

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
May 16, 2019**

Members Present: Steven Latasa-Nicks, Daniel Wagner, Peter Okun, Susan Peskin and Robert Nee.

Members Absent: Jeremy Callahan (excused) and Caleb Eigsti (excused).

Others Present: Jeff Ribeiro (Town Planner) and Ellen C. Battaglini (Permit Coordinator)

WORK SESSION

Vice Chair Steven Latasa-Nicks called the Work Session to order at 6:00 P.M.

1) PENDING DECISIONS:

ZBA 19-29 (Town Counsel)

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. **Jeremy, Steven, Rob, and Daniel sat on the case.** Steven Latasa-Nicks read the decision. *Peter Okun moved to approve the language as written, Robert Nee seconded and it was so voted, 3-0.*

ZBA 19-64 (Caleb)

Application by **The Galley Catering, LLC** seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to revise a seating plan on the property located at **225 Commercial Street (Town Center Commercial Zone)**. **Jeremy, Steven, Daniel, Peter and Caleb sat on the case.** The decision was not ready.

ZBA 19-66 (Peter)

Application by **Jonathan Sinaiko** seeking a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G11, Other customary accessory uses, of the Zoning By-Laws to increase the size of an existing shed on the property located at **292 Bradford Street (Residential 3 Zone)**. **Jeremy Daniel, Steven, Peter, and Caleb sat on the case.** Peter Okun read the decision. *Peter Okun moved to approve the language as written, Robert Nee seconded and it was so voted, 4-0.*

2) **Approval of Minutes:**

May 2 2019 – *Susan Peskin moved to approve the minutes as written, Steven Latasa-Nicks seconded and it was so voted, 5-0.*

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

Vice Chair Steven Latasa-Nicks adjourned the Work Session at 6:30 P.M.

PUBLIC HEARING

Vice Chair Steven Latasa-Nicks called the Public Hearing to order at 6:30 P.M. There were 5 Board members present and 2 absent.

1) **PUBLIC HEARINGS:**

ZBA 19-46 (*request to postpone to the meeting of June 6th*)

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 June 6, 2019 Public Hearing. *Steven Latasa-Nicks moved to grant the request to postpone ZBA 19-46 to the June 6, 2019 Public Hearing at 6:30 P.M., Peter Okun seconded and it was so voted, 5-0.*

ZBA 19-48 (*postponed from the meeting of May 2nd*)

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)**. Vice Chair Steven Latasa-Nicks disclosed that he is an abutter to the property, said that he had no financial interest in the outcome of the application and offered to sit on the case in order to give the applicant a full complement of Board members or recuse himself. The applicant had no objection to his being seated on the case. Steven Latasa-Nicks, Daniel Wagner, Peter Okun, Susan Peskin and Robert Nee sat on the case.

Presentation: Attorney Lester J. Murphy, Don DiRocco, Steve Tait and Dave Cook presented the application. Attorney Murphy said that the requested changes were the same as those that were granted relief in ZBA19-08, a previous case involving the same renovations. He then explained why the applicants were back in front of the Board, saying that subsequent to that relief being granted and during further permit review by staff, the Building Dept. determined that the relief granted in that previous case, pursuant to Article 3, s. 3110, did not adequately address the manner and means by which the project would be completed. The Building Commissioner

and the Town Planner determined that the project involved a demolition, not just an alteration under s. 3110. Thus, the applicant not only had to return to the Historic District Commission for permission to demolish a portion of the structure, but to the ZBA as well to seek relief under both s. 3110 and s. 3115. Attorney Murphy further explained that the relief granted by the ZBA, according to staff, was not clearly explained as to the fact that there is a lawfully pre-existing, non-conforming third floor, where a 2½ story maximum only is allowed under the existing Zoning By-Laws. The structure under consideration before the Board increases the third floor area. That relief may not have been clearly referenced in the previous hearing. There also was correspondence from an abutter's attorney questioning whether the relief sought by the applicant should be a Variance and not a Special Permit. Once these issues arose, the applicant had to revise the approach to the project. Up until the last few days, the property was a four-unit residential use, however it has now been converted into a single-family residence. It can now take advantage of the *Goldhirsh v. McNear* ruling that gives single and two-family structures special consideration in alterations into pre-existing, non-conforming dimensions, which according to an opinion by Town Counsel, justifies the request for a Special Permit.

