hearing of April 18<sup>th</sup>, 2019 at 6:30 P.M., Peter Okun seconded and it was so voted, 5-0.**

2) **ZBA 19-35** (*request to postpone to the meeting of April 18<sup>th</sup>*)

**806 Commercial Street (Residential 1 Zone), Mark Legere, of Marolima East, LLC –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a single-family house where the neighborhood average scale has not yet been established. There was a request from the applicant to postpone this matter to the April 18 2019 Public Hearing. **Peter Okun moved to grant the request to postpone ZBA 19-35 to the Public Hearing of April 18, 2019 at 6:30 P.M., Rob Anderson seconded and it was so voted, 5-0.**

3) **ZBA 19-36** (*request to postpone to the meeting of April 18<sup>th</sup>*)

**820 Commercial Street (Residential 1 Zone), Mark Legere, of Marolima East, LLC –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a single-family house where the neighborhood average scale has not yet been established. There was a request from the applicant to postpone this matter to the April 18, 2019 Public Hearing. **Peter Okun moved to grant the request to postpone ZBA 19-36 to the Public Hearing of April 18, 2019 at 6:30 P.M., Rob Anderson seconded and it was so voted, 5-0.**

4) **ZBA 19-41** (*continued from the meeting of March 7<sup>th</sup>*)

**6 Commercial Street (Residential 1 Zone), Ted Smith Architect, on behalf of Thomas Tannariello –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a new single-family structure that will have a volume greater than the maximum allowable scale for the neighborhood. Rob Anderson invoked the Mullin Rule and signed an affidavit attesting to the fact that he watched a recording of the previous meeting and is eligible to sit on the case. Jeremy Callahan, Rob Anderson, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.

**Presentation:** Attorneys Lester J. Murphy and Robin B. Reid, Tom Tannariello, and Gordon Peabody appeared to discuss the application. Attorney Murphy explained that the scale calculation had been redone since the last hearing of the application when the Board had concerns about a new structure being built that was over the allowable neighborhood scale. As a result, the neighborhood average scale increased. He said that the maximum allowable scale without a Special Permit was originally 19,261cu. ft. and was subsequently revised to be 20,587 cu. ft. The proposed scale of the new structure is 24,751 cu. ft. The excess scale is 4,161 cu. ft., a 20.2% deviation rather than a 28.5% deviation. Attorney Murphy then reviewed the intent of the scale by-law and what led to its adoption. The by-law's purpose is to establish criteria that could identify and establish what the character of the neighborhood is and what is consistent and harmonious with its character. He explained that sometimes the 250' radius used to determine the scale of a structure does not give an accurate idea of a neighborhood's character. He argued that the by-law anticipates scale creep, as it gives 15-25% increase over the neighborhood scale, and sets up a process by which a building scale can increase over that percentage by conforming

to certain criteria. He emphasized that this criteria, according to the by-law, can be applied to both existing and new structures. He said that this particular property was in a location where the structures within the 250' scale radius did not accurately reflect the character of the neighborhood in which it was located. He reviewed the structures surrounding the property and the large anomalies in their scales. He argued that the small cottage colony of Delft Haven, which abuts the property, threw off the building scale numbers in the neighborhood and reviewed how their small scale numbers decreased the neighborhood average scale. He said that the proposed scale of the new structure is not disruptive to the character of the neighborhood, particularly when there are several structures, one across the street and one to the west, that are higher than that. He then argued that the structure met criteria #5 of Article 2, Section 2640E in that the proposed structure would successfully integrate into its surroundings and will be sited in a manner that is not disruptive to the neighborhood in that it was on the lower portion of the lot and not up on the slope. As that location will place the structure in a flood zone, the building's mechanicals have to be elevated higher than ground level. Attorney Murphy said that if the Board considers the purpose and intent of the bylaw and the building scale numbers of the surrounding structures in the neighborhood, the Board could clearly determine that the structure meets the criteria of #5. He said that based upon the numbers, the site, the surrounding structures, and the plans submitted that what was proposed would not be disruptive to the neighborhood and was within the jurisdiction and the discretion of the Board to grant the relief sought. He then offered to argue that pursuant to criteria #1, the project could also meet the objectives and goals of the Local Comprehensive Plan. Attorney Reid reiterated that the project could be scale-compliant if the applicant moved the structure up the hill, however the applicant did not think it was not a good decision visually. She reviewed the benefits to the project to the Town, such as adding to the housing stock and increasing the tax base. She said that the structure was well sited, well designed with on-site parking and septic, with no adverse effects and met the criteria of subparagraphs #1 and #5 of Article 2, Section 2640E. Mr. Peabody reviewed the adverse environmental effects of siting the house on the slope, including unnecessary excavation of the hillside, the removal of its vegetation and the potentially detrimental effects of unintentional grade alterations. Mr. Tanariello explained his decision to site the structure at the lowest point of the property.

