

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
February 21, 2013**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon and Leif Hamnquist (departed at 9:45 P.M.).

**Members Absent:** Joe Vasta (excused).

**Others Present:** Russ Braun (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Chair David Nicolau called the Work Session to order at 6:30 P.M.

**PENDING DECISIONS:**

**FY13-30**      **132 Commercial Street (Town Commercial Center Zone), William N. Rogers, II, P.E. & P.L.S., on behalf of 132 Condominium Trust –**  
Robert Littlefield, Amy Germain, Harriet Gordon and Leif Hamnquist sat on the case. Harriet Gordon read the decision. *Robert Littlefield moved to approve the language as written, Leif Hamnquist seconded and it was so voted, 3-0.*

The Board briefly discussed Article 5, Section 5300. Also discussed was the idea of creating a template for writing decisions. David recommended discussing the issue further at the next meeting. He suggested that the next time a decision for a Special Permit under Article 3, Section 3110 is written, the Board, after the 20-day appeal period, will analyze the decision with the intent of creating a template for 3110 decisions. The Board will then continue that process with subsequent decisions dealing with other Sections of the Zoning By-laws.

**MINUTES: February 7, 2013 – Amy Germain moved to approve the language as written, Tom Roberts seconded and it was so voted, 4-0.**

Chair David Nicolau adjourned the Work Session at 7:00 P.M.

**PUBLIC HEARING**

Chair David Nicolau called the Public Hearing to order at 7:00 P.M. There were six members of

the Zoning Board of Appeals present and one absent.

**POSTPONED CASES:**

**FY13-25 32 Ship’s Way Road (*Residential 1 Zone*), Pavel Fiodarau on behalf of Paul Gable and Tony Lopez –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along pre-existing, non-conforming lot lines and/or a Variance under Article 5, Section 5222 of the Zoning By-Laws to construct an attached farmer’s porch and an attached garage.

**FY13-26 32 Ship’s Way Road (*Residential 1 Zone*), Pavel Fiodarau on behalf of Paul Gable and Tony Lopez –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along pre-existing, non-conforming lot lines and for a Variance under Article 5, Section 5222 of the Zoning By-Laws to construct a farmer’s porch and a detached garage within existing setbacks. David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on both cases.

**Presentation:** Attorney Robin B. Reid, Paul Gable, Tony Lopez and Pavel Fiodarau appeared to present the application. The applicants seek to renovate the existing structure by adding a dormer, a farmer’s porch and a garage. The difference between the two cases involves the location of the garage; the former proposes an attached garage, the latter a free-standing garage. The lot is triangular and therefore has two front yard setbacks and one side yard setback for zoning purposes. The existing structure is non-conforming with respect to both front yard setbacks. Attorney Reid stated that the proposed dormer will allow for more headroom on the upper floor. It would go up and along pre-existing, non-conforming lines and would not intrude further into the front yard setback. She contended that the dormer would have no detrimental effect on the neighborhood. The applicants are seeking relief, in the form of a Variance, from the non-conforming front yard setbacks to add a porch and a garage. The existing porch, which is currently unsafe and needs to be removed, intrudes into the front yard setback and although the proposed porch will not intrude as far, it will be longer in length. The applicants seek an outdoor seating area and the difference in elevation between the exterior door opening and the yard makes another porch a logical choice. The applicants, who currently live out of town but plan on retiring to live in the house, seek to build a garage for the safe-keeping of their car while they are out of town. The siting of the garage within the setbacks is impossible. There are three requirements that must be met for a Variance. The first is that a literal enforcement of the by-law would result in a substantial hardship, which in this case, Attorney Reid explained, is because of the significant constraints caused by the front yard setbacks. These setbacks constrain the home owner’s ability to create a functional and enjoyable home. The second is that the hardship is owing to circumstances related to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures, but not generally affecting the zoning district in which it is located. In this case the hardship is owing to the triangular shape of the lot. No other lot in the neighborhood is of a

