

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
May 2, 2013**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David Nicolau, Robert Littlefield (arrived at 6:48 P.M.), Amy Germain, Joe Vasta, Harriet Gordon and Leif Hamnquist.

Members Absent: Tom Roberts (excused).

Others Present: 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:

- FY13-46** **5 Atlantic Avenue (*Residential 3 Zone*), Chris Beasley on behalf of Jay Zimmerman –**
Robert Littlefield, Tom Roberts, Harriet Gordon, Joe Vasta and Leif Hamnquist sat on the case. Leif Hamnquist read the decision. *Joe Vasta moved to approve the language as written, David Nicolau seconded and it was so voted, 4-0.*
- FY13-43** **50 Commercial Street (*Residential 2 Zone*), Ethan Poulin on behalf of Richard H. Maniace, Jr. –**
David Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon and Leif Hamnquist sat on the case. The applicant has submitted revised plans for the project. Harriet Gordon read the decision. *Joe Vasta moved to approve the language as amended, Leif Hamnquist seconded and it was so voted, 4-0.*
- FY13-41** **15 Commercial Street (*Residential 1 Zone*), David L. Silva on behalf of the Red Inn –**
David Nicolau, Robert Littlefield, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case. David Nicolau read the decision. Amendments to the decision were briefly discussed. The Board will discuss the decision further in the Work Session following the Public Hearing.

Chair David Nicolau postponed the Work Session at 7:01 P.M.

PUBLIC HEARING

Chair David Nicolau called the Public Hearing to order at 7:01 P.M. There were six members of the Zoning Board of Appeals present and one absent.

CONTINUED CASE:

FY13-42 133 Commercial Street (Town Commercial Center Zone), Audrey L. Mostaghim on behalf of Lorraine Najjar and Diarmuid O'Neil –
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for a reduction in seating from 87 seats to 74 seats. There was a request from the applicant to withdraw the application without prejudice. **Robert Littlefield moved to grant the request to withdraw Case #FY13-42 without prejudice, Leif Hamnquist seconded and it was so voted, 5-0.**

POSTPONED CASES:

FY13-54 173 Bradford Street (Residential 3 Zone), William N. Rogers, II, P.E., P.L.S., on behalf of Young's Court East Condominium –
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-laws for the renovation of an existing structure including modifying existing dormers and creation of a roof deck up and along pre-existing, non-conforming setbacks. There was a request from the applicant to postpone the case until the May 16, 2013 Public Hearing. **Joe Vasta moved to grant the request to postpone Case #FY13-54 until the May 16, 2013 Public Hearing, Robert Littlefield seconded and it was so voted, 5-0.**

FY13-40 44-48 Winslow Street (Residential 3 Zone), William N. Rogers, II, P.E., P.L.S. on behalf of Winslow Trading Company –
The applicant seeks a Special Permit under Article 2, Section 2440 of the Zoning By-Laws to construct six buildings with eleven two-bedroom dwelling units. David Nicolau recused himself because of a conflict of interest. Vice Chair Robert Littlefield announced that the Board had received a request from the applicant to postpone the case until the May 16, 2013 Public Hearing. **Amy Germain moved to grant the request to postpone Case #FY13-40 until the May 16, 2013 Public Hearing, Leif Hamnquist seconded and it was so voted, 5-0.**

NEW CASES:

FY13-49 16 Harry Kemp Way (Residential B Zone), Joy Futch Reis –
The applicant seeks a Special Permit under Article 4, Section 4800 of the Zoning By-laws to amend the deed restriction on a previously-approved decision (Case #2005-41) from two existing affordable rental units to ownership units. David Nicolau recused himself because of a conflict of interest. Robert Littlefield, Amy Germain, Harriet Gordon, Joe Vasta and Leif Hamnquist sat on the case. **Presentation:** Joy Futch Reis presented the application. Ms. Reis is selling all of the other units on the lot and would like to be able to sell the units in question that are deed-restricted as affordable rental units to affordable ownership units. In

consultation with the Town housing specialist, Michelle Jarusiewicz, she has not been able to find a buyer, such as a housing organization, to purchase the units and continue to keep them as affordable rental units. Ms. Reis cannot afford to keep them. She has also spoken with realtors who informed her that there is not a large market of buyers looking to own affordable rental units. She has not advertised the units on the market herself, but has only relied on Ms. Jarusiewicz's housing organization contacts.