**Public Comment:** Cliff Schorer, an abutter, spoke in support of, and Jonathan Sinaiko spoke in opposition to, the application.

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

**Board Discussion:** The Board questioned Attorneys Murphy and Reid, Mr. Tanariello and Mr. Peabody. Attorney Kwesell clarified whether new construction could be built in excess of the neighborhood average building scale, stating that the scale By-Law permits it provided that the relevant criteria are met. Attorney Murphy explained the Board's discretionary role in determining whether a structure can deviate from the neighborhood average. The Board discussed the issue. He Attorney Murphy reviewed how the project met the goals and objectives of the LCP in Chapter 1, Goal 1, Policy B, Goal 3, Policy B and Chapter 4, Goal 2, Policies A and C. Mr. Ribeiro reviewed types of zoning in general and subparagraph #5 of the scale Section 2640E in particular, and presented examples of structures that were well integrated into their surroundings and minimized their massing despite their large size. He concluded that if a proposed structure meets the criteria of Section 2640E, the Board should approve it. Mr.

Tannariello pointed out that the front elevation of the building as reflected in the overhead display did not reflect the final version of the design. In response to a request from the Historic District Commission, modifications were made at the high roof, including removal of the eye window and the widow's walk. These changes resulted in a modest reduction in the impression of scale as viewed from the street. The revised elevation was made available to board members for review.

***Rob Anderson moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Daniel Wagner seconded and it was so voted, 4-1 (Susan Peskin in opposition).***

***Rob Anderson moved to find that pursuant to Article 2, Section 2640E5 that the proposed structure integrates into its surroundings and is sited in a manner that minimizes 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, Peter Okun seconded and it was so voted, 4-1 (Susan Peskin in opposition).***

***Rob Anderson moved to grant the Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a new single-family structure that will have a volume greater than the maximum allowable scale for the neighborhood at the property located at 6 Commercial Street (Res 1), Daniel Wagner seconded and it was so voted, 4-0 (Susan Peskin in opposition).*** Jeremy Callahan will write the decision.

5) **ZBA 19-44** (postponed from the meeting of March 21<sup>st</sup>)

Notice of Appeal by the **White Sands Beach Club** aggrieved by a decision of the Building Commissioner dated December 21, 2018, which it believes to be a violation of the Provincetown Zoning By-Laws or the Massachusetts Zoning Act, in reference to the property located at **963 Commercial Street, #10 (Residential 1 Zone)**. Jeremy Callahan, Rob Anderson, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.

**Presentation:** Attorney Ed Patton, Maria Kuliopulos and Thanassi Kuliopulos presented the application. Attorney Patton explained that his client is an abutter to the property that is the subject of the appeal. That property is a condominium, supports 50 beach cottage residential units on a single 167,000 sq. ft. lot, and is pre-existing, non-conforming as to the lot size. He said that each structure on the property is a non-conforming structure and use. Regardless of its conformity with setbacks, the lot is non-conforming and a structure could not be built on the lot today. The structure in question was torn down and a building permit was issued without requiring the unit owner to seek relief from the Board under Article 3, Section 3110, which deals with non-conforming structures and uses. A larger structure is proceeding to be built, triple the size and massing of the original, and Attorney Patton argued that the unit owner should have been required to get zoning relief from the Board, and not proceeded as of right, and that the decision of the Building Commissioner should not have issued a building permit for the project. The Building Commissioner did noted, in a letter written to Attorney Patton, that the property is a pre-existing, non-conforming use, as there are multiple dwelling units on an undersized lot. He argued that the density issue has not been complied with and thus would need the approval of the Board in terms of a Special Permit or a Variance. He said that the applicant was increasing the