triangular shape with two front yards that so limit the property. The third is that relief can be granted without substantial detriment to the public good or nullification of, or substantial derogation from, the purpose of the By-Law. Upon examination of the assessor's map of the neighborhood and the photos submitted, Attorney Reid explained the Board could see how the presence of the porch and garage would have very little impact on each of the abutting properties. None of the neighbors would suffer as a result of the addition of the proposed porch and garage because their privacy would be maintained and protected, thus not derogating from or nullifying the setback By-Law. Attorney Reid encouraged the Board members to do a site visit. She also suggested that the applicants would be willing to put up vegetative barriers or any other conditions that the Board thought necessary.

**Documents Submitted:** Plot plans, one preliminary and one final, by Felco, Inc., dated 11/14/12, each showing a different location for the proposed garage, an Assessor's map, six pictures of the lot and structure and a Non-Conforming Situation Checklist.

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

**Board Discussion:** The Board questioned Attorney Reid. Amy Germain saw no detriment in the proposed dormer or porch, however she thought that attaching the garage to the existing structure was the least visually destructive and the most advantageous to the applicants. Robert Littlefield thought the dormer was not substantially more detrimental, however he was unclear as to what the substantial hardship was. Tom Roberts agreed with that the criteria for a Variance had been met. David Nicolau agreed that the criteria for a Variance had been satisfied and explained that the substantial hardship was that this property did not get to enjoy what every other property can and what the Zoning By-Laws allow other properties to do. The uniqueness of the lot is its triangular shape and other lots in the neighborhood do not suffer from that detriment. He also agreed that the garage should be attached to the existing structure. Harriet Gordon agreed with the other Board members.

**FY13-25** *Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along pre-existing, non-conforming lot lines and a Variance under Article 5, Section 5222 of the Zoning By-Laws to construct an attached farmer's porch and an attached garage at the property located at 32 Ship's Way (Res 1) with the condition that an updated, final plot plan be submitted showing the garage attached to the existing structure, Tom Roberts seconded and it was so voted, 5-0. Robert Littlefield will write the decision.*

**FY13-26** *Attorney Reid requested a withdrawal of Case #FY13-26. Amy Germain moved to grant the request to withdraw Case #FY13-26, Robert Littlefield seconded and it was so voted, 5-0.*

**FY13-28**

**141 Bradford Street, Town Commercial Center Zone, Joseph Freitas on behalf of 141 Bradford Natural Market –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the increase in interior non-service seating from six seats to eighteen seats. David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

**Presentation:** John DeSouza, Chris Getman and Joe Freitas appeared to present the application. The applicants seek to add seats to the establishment, which is a mixed use commercial building. There will be no change in the use of the building, which is a retail market. The increase in seating will be located within the existing seating area. The septic capacity can accommodate the increase in seating. Mr. DeSouza stated that the additional seating is in keeping with the goals and objectives of the Local Comprehensive Plan, Chapter 1, Goal 1, Policy B, Goal 2, Policy A and Chapter 5, Goal 1, Goal 1, Policy A and B and Goal 5. He also contended that the increase in seating will not create any hazard, congestion or environmental degradation. The addition of seats will increase the food service options for the year round population, increase the local tax base and bring further employment opportunities to the community.

**Public Comment:** Sean McNulty, Tony Zampella, Michael Rogovsky and Anne Okun spoke in favor of the application. There were 7 letters and a petition signed by 240 individuals in support of the application.

**Board Discussion:** There was a question about the adequacy of the floor plan submitted and the ability of the existing seating area to accommodate more seats. Russ Braun said that he would look at that. David Nicolau suggested that since more people may be visiting the market, the applicant may want to consider putting exterior convex mirrors in the parking area for safety purposes.

**Amy Germain moved to grant Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the increase in interior non-service seating from six seats to eighteen seats at the property located at 141 Bradford Street (TCC), Robert Littlefield seconded and it was so voted, 5-0.** Amy Germain will write the decision.

