

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
July 18, 2019**

**Members Present:** Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks, Peter Okun (left at 7:30 P.M.), Susan Peskin, and Caleb Eigsti.

**Members Absent:** Robert Nee (excused).

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

**WORK SESSION**

Chair Jeremy Callahan called the Work Session to order at 6:00 P.M.

- 1) **Election of a Vice Chair:** *Jeremy Callahan moved to nominate and elect Steven Latasa-Nicks as Vice Chair, Peter Okun seconded and it was so voted, 5-0.*

**Election of a Clerk:** *Jeremy Callahan moved to nominate and elect Peter Okun as Clerk, Steven Latasa-Nicks seconded and it was so voted, 5-0.*

- 2) **PENDING DECISIONS:**

**ZBA 19-48 (Steven)**

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)**. **Steven Latasa-Nicks, Daniel Wagner, Peter Okun, Susan Peskin and Robert Nee sat on the case.** Steven Latasa-Nicks read the decision. *Peter Okun moved to approve the language as written, Caleb Eigsti seconded and it was so voted, 4-0.*

**ZBA 19-71 (Caleb)**

Application by **Guy Busa** 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 construct a two-story addition on the structure located at **2 & 2A Conway Street (Residential 2 Zone)**. **Jeremy Callahan, Daniel Wagner, Peter Okun, Caleb Eigsti, and Robert Nee sat on the case.** Caleb Eigsti read the decision. *Peter Okun moved to approve the language as amended, Steven Latasa-Nicks seconded and it was so voted, 4-0.*

**3) Approval of Minutes:**

June 6 & 20, 2019: *Jeremy Callahan moved to approve the minutes as written, Caleb Eigsti seconded and it was so voted, 6-0.*

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

Chair Jeremy Callahan adjourned the Work Session at 6:17 P.M.

## **PUBLIC HEARING**

Chair Jeremy Callahan called the Public Hearing to order at 6:30 P.M. There were 6 Board members present and 1 absent.

**1) PUBLIC HEARINGS:**

**ZBA 19-46** (*request to postpone to the meeting of August 1<sup>st</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 July 18, 2019 Public Hearing. *Caleb Eigsti moved to grant the request to postpone ZBA 19-46 to the August 1, 2019 Public Hearing at 6:30 P.M., Peter Okun seconded and it was so voted, 5-0.*

**ZBA 19-65** (*postponed from the meeting of June 20<sup>th</sup>*)

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)**. Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks, Peter Okun, and Caleb Eigsti sat on the case.

**Presentation:** George Tagaris and Ron Shergold presented the application. Mr. Shergold read a statement requesting that the Board amend a condition of a previously-approved Special Permit requiring the installation of a fire sprinkler system. He stated that Mr. Tagares intends to meet that condition, however he requested that its language stipulate that the installation of a particular type of sprinkler system, namely an exterior water wall, would be sufficient to fulfill the condition. He argued that such a system would meet the requirements of the SP and further clarify what he characterized as ‘confusion’ and ‘vague language’ in the condition referring to the sprinkler system. He said that the State Building Code did not require a sprinkler system for the building, however he conceded that the applicant had agreed to the condition at the time of the SP’s approval. He argued that the exterior water sprinkler system would alleviate the concern the Board had at the original SP hearing, which was the close proximity of the eastern abutting structure and its vulnerability if a fire were to break out at the property. He then reviewed a case, involving the property at 506 Commercial Street, that he alleged presented the same situation

and elicited the same concerns from the Board as that at 143 Commercial Street, wherein the applicant was only required to install a water wall and not a sprinkler system. Mr. Shergold argued that the applicant should not be held to a higher standard than what had been previously required of this property. He is asking the Board to impose a similar requirement for the applicant in this situation and added that the exterior water wall would be less of a financial burden.