non-conformity by building a bigger structure. He noted that the second except clause of G.L. c. 40A, s. 6 would be controlling, as the property did not involve a one or two-family structure and, he argued, that increasing the non-conformancy and the massing of the structure would thus require a Variance. He then argued that several other units on the property were required to seek zoning relief before being renovated. He said that this project involved an addition to a non-conforming situation. He concluded that when there is a building in a situation where there is insufficient land area, there is a non-conformancy that is subject to the local by-law and to G.L. c. 40A, s. 6. Attorney Kwesell rebutted his argument and stated that there were two procedural defects in the applicant's case, recommending that the Board did not technically have the jurisdiction to make a decision. She said that there is a 30-day appeal period for an appeal of the Building Commissioner's issuance of a building permit and that the applicant filed her appeal with the Town Clerk after that period had ended. The building permit was issued on December 11<sup>th</sup> and the Building Commissioner's letter, in response to the applicant's request to halt the work and rescind the building permit, stated that the use was non-conforming and was written on December 21<sup>st</sup>. The applicant's appeal was made on January 18<sup>th</sup>, more than 30 days after the issuance of the building permit. It is incumbent upon the applicant to file an appeal in a timely manner with the Town Clerk. The appeal was not filed with the Town Clerk until January 22<sup>nd</sup>, 32 days after the Building Commissioner's opinion. She said that because of the procedural defects, the Board did not technically have the jurisdiction, that it should not entertain the merits of this application and that it issue a procedural denial. Attorney Patton argued that December 21<sup>st</sup> was when the applicant knew that a building permit had been issued and that the appeal was filed on January 17<sup>th</sup>, within the 30-day appeal period. As evidence, he called the Board's attention to the date on the certified abutters' list, which was date-stamped January 17<sup>th</sup>. Attorney Kwesell said that the Assessor's Office abutters' list was not comparable to filing with the Town Clerk and that the building permit was the operative document. She also noted that a demolition permit had been issued in November. Anne Howard, the Building Commissioner, attested to the dates of the clearing of the site and her issuance of the building permit.

**Public Comment:** Attorney Lester J. Murphy, representing the unit owners, argued in opposition to Attorney Patton's reasoning. He said that the issue was concerning the structure, not the use, as Attorney Patton was arguing, the structure itself was conforming and that the alteration of the structure did not require dimensional relief. The use of the structure, which is non-conforming, was not being altered. There was 1 letter in support of the application.

***Peter Okun moved to close the Public Hearing, Rob Anderson seconded and it was so voted, 5-0.***

**Board Discussion:** The Board briefly discussed the issues and decided to deny the appeal pursuant to the procedural defects as described by Town Counsel.

***Peter Okun moved to deny the appeal due to the lack of jurisdiction of the Board, that the operative permit was issued on December 11, 2018, and that the appeal was not filed with the Town Clerk in a timely manner, until after the 30-day appeal period was over, Susan Peskin seconded and it was so voted, 5-0.***

***Peter Okun moved to approve the findings as discussed, that the operative permit was the building permit issued on December 11, 2018, the Building Commissioner's official file notes that a demolition permit was issued on November 19, 2018, and on December 5 2018, the site had been cleared and the building had come down and the appeal was filed was filed with the***

*Town Clerk on January 22, 2019, which is 32 days after the determination that is alleged in the appeal, Susan Peskin seconded and it was so voted, 5-0. Attorney Kwesell will write the decision.*

6) **ZBA 19-46** (*request to postpone to the meeting of April 18<sup>th</sup>*)

Application by **Stanley Sikorski & Eva Sikorski**, on behalf of **David Mayo**, seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, to construct a single-family structure that will exceed the allowable building scale on the property located at **294 Bradford Street (Residential 3 Zone)**. There was a request from the applicant to postpone the matter to the April 18, 2019 Public Hearing. *Peter Okun moved to grant the request to postpone ZBA 19-46 to the April 18, 2019 Public Hearing at 6:30 P.M., Rob Anderson seconded and it was so voted, 5-0.*

7) **ZBA 19-48** (*request to postpone to the meeting of April 18<sup>th</sup>*)

Application by **Don DiRocco, of Hammer Architects**, on behalf of **Steve Tait & Dave Cook**, 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 demolish and rebuild portions of a structure up and along a pre-existing, non-conforming dimensions, including height and side yard setbacks, at the property located at **425 Commercial Street (Residential 3 Zone)**. There was a request from the applicant to postpone the matter to the April 18, 2019 Public Hearing. *Peter Okun moved to grant the request to postpone ZBA 19-48 to the April 18, 2019 Public Hearing at 6:30 P.M., Rob Anderson seconded and it was so voted, 4-0.*

8) **ZBA 19-50** (*postponed from the meeting of March 21<sup>st</sup>*)

Application by **Christopher J. Snow, Esq.**, on behalf of **Linchris Hotel Corp.**, seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to provide entertainment, including movies, pool tables, karaoke, dancing, live entertainment with amplified music, and theatrical shows, at the property located at **698 Commercial Street (Residential 1 Zone)**. Jeremy Callahan, Rob Anderson, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.