**FY13-23**

**7 Browne Street (Residential 3 Zone), Joseph Freitas –**

The applicant seeks a Special Permit under Article 2, Section 2640 and Article 3, Section 3110 of the Zoning By-Laws to construct a second floor deck addition up and along pre-existing, non-conforming setbacks on a single family dwelling and for a deviation in building scale. David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Leif Hamnquist sat on the case.

**Presentation:** John DeSouza, Joe Freitas and Chris Getman appeared to present the application. The applicant seeks to expand an exterior deck by approximately 10' by 13' which will allow an additional egress from the main living area on the second floor and will redirect the existing stairs directly into the rear yard. The additional egress will increase safety and allow better access to the rear yard. According to Mr. DeSouza, the increase in the deck will not be substantially more detrimental to the neighborhood than what exists. The proposed increase in scale is owing to the space created below the deck and thus the impact of mass upon the

building is less than if a porch or addition were added. The existing scale is 36,950 cu. ft. and the proposed scale is 38,620 cu. ft., an increase of 3.96%. The project is in keeping with the goals and objectives of the LCP, Chapter 1, Goal 1, Policy B, Goal 2, Policy A and Chapter 4, Goal 2, Policy A. The proposed renovations will not be out of character with the rest of the neighborhood, harmonious with the surrounding area and of limited visibility. The project also conforms to Article 2, Section 2640, subparagraph 5. There will be no adverse effects such as hazard, congestion or environmental degradation as a result of the proposal.

**Public Comment:** Michael Rogovsky spoke in favor of the application. There were 9 letters; 8 from abutters and 1 from a non-abutter, in favor of the application.

**Board Discussion:** The Board agreed that the project was not more detrimental to the neighborhood than what existed. Amy Germain thought that the increase in the scale would not result in a structure that was harmonious with the neighborhood as it was already twice the neighborhood average scale. Robert Littlefield thought that adding a deck would not create the appearance of more mass as would an addition. David Nicolau reminded the Board that once the deck is built, the area beneath can be enclosed. Tom Roberts and Leif Hamnquist had no issues as long as the applicant agreed that the area beneath the deck remain open.

**Tom Roberts moved to grant a Special Permit under Article 2, Section 2640 and Article 3, Section 3110 of the Zoning By-Laws to construct a second floor deck addition up and along pre-existing, non-conforming setbacks on a single family dwelling and for a deviation in building scale at the property located at 7 Browne Street (Res 3) with the condition that the area beneath the deck not be enclosed, Amy Germain seconded and it was so voted, 5-0.** Tom Roberts will write the decision.

**FY13-29      99 Commercial Street (Residential 2 Zone), Lora Papetsas of Sal's Place, Inc. -**

The applicant seeks the renewal of a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for a full service, sit-down bar with 10 bar stools. David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

**Presentation:** Lora Papetsas, Attorney Donna Robertson and Anthony Zampella appeared to present the application. The applicant seeks a renewal of a Special Permit with the same conditions as imposed by the Board, except that she would like further clarification of the condition that stated that the front dining room door shall be closed at all times. Attorney Robertson explained that the conditions imposed by the Board were followed and supported Ms. Papetsas in the success she has had in the neighborhood's acceptance and in her business. The condition that the front dining room door be closed at all times has helped with the noise emanating from the restaurant, however patrons do use the door occasionally for access. She is asking whether the door can continue to be used as an access even though it remains closed during the restaurant's hours of operation. The use of the

door as an ingress and egress is necessary for the safety of the patrons and to aid in the flow of patrons and employees inside the restaurant in order to avoid crowding at the side entrance.

**Public Comment:** Matt Mulvey, Gary Reinhardt, Irv Morgan, Joseph Casto, Michael Rogovsky and Peter Okun spoke in support of the application. Joy Long and Helen Valentine spoke in opposition to the application. There were 18 letters; 9 from abutters and 9 from non-abutters, in support of the application and 1 letter in opposition to the application.