Public Comment: None. There were 2 letters in support of the application. There was a letter from an abutting condominium association concerning a fence that is located next to its property line that the Board decided was not relevant to the discussion. There was a letter from Michelle Jarusiewicz recommending that the Board approve the applicant's request. Rex McKinsey provided a point of information that there are many qualified affordable ownership candidates in Town.

Board Discussion: The Board was concerned about changing the status of the units in light of the Town's long-standing need for affordable rental versus affordable ownership units and discussed the issue. The Board decided that it would like more information from Michelle Jarusiewicz to fully understand this issue. Vice Chair Robert Littlefield ruled that the Board would continue the case until information from Ms. Jarusiewicz was obtained. Amy Germain suggested that the Board submit several questions or pieces of information to Ms. Jarusiewicz to which she could give a written response or that she would be prepared to answer and discuss if she appeared before the Board.

Amy Germain moved to continue Case #FY13-49 until the May 16, 2013 Public Hearing, Harriet Gordon seconded and it was so voted, 3-0-2. (Robert Littlefield and Joe Vasta abstaining).

FY13-50

1 High Pole Hill Road (Residential 3 Zone), John McDonagh on behalf of the Cape Cod Pilgrim Memorial Association –

The applicant seeks a Special Permit under Article 3, Sections 3230 and 3240 of the Zoning By-Laws to exceed the maximum allowable square footage for signage by adding one new 7' by 6' sign at the entrance stairs to the building and for a modification of a pre-existing 2 ½' by 4' to a 7' by 6' exit sign. David Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: John McDonagh presented the application. The applicant seeks to add a sign and enlarge a sign in the parking lot. The signs are for welcome and exit purposes and will potentially guide visitors who are just utilizing the parking lot on the property to experience the monument and museum. The signs will, according to Mr. McDonagh relieve congestion when coupled with new parking protocol and will pose no threat or hazard to the environment.

Public Comment: Attorney Christopher J. Snow, who is a trustee of the Cape Cod Pilgrim Memorial Association, spoke in favor of the application. There were no letters in the file.

Board Discussion: The Board questioned Mr. McDonagh about other signs and visual aids, such as arrows on the pavement, on the property, including their size,

location, number and visibility. Not all Board members had done a site visit, so David Nicolau suggested that those Board members who had not yet been up to the property with this proposal in mind should visit the location. The Board discussed the flow of traffic on the property and the size and location of the proposed signs. The Board was concerned about the large size of the proposed signs and discussed reducing the size of both signs.

David Nicolau moved to approve the sign at the entrance stairs to the building as presented, but to require the proposed 7' by 6' exit sign remain the same size, approximately 3 1/2' by 5', as the sign at the entrance to the parking lot and the sign at the bottom of Bradford Street, Joe Vasta seconded.

The Board discussed the motion.

The motion was so voted, 3-2 (Robert Littlefield and Amy Germain opposed).

The motion does not pass.

Amy Germain moved to continue Case #FY13-50 until the May 16, 2013 Public Hearing, Leif Hamnquist seconded and it was so voted, 5-0.

FY13-51 1 MacMillan Wharf (Town Commercial Center Zone), Rex McKinsey on behalf of the Provincetown Public Pier Corporation –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of arts and crafts at the trap sheds. David Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Rex McKinsey presented the application. This is the renewal of an existing Special Permit. The artists' trap sheds are 10' by 10' and are a revenue source for the PPPC, at the same time allowing emerging artists to display and sell their artwork. The front and side of the trap sheds are used for outside display of artwork and crafts and do not impede the progress of people walking on the Pier. The sidewalk is 10' wide and unobstructed where the traps sheds are located.

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

Board Discussion: The Board had no issues with the application.

Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of arts and crafts at the trap sheds at the property located at 1 MacMillan Wharf (TCC) with the following conditions:

- *The artists' area is not specifically the trap sheds, but is that area delineated in the General Findings of the previous Special Permit decision;*
- *No tables or shelves should be greater than 18" deep;*
- *Displays, pieces of artwork or crafts shall not project more than 18" beyond the exterior wall of the trap sheds;*
- *No more than 12 pieces of art or craft shall be displayed on each exterior wall or shelving unit;*
- *No outdoor display shall restrict the movement of pedestrians on the walkway;*
- *All outdoor displays and associated fixtures shall be removed at the close of each business day;*

- *Each artist's display space shall not be larger than the front or side exterior wall of the trap shed within the established artists' area;*
- *If, in the sole opinion of the PPPC, and in accordance with the PPPC trap shed leases, additional restrictions are needed, they may be imposed without further modification of the Special Permit conditions;*
- *The Special Permit must be exercised within a twenty-four month period or it shall lapse; and*
- *The Special Permit shall exist in perpetuity unless there is any change in these conditions.*

Joe Vasta seconded and it was so voted, 5-0. Amy Germain will write the decision.

FY13-52 10 Commercial Street, Unit 16, (Residential 1 Zone), Ellen Rosenfeld, Attorney, on behalf of Candace Nagle –

The applicant seeks a Special Permit and/or Variance under Article 2, Section 2440 (A2) and Article 3, Section 3110 of the Zoning By-Laws to alter a pre-existing, non-conforming use by converting one dwelling unit into two dwelling units. David Nicolau recused himself because of a conflict of interest. Robert Littlefield, Amy Germain, Harriet Gordon, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Attorney Ellen Rosenfeld and Candace Nagle presented the application. Attorney Rosenfeld gave a brief history of the unit that was a single unit when Delft Haven was established in 1977. In May of 1982, it was divided into two units. In April of 2002, the Zoning District, previously designated as a multi-family zone, was changed to Residential 1, which is a zone of primarily single family homes. In June of 2002, the two, separate units were combined, thus the single-family use of the two dwelling units was abandoned. The applicant seeks now to divide the two dwelling units. Attorney Rosenfeld stated that the Board would need to find that the extension, alteration or change was not substantially more detrimental to the neighborhood than what now exists. In order to structurally separate the two units, a cased opening will be closed. She informed the Board that in researching the neighborhood, the dwelling units within 300' consist of 9 single family homes, 3 hotels and approximately 37 condominium units. A Variance requires the Board to find a substantial hardship, financial or otherwise. According to Attorney Rosenfeld, the financial hardship in this case is owing to the fact that the unit has been on the market since 2011, having been reduced in price several times. Another requirement of a Variance is to show a hardship owing to circumstances related to the soil, shape or topography of the land, or structures, and especially affecting such land or structures, but not generally affecting the zoning district in which it is located. Attorney Rosenfeld alleges that there is a hardship in the awkwardness of the structure because the only way to get from the front of one unit into the smaller, second single-story unit is through the master bedroom. If that is the only access, then the smaller should be a separate unit. In order to correct this structural condition, according to a contractor consulted by the applicant, another financial hardship would be created, if that change were even to be approved. She argued

that the proposed change would not derogate from the purpose or intent of the By-Law, which she speculated was for single family uses, although the majority of the neighborhood is multi-use.

Public Comment: None. There were 2 letters in support and 1 letter in opposition to the application.

Board Discussion: The Board discussed the issues involved in the proposed change in order to make a finding under Article 3, Section 3110. The Board ruled that the use cannot return to non-conforming once it was conforming as a single family dwelling unit and commented that that the conversion of single family homes to condominium units could be seen as being, according to many citizens and Town officials, a substantial detriment to the Town in terms of the diminishment of the quality of life and the increased use of municipal services.

Amy Germain moved to deny a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter a pre-existing, non-conforming use by converting one dwelling unit into two dwelling units at the property located at 10 Commercial Street, Unit 16, Leif Hamnquist seconded and it was so voted, 5-0. The Special Permit was denied.