Attorney Murphy said that the structure will be razed and rebuilt with a slightly larger footprint, but with a smaller scale. The Board will have to make a finding that the increase in the footprint is not substantially more detrimental than the existing situation. The building scale is being reduced, the floor area will increase by 134 sq. ft. on the third floor, and the plans submitted for this application are the same as were presented to the Board in ZBA 19-08. Attorney Murphy argued that the floor area and the building coverage are the same and the Board can make the same findings, under s. 3110, as it made previously. The site design, the building design and the elevations, the height of the building, and third floor area are all the same as authorized previously. The only change is the characterization of the relief both as to razing and replacing the structure and the third floor addition. He said that the proposed structure will be more attractive than the existing building. He reviewed the setbacks on the east and west elevations and noted that the building actually encroaches over the lot line and into the abutting property on the east. This will be partially corrected as a result of this project and the building is proposed to be situated 4' from this lot line, making it less non-conforming. The lot coverage is still within the requirements of the Zoning By-Laws. He argued that the proposed structure will not be substantially more detrimental than the existing structure. He also argued that the social, economic and other benefits of the project outweigh any adverse effects. It will be a net benefit to the Town and neighborhood in that an existing flat-roofed, unattractive structure will be renovated and an east elevation encroachment will be made less non-conforming. In addition, there will be a reduction in units, reducing traffic and congestion in the area, and septic flow, and in density, as the four-rental unit residence will be converted into a single-family residence. Mr. DiRocco briefly reviewed the project.

Public Comment: None. There were 4 letters from abutters and 1 brief from an attorney representing an abutter, in opposition to the application.

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

Board Discussion: Mr. Ribeiro commented on Town Counsel's opinion on the project and the nature of the alterations and reviewed the allowances given to one and two-family structure in regard to the expansion of the third floor in a pre-existing, non-conforming side yard setback. He

reiterated Town Counsel's opinion that the Board is reviewing this project as the renovation of a one or two-family structure. The Board questioned Attorney Murphy and Mr. DiRocco.

Peter Okun moved to find that pursuant to Article 5, Section 5330, Special Permit Considerations, the social, economic or other benefits of the proposal for the neighborhood or Town outweigh any adverse effects such as hazard, congestion or environmental degradation, Robert Nee seconded and it was so voted, 5-0.

Peter Okun moved to grant a Special Permit pursuant to Article 3, Sections 3110, 1. Change, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to 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 (Res 3), Robert Nee seconded and it was so voted, 5-0. Steven Latasa-Nicks will write the decision.

ZBA 19-65 (request to postpone to the meeting of June 6th)

Application by **George Tagaris** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to modify a condition of Special Permit #FY15-57 requiring the installation of a sprinkler system in a structure on the property located at **143 Commercial Street (Town Center Commercial Zone)**.

ZBA 19-67 (request to postpone to the meeting of June 6th)

Application by **Ronald Aike** and **David E. Mooney** seeking a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, G14, Utility/Garden Shed (96 sq. ft. max.), of the Zoning By-Laws to add a shed on the property located at **13 Willow Drive, Unit B (Residential B Zone)**. There was a request from the applicant to postpone the matter to the June 6, 2019 Public Hearing. **Steven Latasa-Nicks moved to grant the request to postpone ZBA 19-67 to the June 6, 2019 Public Hearing at 6:30 P.M., Peter Okun seconded and it was so voted, 5-0.**

ZBA 19-68

Application by **Deborah Paine, Inc.**, on behalf of **Terrence Meck**, seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to raise a structure by 18" and to construct entrance stairs and a landing on the northwest corner, extending a pre-existing, non-conforming dimension farther into the east side yard setback on the property located at **72A Commercial Street (Residential 2 Zone)**. Steven Latasa-Nicks, Daniel Wagner, Peter Okun, Susan Peskin and Robert Nee sat on the case.

Presentation: Deborah Paine, Ginny Binder and Brett Alberti, an owner of the property, presented the application. Ms. Paine reviewed the project, which involves lifting the building up 18" and setting it on piles to avoid any future flooding issues. The building is not in a flood zone and required to be elevated, however the owners seek to keep it out of harm's way. As part of the project, the building will be slightly enlarged, with two dormers added, a wood bulkhead will be removed on the north elevation, an arbor will be added over a small deck on the northwest corner of the structure, along a pre-existing, non-conforming west elevation and a conforming north elevation, and on the east elevation, a new stoop will be added to accommodate egress for the raised building. Ms. Binder requested a finding under the *Goldhirsh v. McNear* ruling, as it is a single-family home. She said that the east elevation stairs have to be compliant with the rail or the egress would be illegal from a building code perspective. With a finding that the new stairs

will not be substantially more detrimental than the existing situation, the Board can allow the increase in the non-conformity caused by the new egress stairs encroaching farther into the east elevation setback. Mr. Ribeiro briefly reviewed the project.