**Board Discussion:** The Board questioned Attorney Robertson, Ms. Papetsas and Mr. Zampella about the use of the front dining room door. David Nicolau asked about a sign that he saw on the front door that said ‘Afternoon Happy Hour’. Mr. Zampella said that the sign says ‘Wine Bar open at 4:30’ and that the bar is open at that time an hour before the restaurant opens in order to attract people coming from the beach. Amy Germain thought that the conditions should remain as is, suggested that re-configuring the dining area would increase the flow of patrons and employees and that the front door should be used for emergency purposes only. Robert Littlefield was agreeable to the door being used for ingress and egress purposes, but wouldn’t want it to become the primary door. Harriet Gordon did not see the detriment to using the door periodically and only when needed and that it was important to be cognizant of noise coming out of the restaurant. Tom Roberts agreed. David Nicolau was not comfortable with the request for a renewal that included a change in the conditions and is opposed to the use of the front door.

*Amy Germain moved to grant the renewal of a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for a full service, sit-down bar with 10 bar stools at the property located at 99 Commercial Street (Res 2) with the same conditions except that the Special Permit shall expire on January 2, 2017, Harriet Gordon seconded and it was so voted, 5-0. Harriet Gordon will write the decision.*

**FY13-31**

**27 Winthrop Street (Residential 3 Zone), Joseph Casto –**

The applicant seeks a Special Permit under Article 2, Section 2440, B4, of the Zoning By-Laws to operate a barbershop. David Nicolau recused himself because of a conflict of interest. Robert Littlefield disclosed that he is a client of the barbershop, but he has filed a disclosure form and has gotten the permission of the Board of Selectmen to sit on the case as he has no financial interest in the outcome of the case and is able to render a decision in a fair and impartial manner. Amy Germain chaired the case. Robert Littlefield, Tom Roberts, Harriet Gordon and Leif Hamnquist also sat on the case.

**Presentation:** Joseph Casto appeared to present the application. He seeks to open a second location in Town in order to offer more services to residents and tourists. He will be able to hire more year round employees. He said that his application is consistent with the goals and policies of the LCP, Chapter 5, 5.2, Goal 1, Policy B and Policy D.

**Public Comment:** Peter Okun spoke in support of the application. There were 12 letters; 10 from abutters, and a petition with 8 abutters’ signatures in support of

the application.

**Board Discussion:** Russ Braun provided some background information about the property and the businesses that had been operating at the site. The previous uses of the building as pilates studios were never lawfully permitted. The use of the building as a commercial establishment exists under the use table if the use existed prior to October 1, 2006, which it did. The Board has to grant a Special Permit for the proposed use so that is now on record as an established and permitted use.

**Tom Roberts moved to grant a Special Permit under Article 2, Section 2440, B4, of the Zoning By-Laws to operate a barbershop at the property located at 27 Winthrop Street (Res 3), Robert Littlefield seconded and it was so voted, 5-0.**

Tom Roberts will write the decision.

**FY13-32**

**334 Commercial Street (Town Commercial Center Zone), Peter and Ann Okun/Broken Wheel Farm, LLC, d/b/a Purple Feather Café –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of wine, malt and cordials to patrons for indoor consumption only. David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

**Presentation:** Peter and Ann Okun appeared to present the application. The applicant seeks to renew the Special Permit granted by the Board over a year ago. Mr. Okun explained that they were denied their license by the Licensing Board after being granted that Special Permit last year. They appealed and the decision in their favor was rendered last month.

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

**Board Discussion:** The Board had no questions for the applicant.

**Amy Germain moved to renew the Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of wine, malt and cordials to patrons for indoor consumption only at the property located at 334 Commercial Street (TCC) with the condition that the permit expire on January 9, 2014, Robert Littlefield seconded and it was so voted, 5-0.**

**NEXT MEETING:** The next meeting will take place on March 7, 2013. It will consist of a Work Session at 6:15 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Amy Germain moved to adjourn at 10:00 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on March 7, 2013  
David Nicolau, Chair