**Presentation:** Attorney Christopher J. Snow, Bob Anderson and Cheryl Barrett presented the application. Attorney Snow reviewed the request on behalf of a new owner of the business and said that the overall operation of the premises will remain the same, except that the hotel would be open seasonally, from April 1<sup>st</sup> to November 1<sup>st</sup>. The Linchris Corporation, the new owner, has proposed no other changes. Because the property is undergoing a change in ownership, Attorney Snow said, the applicant had to appear before the Board. He said the restaurant will be scaled back and serve tapas only, the seating plan will remain the same, and all doors will be closed during the hours of entertainment.

**Public Comment:** Berta Romano, a Trustee of the condominium across Snail Road, spoke in support of the application, if the new owners are as accommodating as the previous owners. Christine Walker made an appeal on behalf of the Provincetown Film Society that the new management contact them about using the site for Film Society events and accommodations, such as for their annual Film Festival. There was 1 letter in opposition and 1 letter in support of the application.

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

**Board Discussion:** The Board questioned Attorney Snow. He indicated that there was no outdoor entertainment proposed and that the pool would probably be limited to guests only, however the public may be able to use it on a permit basis for a fee of \$10.

**Rob Anderson moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Peter Okun seconded and it was so voted, 5-0.**

**Rob Anderson moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to provide entertainment, including movies, pool tables, karaoke, dancing, live entertainment with amplified music, and theatrical shows, at the property located at 698 Commercial Street (Res 1) with the condition that all entertainment activities are inside with the doors closed, Peter Okun seconded and it was so voted, 5-0.** Susan Peskin will write the decision.

9) **ZBA 19-51** (postponed from the meeting of March 21<sup>st</sup>)

Application by **Glenn Siegmund** seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to change the seating plan for a coffee shop on the property located at **170 Commercial Street (Town Commercial Center Zone)**.

**Presentation:** Glenn Siegmund presented the application. He is seeking to add 16 seats on the front patio. The establishment currently has 50 seats, which are flexed to 40 outside and 10 inside. He is asking for 66 total seats, 20 of which will be inside and 46 outside. He said the business will be open 9 months plus of the year.

**Public Comment:** None.

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

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

**Rob Anderson moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Peter Okun seconded and it was so voted, 5-0.**

**Rob Anderson moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to change the seating plan for a coffee shop on the property located at 170 Commercial Street (TCC), Peter Okun seconded and it was so voted, 5-0.** Daniel Wagner will write the decision.

10) **ZBA 19-52**

Application by **One Hundred Twenty-Nine Commercial Street Corp** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to alter and extend a pre-existing, non-conforming two-family dwelling for the installation of exterior egress stairs per FEMA regulations on the property located at **129 Commercial Street (Town Commercial Center Zone)**.

**Presentation:** Alfred Pickard presented the application. He said that his previous Special Permit had expired and there was a change in the plans required by the Building Commissioner because a window had to be 3' from the property line. He submitted revised plans and reviewed them.

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

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

**Board Discussion:** The Board briefly questioned Mr. Pickard.

*Rob Anderson moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Peter Okun seconded and it was so voted, 5-0.*

*Rob Anderson moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to alter and extend a pre-existing, non-conforming two-family dwelling for the installation of exterior egress stairs per FEMA regulations on the property located at 129 Commercial Street (TCC). Jeremy Callahan will write the decision.*

11) **ZBA 19-54** (*request to postpone to the meeting of April 18<sup>th</sup>*)

Application by **Olivier Jamin Changeart** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a deck on the south elevation of a structure up and along a pre-existing, non-conforming east elevation dimension on the property located at **259-263 Commercial Street (Town Commercial Center Zone)**. There was a request from the applicant to postpone to the Public Hearing of April 18, 2019. *Peter Okun moved to approve the request to postpone ZBA 19-54 to the hearing of April 18, 2019 at 6:30 P.M., Rob Anderson seconded and it was so voted, 5-0.*

