

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
March 7, 2013**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** David Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon, Joe Vasta and Leif Hamnquist.

**Members Absent:** Tom Roberts (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 6:15 P.M.

**PENDING DECISIONS:**

**FY13-25**      **32 Ship's Way Road (*Residential 1 Zone*), Pavel Fiodarau on behalf of Paul Gabel and Tony Lopez –**  
David Nicolau, Amy Germain, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the case. Robert Littlefield read the decision. *Amy Germain moved to approve the language as written, Robert Littlefield seconded and it was so voted, 4-0.*

The Board discussed the decision.

**FY13-28**      **141 Bradford Street, (*Town Commercial Center Zone*), Joseph Freitas on behalf of 141 Bradford Natural Market –**  
David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case. Amy Germain read the decision. *Robert Littlefield moved to approve the language as written, Harriet Gordon seconded and it was so voted, 4-0.*

**FY13-23**      **7 Browne Street (*Residential 3 Zone*), Joseph Freitas –**  
David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Leif Hamnquist sat on the case. Amy Germain read the decision. *Robert Littlefield moved to approve the language as amended, Harriet Gordon seconded and it was so voted, 3-1 (Amy Germain opposed).*

**FY13-31**      **27 Winthrop Street (*Residential 3 Zone*), Joseph Casto –**  
Amy Germain, Robert Littlefield, Tom Roberts, Harriet Gordon and Leif Hamnquist sat on the case. Robert Littlefield read the decision. The approval of

the decision was tabled.

Chair David Nicolau postponed the Work Session at 6:58 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.

*Amy Germain moved to take Case FY13035 out of order, Robert Littlefield seconded and it was so voted, 6-0.*

### **NEW CASES:**

**FY13-35**     **359 Commercial Street, Unit H (Town Commercial Center Zone), Cassandra Benson of Harbor Lounge, Inc., on behalf of 3 Old Dogs, Inc. –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the rearrangement of seating and to extend the hours of operation from 10:00 P.M. to 11:00 P.M. Gerry Anathan, representing Cass Benson, appeared to request a postponement until the March 21, 2013 Public Hearing.

*Robert Littlefield moved to grant the request to postpone Case #FY13-35 until the March 21, 2013 Public Hearing, Harriet Gordon seconded and it was so voted, 5-0.*

**FY13-33**     **174 Commercial Street (Town Commercial Center Zone), Steven D. Lyons –**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of art contained in a cabinet. David Nicolau and Joe Vasta recused themselves because of conflicts of interest. Vice Chair Robert Littlefield explained to the applicant that since there were only four members of the Board seated on the case and the granting of a Special Permit required four assenting votes, he had the choice of moving forward or postponing until a five-member Board could be seated. The applicant requested to postpone until the April 4, 2013 Public Hearing.

**FY13-34**     **269 Commercial Street (Town Commercial Center Zone), Benjamin E. Zehnder, Attorney, on behalf of El Mundo, LLC –**

The applicant seeks a Special Permit under Article 2, Section 2460 for outdoor seating for 20 patrons in the rear portion of the property on a flex-seating basis and to run with the applicant on an on-going basis. David Nicolau and Leif Hamnquist recused themselves because of conflicts of interest. Vice Chair Robert Littlefield explained to the applicant that since there were only four members of the Board seated on the case and the granting of a Special Permit required four assenting votes, he had the choice of moving forward or postponing until a five-member Board could be seated. Attorney Zehnder chose to proceed if given the chance to poll the Board prior to a vote.

**Presentation:** Attorney Ben Zehnder and Bea Chamberlain appeared to present the application. According to Attorney Zehnder, there will be no change to the seating arrangement that was previously approved by the Board. This seating arrangement has been operating for a year without issues. The applicant is requesting that the Board grant the Special Permit with the condition that the Special Permit run with the applicant and not the site, however she is seeking to remove the restriction that the Special Permit is only valid for a year in order to save the Board's time and her expense in returning annually for renewal.

**Public Comment:** Judy Cicero, the applicant's landlord, read a letter in support of the application. There were no other letters in the file.