The Board then discussed whether the requirements for a Variance had been met. Attorney Rosenfeld reiterated the issues in the case that she had previously argued met the criteria of a Variance. The Board discussed the alleged financial and structural hardships involved and if those complied with the Variance requirements. Vice Chair Robert Littlefield polled the Board. There were three members who would vote to deny. The applicant requested to withdraw without prejudice.

Amy Germain moved to deny the request by the applicant to withdraw without prejudice, Leif Hamnquist seconded and it was so voted, 2-3 (Robert Littlefield, Harriet Gordon and Joe Vasta opposed). The motion failed.

Joe Vasta moved to grant the request by the applicant to withdraw without prejudice, Harriet Gordon seconded and it was so voted, 3-2 (Amy Germain and Leif Hamnquist opposed).

FY13-53 **43 Pleasant Street (Residential 3 Zone), Peter Sylvester** – The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second story addition up and along a pre-existing, non-conforming side and rear yard setbacks to an existing garage for a proposed garage/artist studio building. David Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Gary Reinhardt presented the application. The property contains two residential units in a main house and a garage. The applicant seeks to put a second floor on the garage and use it as a home office/artist studio. The garage will retain the same footprint. The existing non-conformancies are that the garage encroaches into the north side yard and the rear yard setbacks. These non-conformancies will not change as a result of the proposed project. Mr. Reinhardt argued that the alterations in the garage will not be substantially more detrimental to the neighborhood or Town than what exists. The social benefits to the neighborhood are that the applicant and his partner will be allowed to remain in

their home year round enhancing the vibrancy and character of the neighborhood and Town. The economic benefit is that there will be an increase in property tax revenue due to the changes made to the garage. Mr. Reinhardt argued that there would be no detrimental effects as a result of the project. The Local Comprehensive Plan encourages and promotes the viability of a year round community and encourages and promotes the renovation of existing structures to maintain the integrity of neighborhoods. The applicable sections are Chapter 1, Section 1.2, Goal 1, Policy B and Chapter 5, Section 5.2, Policy E, Goal 7. **Public Comment:** Mary Jean Lauzier spoke in favor of the application. There were 11 letters in support, 1 letter with concern and 1 letter in opposition to the application.

Board Discussion: The Board questioned Mr. Reinhardt about the use of the garage. The Board was concerned about the potential development of the garage into a dwelling unit. There was a suggestion that the downstairs of the garage remain undeveloped and be used as a storage area only, that the bathroom contain only a sink and toilet and that no kitchen be allowed. The Board inquired if the plans had been shown to the Health Agent, given that a shower was proposed. The Board stated that garage is an accessory use and is not habitable for sleeping purposes. The Board suggested that the applicant replace the windows on the east side/rear of the garage with smaller windows, such as a transom-style or something similar.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second story addition up and along a pre-existing, non-conforming side and rear yard setbacks to an existing garage for a proposed garage/artist studio building at the property located at 43 Pleasant Street (Res 3) with the conditions that transom/square windows shall be installed on the rear/east side of the structure and that the structure be limited to an accessory use and shall not be used as a dwelling unit, Joe Vasta seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

Chair David Nicolau adjourned the Public Hearing at 10:10 P.M.

WORK SESSION

Chair David Nicolau reconvened the Work Session at 10:10 P.M.

PENDING DECISION:

FY13-47 5 Ryder Street (Town Commercial Center Zone), Andrew Pollock - Robert Littlefield, Amy Germain, Harriet Gordon, Joe Vasta and Leif Hamnquist sat on the case. Joe Vasta read the decision. **Amy Germain moved to approve the language as written, Leif Hamnquist seconded and it was so voted, 5-0.**

MINUTES: April 18, 2013 – Amy Germain moved to approve the language as written, Leif

Hamnquist seconded and it was so voted, 5-0.

NEXT MEETING: The next meeting will take place on May 16, 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 10:30 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on May 16, 2013
David Nicolau, Chair