12) **ZBA 19-55** (*request to postpone to the meeting of April 18<sup>th</sup>*)

Application by **Dave Krohn** seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to demolish and replace a horse barn and to construct a new culinary barn, which will include a dwelling unit and a single-family and a duplex residential structure on the property located at **66 & 72 West Vine Street (Residential 1 & 3 Zones)**. There was a request from the applicant to postpone to the Public Hearing of April 18, 2019. *Peter Okun moved to approve the request to postpone ZBA 19-55 to the hearing of April 18, 2019 at 6:30 P.M., Rob Anderson seconded and it was so voted, 5-0.*

13) **ZBA 19-56**

Application by **Steven L. Benjamin** seeking a Special Permit pursuant to Article 2, Sections 2440, Permitted Principal Uses, B5, Restaurant, bar, and 2460, Special Permit Requirements, of the Zoning By-Laws to convert a retail space to a coffee shop with pre-packaged food on the property located at **361 Commercial Street (Town Commercial Center Zone)**. Peter Okun recused himself because of a conflict of interest. The Chair explained that given there were only 4 members present and a Special Permit needed the approval of 4 Board members, the applicant had the choice of postponing until 5 members were present or proceeding with 4. The applicant chose to proceed. Jeremy Callahan, Rob Anderson, Daniel Wagner and Susan Peskin sat on the case.

**Presentation:** Steven L. Benjamin presented the application. He is seeking 20 seats, 16 inside and 4 outside. He intends to maintain an affordable housing unit for staff above the premises. He said the business would be open year-round and employ 2-3 employees.

**Public Comment:** None. There was 1 letter in support of the application as long as the coffee shop was open year-round.

**Rob Anderson moved to close the public portion of the hearing, Daniel Wagner seconded and it was so voted, 5-0.**

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

**Rob Anderson moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Daniel Wagner seconded and it was so voted, 4-0.**

**Rob Anderson moved to grant a Special Permit pursuant to Article 2, Sections 2440, Permitted Principal Uses, B5, Restaurant, bar, and 2460, Special Permit Requirements, of the Zoning By-Laws to convert a retail space to a coffee shop with pre-packaged food on the property located at 361 Commercial Street (TCC), Daniel Wagner seconded and it was so voted, 4-0.**

Rob Anderson will write the decision.

#### 14) ZBA 19-57

Application by **Chris Hartley** seeking a Special Permit pursuant to Article 2, Sections 2440, Permitted Principal Uses, B5, Restaurant, bar, and 2460, Special Permit Requirements, of the Zoning By-Laws to convert a market to a nano brewery and for the service of food and alcohol on the property located at **141 Bradford Street (Town Commercial Center Zone)**. Peter Okun disclosed that he was an abutter to the property but said that he could render a fair and unbiased decision in the case. The applicant had no objection to his being seated on the case.

**Presentation:** Chris Hartley and Attorney Lester J. Murphy presented the application. Mr. Hartley reviewed the project, which involves the installation of a small, two-barrel system for brewing beer. He reviewed the interior seating plan, which will include a tap room. The kitchen will serve coffee and breakfast sandwiches in the morning and then lighter fare for the rest of day and evening. The exterior parking area will be converted into a beer garden with 30 seats available for patrons. Attorney Murphy explained that Mr. Hartley had received an Economic Development Permit for an additional 77 seats on the property. The criteria for granting those additional gallons are that the social, economic and other benefits of the brewery outweigh any adverse effects. He said that the benefits include the fact that breweries are very popular and are a growing industry in the country and will bring people into Town, the intent of this brewery to be pro-community and pro-active for various causes, that a minimum of three to four year-round employees will be hired, and that there will be an increase in the tax base. He added that there will be significant benefits and no significant adverse impacts. An unsafe parking situation will be removed on the site and there is a public parking lot across the street for customers. He said that the Board could clearly within its discretion in granting this Special Permit.