**Board Discussion:** Joe Vasta and Harriet Gordon had no questions. Amy Germain asked for a clarification regarding the seating plan and the plot plan and asked if any noise complaints had been reported to the Police Dept. Neither the staff nor the applicant was aware of any reports. The Board had no other concerns.

*Amy Germain moved to grant a Special Permit under Article 2, Section 2460 for outdoor seating for 20 patrons in the rear portion of the property on a flex-seating basis and to run with the applicant on an on-going basis at the property located at 269 Commercial Street (TCC), Harriet Gordon seconded and it was so voted, 4-0.* Robert Littlefield will write the decision.

**FY13-36      212-214 Commercial Street (Town Commercial Center Zone), Ben deRuyter, on behalf of New Art Realty Corp. –**

The applicant seeks to amend Special Permit 2007-065 under Article 2, Section 2460 to reconfigure the restaurant and bar seating layout. David Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon and Joe Vasta sat on the case.

**Presentation:** Ben deRuyter appeared to present the application. The applicant seeks to reconfigure the seating layout of the food and beverage area in order to accommodate a new tenant. He is also proposing to section off a portion of the dining area on the east side of the building for a retail space. No exterior work will occur. Mr. deRuyter seeks to eliminate an old flex-seating plan that anticipated four separate seating scenarios depending upon which of the two theaters was opened or closed. The plan was hard to manage and difficult to enforce. A flow calculation chart for the proposed seating was submitted to the Board for its consideration. The 78 fast food restaurant seats will remain the same as will the number of theater seats, however the latter will change designation from movie theater to performance venue and lower the required gallons. 17.5 gallons will be allocated to the 350 sq. ft. retail space.

**Public Comment:** Paige Mansfield, Mr. deRuyter's new tenant, spoke in support of the application.

**Board Discussion:** Harriet Gordon asked for a clarification of the number of seats for the entire site. Mr. deRuyter replied that the number of seats will remain static. Robert Littlefield was concerned about congestion when shows were operating at the site. Mr. deRuyter indicated that the show times are staggered and the doors are opened 30 to 45 minutes in advance of performance times in order to avoid congestion in the bar/eating area. Robert Littlefield suggested conditioning the

Special Permit with measures to ensure that crowding is eliminated. This issue will fall under the purview of the Building Commissioner. Mr. deRuyter intends upon operating the food service and bar on a year-round basis, with a lengthy break during January and February, although that will depend upon the financial viability of that plan. The Board discussed requiring that the Special Permit run with the applicant and not the property.

***Robert Littlefield moved to grant the request to amend Special Permit 2007-065 under Article 2, Section 2460 to reconfigure the restaurant and bar seating layout at the property located at 212-214 Commercial Street (TCC) with the condition that the Special Permit run with the applicant and not the property, Joe Vasta seconded and it was so voted, 5-0. Harriet Gordon will write the decision.***

**FY13-37      320 Bradford Street (Residential 3 Zone), Mark Kinnane of Cape Associates, Inc., on behalf of Robena Malicoat –**

The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to change the trellis roof over the existing porch to a solid roof, making it a covered porch. David Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon and Leif Hamnquist sat on the case.

**Presentation:** Mark Kinnane and Robena Malicoat appeared to present the application. Mr. Kinnane explained that the porch could be enclosed about 75% without zoning relief, however a section consisting of 18' needed relief. The allowable scale for the neighborhood is 34,945 cu. ft. The proposed scale is 35,930 cu. ft. The increase is 985 cu. ft. or 98.5 sq. ft. of covered porch, which is an increase of 2.8% over the allowable scale. While adding the solid roof, the proposal will also include eliminating an additional area of 28' by 6' of covered roof that connects the garage and the house. This 1680 cu. ft. of covered porch does not count as part of the main house scale calculation. The overall lot coverage will be reduced by 168 sq. ft. The change will increase the tax base of the property. No congestion or environmental degradation will occur as a result of this change. The streetscape is dominated by a large hotel abutting the property. The scale of the existing structure is 4.9 times smaller than that structure.