**Public Comment:** None.

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

**Board Discussion:** Mr. Ribeiro commented that the Board has not received any specifications regarding the exterior water wall proposal, the Town's position is in support of the original SP condition, and the Building Commissioner has expressed concern that the lack of a sprinkler system constituted an on-going safety issue at the site. The front building on the property was allowed to be re-established based on the requirement that an interior sprinkler system be installed in the rear building. According to the Water Superintendent, there is no physical limitation preventing access to the Town's water system, however additional infrastructure would need to be added on the property to accommodate a sprinkler system. His conclusion is that the application is repetitive. The condition was accepted by applicant at the time of the SP approval and that staff recommends the denial of the request in order that the Board does not receive another repetitive application. The Board questioned Mr. Tagaris and Mr. Shergold. Mr. Tagaris said that a test of the water flow from the street had not been done after the Water Dept. calculated mathematically that there was acceptable supply to support a sprinkler system. Mr. Shergold said that the applicant was doing his best to meet the requirement of the condition, although he does not have specific information about the water wall, as he has not been able to get anyone on the property. The Board discussed the matter and reviewed the previous decision and the decision of a previous Building Commissioner concerning the property at 506 Commercial Street. Mr. Ribeiro reminded the Board of their mandate to consider, in its deliberations, any additional burdens a project may place on Town public safety services, such as fire and police.

*Jeremy Callahan moved to grant 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 (TCC), Peter Okun seconded and it was so voted, 2 in favor and 3 (Jeremy Callahan, Peter Okun and Caleb Eigsti) opposed.* The motion failed. Jeffrey Ribeiro will write the decision.

**ZBA 19-74** (continued to the meeting of July 18<sup>th</sup>)

Application by **Peter Brox** 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 replace a 10' by 12' addition with a 20' by 31' addition and to extend an overhang into a pre-existing, non-conforming front yard setback on the structure located at **74 Franklin Street (Residential 3 Zone)**. Steven Latasa-Nicks invoked the Mullin Rule, attesting to the fact that he had watched a video recording of the previous hearing of the case. Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks, Peter Okun, and Caleb Eigsti sat on the case.

**Presentation:** Stephen Magliocco and Peter Brox appeared to discuss the revised plans. Mr. Magliocco reviewed the revisions, including reducing the proposed architectural overhang that aggravated the pre-existing, non-conforming front yard setback, and reducing the size of the proposed addition by setting it back from the main façade and decreasing its width, locating it farther away the north property line. He said the size of the addition has been reduced about 40-50% from the original proposal. Mr. Callahan noted that the building volume was decreased from 12,430 cu. ft. to 8,070 cu. ft.

**Public Comment:** None. There were 13 letters of support for the application.

**Jeremy Callahan 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. Magliocco and Mr. Brox.

**Caleb Eigsti moved to find that 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.**

**Caleb Eigsti 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 replace a 10' by 12' addition with a 20' by 31' addition and to extend an overhang into a pre-existing, non-conforming front yard setback on the structure located at 74 Franklin Street (Res 3), Peter Okun seconded and it was so voted, 5-0.** Jeremy Callahan will write the decision.

#### **ZBA 19-76**

Application by **Provincetown Aquasports, LLC** seeking a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place a sandwich board on the northwest corner of the Freeman Street Town Landing abutting the property located at **335 Commercial Street (Town Commercial Center Zone)**. Peter Okun recused himself because of a conflict of interest. Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks, Susan Peskin, and Caleb Eigsti sat on the case.

**Presentation:** Bill Bonn and Keenan Moffet presented the application. Mr. Bonn explained the need for a sandwich board to be allowed on the property located at 335 Commercial Street is because his business is located on the waterfront, somewhat of a distance from the street. He said he has the permission to do so from the owner of the business against which the sign leans.

**Public Comment:** Peter Okun, an abutting business owner, spoke of his concern about the sign being a tripping hazard.

**Jeremy Callahan moved to close the public portion of the hearing, Steven Latasa-Nicks seconded and it was so voted, 5-0.**

**Board Discussion:** The Board questioned Mr. Bonn. He is aware of not creating a tripping hazard for the public and will locate the sign appropriately.