Public Comment: None. There was 1 letter from an abutter in favor of the project.

Susan Peskin 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. Paine and Ms. Binder.

Peter Okun moved to find that pursuant to Article 5, Section 5330, Special Permit Considerations, the social, economic or other benefits of the proposal for the neighborhood or Town outweigh any adverse effects such as hazard, congestion or environmental degradation, Robert Nee 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 raise a structure by 18” and to construct entrance stairs and a landing on the northwest corner, extending a pre-existing, non-conforming dimension farther into the east side yard setback on the property located at 72A Commercial Street (Res 2), Robert Nee seconded and it was so voted, 5-0. Peter Okun will write the decision.

ZBA 19-69

Application by **Frederick Latasa-Nicks** seeking a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to add outdoor entertainment on the property located at **404 Commercial Street (Town Center Commercial Zone)**. Peter Okun, Daniel Wagner, Susan Peskin, and Robert Nee sat on the case.

Presentation: Fred Latasa-Nicks presented the application. He said the business on the premises is a restaurant that has both indoor and outdoor dining. There is currently an indoor and outdoor sound system that is allowed by a common victualler license issued by the Town. In order to improve the quality of the music and the customer experience, he is requesting that the Board allow live entertainers who will play easy-listening music, such as with a guitar, and provide backdrop music for diners in the early evening hours. He said that performers would be situated on the front patio, or if raining, inside the building. No performers will be allowed in the back dining area. He said that the business has always been respectful and accommodating in regard to the neighbors. Mr. Ribeiro commented on the application.

Public Comment: Richard Forster, an abutter, spoke of his concerns about the level of noise from the proposed musical performers. There were 8 letters in support of, and 2 letters in opposition to, the application.

Susan Peskin moved to close the public portion of the hearing, Robert Nee seconded and it was so voted, 4-0.

Board Discussion: The Board questioned Mr. Latasa-Nicks.

Susan Peskin moved to find that pursuant to Article 5, Section 5330, Special Permit Considerations, the social, economic or other benefits of the proposal for the neighborhood or Town outweigh any adverse effects such as hazard, congestion or environmental degradation, Robert Nee seconded and it was so voted, 4-0.

Susan Peskin moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to add outdoor entertainment on the property located at 404 Commercial Street (TCC), with the condition that the live music be performed in the front of the premises and if the music is performed indoors, that the back doors be closed, Robert Nee seconded and it was so voted, 4-0. Daniel Wagner will write the decision.

ZBA 19-70

Application by **Michael Rogala, d/b/a Roots**, seeking a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display retail items outside a store on the property located at **193 Commercial Street, Unit 5 (Town Center Commercial Zone)**. Steven Latasa-Nicks, Daniel Wagner Peter Okun, Susan Peskin and Robert Nee sat on the case. **Presentation:** Michael Rogala presented the application. He reviewed the items that would be placed on the brick landing outside the store.

Public Comment: None.

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

Board Discussion: The Board questioned Mr. Rogala.

Peter Okun moved to find that pursuant to Article 5, Section 5330, Special Permit Considerations, the social, economic or other benefits of the proposal for the neighborhood or Town outweigh any adverse effects such as hazard, congestion or environmental degradation, Susan Peskin seconded and it was so voted, 5-0.

Peter Okun moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display retail items outside a store on the property located at 193 Commercial Street, Unit 5 (TCC), Susan Peskin seconded and it was so voted, 5-0.

ZBA 19-72

Application by **509 Commercial Street, LLC** seeking a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to raise a structure by 9', move it 15' to the south, and add dormers along pre-existing, non-conforming east and west elevations on the property located at **509 Commercial Street (Residential 3 Zone)**. Attorney Murphy submitted a request to withdraw ZBA 19-72 without prejudice.

NEXT MEETING: The next meeting will take place on Thursday, June 6, 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 8:30 P.M., Susan Peskin seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2019

Jeremy Callahan, Chair