**Public Comment:** None. There were 4 letters from abutters in support of the application.

**Board Discussion:** Amy Germain asked why the applicant is not sizing the covered porch to remain within the limits of the neighborhood building scale. Mr. Kinnane replied that the porch works better in a visual and architectural way as proposed. The Board was concerned about the future possibility of enclosing the area beneath the porch, which would increase the massing of the house from the streetscape. The Board requested that in the future, Mr. Kinnane submit consistent plans for existing and proposed directional elevations.

***Amy Germain moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to change the trellis roof over the existing porch to a solid roof, making it a covered porch at the property located at 350 Bradford Street (Res 3) with the condition that the space beneath the covered porch will never be enclosed, Robert Littlefield seconded and it was***

*so voted, 5-0.* David Nicolau will write the decision.

**FY13-38      17 West Vine Street (Residential 3 Zone), Mark Kinnane of Cape Associates, on behalf of Peter Rombult –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a covered entry up and along a pre-existing, non-conforming front yard setback and a deck up and along pre-existing, non-conforming front and rear yard setbacks. David Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon and Leif Hamnquist sat on the case.

**Presentation:** Mark Kinnane of Cape Associates appeared to present the application. Mr. Kinnane submitted revised plans showing new window elevations as requested by the Historic District Commission. He requested to be heard under the *Goldhirsh v. McNear* ruling.

***Robert Littlefield moved to hear the case under the Goldhirsh v. McNear ruling, Leif Hamnquist seconded and it was so voted, 4-1 (Amy Germain opposed).***

The applicant seeks to move a door to the front of the structure and cover it with an entry roof over a landing that will be located within the pre-existing, non-conforming setback. A deck is also proposed for the front of the house. The project will increase the structure within the non-conforming front yard setback. Mr. Kinnane contends that the improvement will enhance the neighborhood and will not be substantially more detrimental than what exists, as the structural increase in the non-conforming area will be small.

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

**Board Discussion:** David Nicolau reviewed the criteria for hearing an application under the *Goldhirsh v. McNear* ruling. The Board briefly discussed whether the change was substantially more detrimental than what existed, as the non-conformancy was being increased.

***Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a covered entry up and along a pre-existing, non-conforming front yard setback and a deck up and along pre-existing, non-conforming front and rear yard setbacks at the property located at 17 West Vine Street under the Goldhirsh v. McNear ruling, Harriet Gordon seconded and it was so voted, 5-0.***

David Nicolau adjourned the Public Hearing at 8:27 P.M.

## **WORK SESSION**

David Nicolau reconvened the Work Session at 8:27 P.M.

The Board discussed what members would be present for the next Public Hearing. Amy Germain, Robert Littlefield and Joe Vasta will not be present for the March 21, 2013 Public Hearing. The Board decided to hold an extra Public Hearing on March 28, 2013, where all

members will be present.

**PENDING DECISIONS:**

**FY13-31**     **27 Winthrop Street (Residential 3 Zone), Joseph Casto –**  
Robert Littlefield, Tom Roberts, Harriet Gordon and Leif Hamnquist also sat on the case. The Board discussed the decision and the issues involved in the case. *Amy Germain moved to reconsider the ruling until Town Counsel could be consulted.* No one seconded the motion. Amy suggested some changes to the decision.  
*Robert Littlefield moved to approve the language of the decision as written with the proposed amendments, Harriet Gordon seconded and it was so voted, 3-1 (Amy Germain opposed).*

**MINUTES: February 21, 2013 – Amy Germain moved to approve the language as amended, Robert Littlefield seconded and it was so voted, 5-0.**

**FY13-29**     **99 Commercial Street (Residential 2 Zone), Lora Papetsas of Sal’s Place, Inc. -**  
David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case. Harriet Gordon read the conditions only in the decision. *Amy Germain moved to approve the language as written, Robert Littlefield seconded and it was so voted, 4-0.*

**FY13-32**     **334 Commercial Street (Town Commercial Center Zone), Peter and Ann Okun/Broken Wheel Farm, LLC, d/b/a Purple Feather Café –**  
David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case. Robert Littlefield read the decision. *Amy Germain moved to approve the language as written, Harriet Gordon seconded and it was so voted, 4-0.*

**NEXT MEETING:** The next meeting will take place on March 21, 2013. It will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Amy Germain moved to adjourn at 9:30 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on March 21, 2013  
David Nicolau, Chair