**Public Comment:** None.

**Rob Anderson 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 for Attorney Murphy and Mr. Hartley.

**Peter Okun moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Rob Anderson seconded and it was so voted, 5-0.**

*Peter Okun moved to grant a Special Permit pursuant to Article 2, Sections 2440, Permitted Principal Uses, B5, Restaurant, bar, and 2460, Special Permit Requirements, of the Zoning By-Laws to convert a market to a nano brewery and for the service of food and alcohol on the property located at 141 Bradford Street (TCC), Rob Anderson seconded and it was so voted, 5-0. Daniel Wagner will write the decision.*

**15) ZBA 19-58**

Application by **Joanne Cancro & Charlene P. Allen** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to raise a structure to comply with FEMA regulations and to construct egress stairs under a second floor deck in the pre-existing, non-conforming south elevation and a deck with stairs on the north elevation, up and along the pre-existing, non-conforming east elevation on the property located at **8 Commercial Street, #DUA (Residential 1 Zone)**.

**Presentation:** Attorney Lester J. Murphy presented the application. He requested that the application be heard under the *Goldhirsh v. McNear* ruling.

*Daniel Wagner moved to hear ZBA 19-58 under the Goldhirsh v. McNear, Rob Anderson seconded and it was so voted, 5-0.*

Attorney Murphy reviewed the project, which includes raising a structure 3.7' out of a flood zone and adding egress stairs on the south and east elevations in order to access the structure. He argued that the proposed changes will not be substantially more detrimental to the Town or neighborhood than the existing situation. The stairs on the south elevation will be located below a pre-existing, non-conforming existing deck. The existing stairs on the east elevation will be replaced with a deck and a new set of stairs and will extend farther to the north lot line, but no closer to the east side lot line. There are no detrimental impacts as a result of the project, the project will make the structure more flood-resistant and there are benefits to the abutting structures. If enough properties are better protected from damaging storms, flood insurance rates will not rise as quickly as in recent years.

**Public Comment:** None.

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

**Board Discussion:** The Board questioned Attorney Murphy.

*Rob Anderson moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Peter Okun seconded and it was so voted, 5-0.*

*Rob Anderson moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to raise a structure to comply with FEMA regulations and to construct egress stairs under a second floor deck in the pre-existing, non-conforming south elevation and a deck with stairs on the north elevation, up and along the pre-existing, non-conforming east elevation on the property located at 8 Commercial Street, #DUA (Res 1), Peter Okun seconded and it was so voted, 5-0.*

**16) ZBA 19-59**

Application by **Steven Schnitzer** seeking a Special Permit pursuant to Article 2, Sections 2440, Permitted Principal Uses, B5, Restaurant, bar, and 2460, Special Permit Requirements, of the

Zoning By-Laws to convert a retail shop to a bar for the service of alcohol and take-out food on the property located at **258 Commercial Street (Town Commercial Center Zone)**.

**Presentation:** Steve Schnitzer and Brennan Kavanaugh presented the application. Mr. Schnitzer explained that a retail space on the property was being converted to a small bar and patrons would be able to consume take-out food from the two restaurants on the site, or from other restaurants in Town. The bar will be open year-round. In addition, Mr. Schnitzer is requesting that the Board allow a change in the existing flex-seating plan to allow for the extension of hours for the nightclub venue, which has gotten additional EDP gallons, to be used on a more regular basis and not only when the restaurant upstairs, Saki, was closed, as a venue for shows, cabarets and movies. He said that he wanted to offer his employees additional hours year-round as the two restaurants existing on the site both closed for the winter months.

**Public Comment:** None.

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

**Board Discussion:** The Board questioned Mr. Schnitzer and Mr. Kavanaugh. The Board sought clarification on the various seating plans that had been submitted.

*Peter Okun moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Rob Anderson seconded and it was so voted, 5-0.*

*Peter Okun moved to grant a Special Permit pursuant to Article 2, Sections 2440, Permitted Principal Uses, B5, Restaurant, bar, and 2460, Special Permit Requirements, of the Zoning By-Laws to convert a retail shop to a bar for the service of alcohol and allow the consumption of take-out food on the property located at 258 Commercial Street (TCC), Rob Anderson seconded and it was so voted, 5-0. Rob Anderson will write the decision.*

#### 17) ZBA 19-60

Application by **Angela McCarthy** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to replace a foundation and renovate a structure, including replacing an entry porch and stairs on the pre-existing, non-conforming north elevation and a stoop on the pre-existing, non-conforming south elevation on the property located at **199 Bradford Street (Residential 3 Zone)**.

**Presentation:** Angela McCarthy and Ted Smith presented the application. Mr. Smith requested that the project be heard under the *Goldhirsh v. McNear* ruling.