**Steven Latasa-Nicks moved to find that the social, economic and other benefits of the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Caleb Eigsti seconded and it was so voted, 5-0.**

**Steven Latasa-Nicks moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place a sandwich board on the northwest corner of**

*the Freeman Street Town Landing abutting the property located at 335 Commercial Street (TCC), Caleb Eigsti seconded and it was so voted, 5-0.*

#### **ZBA 19-77**

Application by **Paul Nesbit** seeking a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place items for retail sale on the front of the structure located at **349 Commercial Street (Town Commercial Center Zone)**. Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks, Susan Peskin, and Caleb Eigsti sat on the case.

**Presentation:** Paul Nesbit presented the application. He explained what items would be displayed outside the store, including torsos of mannequins that display his products and attract customers to his business, and he assured the Board that they are on private property.

**Public Comment:** None.

*Jeremy Callahan moved to close the public portion of the hearing, Steven Latasa-Nicks seconded and it was so voted, 5-0.*

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

*Caleb Eigsti moved to find that the social, economic and other benefits of the project outweigh any adverse effects such as hazard, congestion or environmental degradation, Steven Latasa-Nicks seconded and it was so voted, 5-0.*

*Caleb Eigsti moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place items for retail sale on the front of the structure located at 349 Commercial Street (TCC), Steven Latasa-Nicks seconded and it was so voted, 5-0.*

#### **ZBA 19-78**

Application by **Dol-Fin Development, LLC** seeking a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, B7, Parking Lots, garages, of the Zoning By-Laws to establish a parking lot on the property located at **3 Cudworth Street (Residential 3 Zone)**. Jeremy Callahan, Daniel Wagner, Steven Latasa-Nicks, Susan Peskin, and Caleb Eigsti sat on the case.

**Presentation:** Lyn Plummer presented the application. She described the property as overgrown and littered with garbage when it was purchased in 2016. The lot has since been cleaned up and covered with gravel. She explained that the applicant was asking to create and deed two parking spaces to the residential units at 16 Cudworth Street, a property also owned by the applicant, and which did not have parking spaces associated with them. She said that the applicant was planning on developing housing, potentially a year-round rental or market-rate unit, on the site. Mr. Ribeiro commented on the project and why the applicant was requesting a parking lot, explaining that the applicant will be required to request a curb cut for the property and apply for site plan review from the Planning Board. The Board needs to be concerned with any impacts of the use on any adjacent, access or other serving roads, whether public or private, in the neighborhood, including carrying capacity, both during and after construction and about the hazards of having vehicles backing out onto Cudworth Street. He said that if the Board approved the application, it would be for a parking lot with two spaces, not for one on the entire property, and if the applicant wanted the remainder of the lot to be used as such, another SP would be required. He

recommended that the Board continue the application until the applicant submits a clearer application regarding the proposed use of the lot and a plan showing such.

**Public Comment:** Michael Perry and Paul Houlihan, abutters, and Peter Gallagher spoke in opposition to the application. Sextus Norden and Brad Williams, both abutters, had clarification questions about the application and Neil Korpinen, an abutter, spoke in support of the application.

**Board Discussion:** The Board discussed Mr. Ribeiro's comments and agreed to continue the matter, as did Ms. Plummer who requested a continuance to the Public Hearing of September 19, 2019 at 6:30 P.M.

***Steven Latasa-Nicks moved to continue ZBA 19-78 to the September 19, 2019 Public Hearing, Caleb Eigsti seconded and it was so voted, 5-0.***

**NEXT MEETING:** The next meeting will take place on Thursday, August 1, 2019 in the Judge Welsh Room. It will consist of a Work Session at 6:00 P.M. and a Public Hearing at 6:30 P.M.

**ADJOURNMENT:** *Caleb Eigsti moved to adjourn the Public Hearing at 8:30 P.M., Steven Latasa-Nicks seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

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