*Peter Okun moved to hear ZBA 19-60 under the Goldhirsh v. McNear ruling, Rob Anderson seconded and it was so voted, 5-0.*

He reviewed the project, which includes lifting the structure, replacing the foundation and setting it back down. In having completed this part of the project already, the porch and stoop on the south elevation were removed. The project involves rebuilding what was lost in the demolition process. He said that no new non-conformancies are proposed.

**Public Comment:** None.

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

**Board Discussion:** The Board questioned Mr. Smith and Ms. McCarthy.

*Peter Okun moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Rob Anderson seconded and it was so voted, 5-0.*

*Peter Okun moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to replace a foundation and renovate a structure, including replacing an entry porch and stairs on the pre-existing, non-conforming north elevation and a stoop on the pre-existing, non-conforming south elevation on the property located at 199 Bradford Street (Res 3), Rob Anderson seconded and it was so voted, 5-0.*

#### 18) **ZBA 19-62**

Application by **Provincetown Film Society** seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the service of alcohol in the lobby of a movie theater on the property located at **237 Commercial Street (Town Commercial Center Zone)**.

**Presentation:** Christine Walker and Heidi Bollinder presented the application. Ms. Walker indicated that the proposed service of alcohol would be in the lobby area of the theater.

**Public Comment:** None.

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

**Board Discussion:** The Board questioned Ms. Walker and Mr. Bollinder.

*Rob Anderson moved to find that pursuant to Article 5, Section 5330 the social, economic and other benefits of the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Peter Okun seconded and it was so voted, 5-0.*

*Rob Anderson moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the service of alcohol in the lobby of a movie theater on the property located at 237 Commercial Street (TCC), Peter Okun seconded and it was so voted, 5-0.* Susan Peskin will write the decision.

Chair Jeremy Callahan adjourned the Public Hearing at 9:35 P.M.

## **D. WORK SESSION**

Chair Jeremy Callahan called the Work Session to order at 9:35 P.M.

### **1) Pending Decisions:**

#### **ZBA 19-43**

Application by **Tom Thompson**, on behalf of **George Sauer**, 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 extend up and along a pre-existing, non-

conforming side yard dimension to construct a second floor deck over an existing first floor deck on the property located at **2 Winthrop Place, U2D (Residential 3 Zone)**. **Jeremy Callahan, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.** Daniel Wagner read the decision. *Peter Okun moved to approve the language as written, Rob Anderson seconded and it was so voted, 4-0.*

**ZBA 19-45**

Application by **Lululemon, USA, Inc.**, on behalf of **Marc Roland, LLC**, seeking a Special Permit pursuant to Article 2, Section 2360, Formula Business Regulated District, of the Zoning By-Laws to establish a formula business retail store on the property located at **184 Commercial Street (Town Center Commercial Zone)**. **Jeremy Callahan, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.** Peter Okun read the decision. *Rob Anderson moved to approve the language as written, Daniel Wagner seconded and it was so voted, 4-0.*

**ZBA 19-47**

Application by **John Love Yingling** seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to add a canopy to a structure that exceeds the allowable building scale on the property located at **183-185 Commercial Street (Town Center Commercial Zone)**. **Jeremy Callahan, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.** The decision was not read.

**ZBA 19-49**

Application by **Tom Thompson**, on behalf of **Frank Christopher**, seeking a Special Permit pursuant to Article 3, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the service of food and alcohol and to provide entertainment at the property located at **193 Commercial Street, #AU6 (Town Commercial Center Zone)**. **Jeremy Callahan, Daniel Wagner, Peter Okun, and Susan Peskin sat on the case.** Jeremy Callahan read the decision. *Rob Anderson moved to approve the language as written, Peter Okun seconded and it was so voted, 4-0.*

2) **Approve minutes of the March 7, 2019 meeting.**

**MINUTES:** March 7, 2019 – *Peter Okun moved to approve the minutes as written, Susan Peskin seconded and it was so voted, 5-0.*

3) **Any Other Business that may properly come before the Board.** None.

**NEXT MEETING:** The next meeting will take place on Thursday, April 18, 2019 in the Judge Welsh Room. It will consist of a Work Session at 6:00 P.M. followed by a Public Hearing at 6:30 P.M.

**ADJOURNMENT:** *Peter Okun moved to adjourn the Public Hearing at 10:00 P.M.,*

*Susan Peskin seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2019  
Jeremy Callahan, Chair