

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
May 16, 2013**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon.

Members Absent: Joe Vasta (excused) and Leif Hamnquist (excused).

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

WORK SESSION

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

Chris Beasley appeared to discuss an issue in regard to a deck at 5 Atlantic Avenue that was previously approved by the Board. Mr. Beasley asked if reducing the size of the deck could be administratively approved by the Board at its next Public Hearing. He will submit revised plans reflecting the change. *Robert Littlefield moved to hear the request for a reduction in the size of a deck at 5 Atlantic Avenue, which had been previously approved by the Board in Case #FY13-46, as an Administrative Review, Tom Roberts seconded and it was so voted, 4-0-1 (Amy Germain abstaining).*

PENDING DECISIONS:

FY13-53 **43 Pleasant Street (Residential 3 Zone), Peter Sylvester –**
David M. Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Leif Hamnquist sat on the case. Robert Littlefield read the decision. The Board has not yet received revised plans. *Amy Germain moved to postpone the approval of the decision, Harriet Gordon seconded and it was so voted, 5-0.*

MINUTES: May 2, 2013 – Harriet Gordon moved to approve the language as written, Robert Littlefield seconded and it was so voted, 4-0.

FY13-51 **1 MacMillan Wharf (Town Commercial Center Zone), Rex McKinsey on behalf of the Provincetown Public Pier Corporation –**
David M. Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Leif Hamnquist 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.*

FY13-41 **15 Commercial Street (*Residential 1 Zone*), David L. Silva on behalf of the Red Inn –**
David M. Nicolau, Robert Littlefield, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case. Chair David M. Nicolau asked Board members if they wanted to change their vote on this decision, which was approved at a previous Public Hearing, particularly in light of the absence of a condition that all windows and doors should be closed during hours of entertainment. The Board briefly discussed the issue. ***Robert Littlefield moved to approve the language as read at the March 28, 2013 Public Hearing, Harriet Gordon seconded and it was so voted, 4-0.***

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

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:00 P.M. There were five members of the Zoning Board of Appeals present and two absent.

POSTPONED CASES:

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 M. Nicolau recused himself because of a conflict of interest. Vice Chair Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.
Presentation: Attorney Lester J. Murphy was present to discuss the application. He stated that there was a letter in the file requesting a continuance and submitted a letter waiving the time constraints. He explained that the Fire Chief has required a cul-de-sac or a second means of egress from the property. The property owner had entered into an agreement in principle with the VFW that was going to allow for emergency egress through its parking lot. However, that agreement was not supported by the full Board of the VFW, so plans need to be re-designed to show a cul-de-sac to ensure safe egress for the Fire Department. Attorney Murphy is requesting a continuance to the June 6, 2013 Public Hearing and stated that revised plans would be available a week prior to that Hearing. One Board member suggested continuing to the June 20, 2013 Public Hearing to leave adequate time for unforeseen circumstances that may require more delays. The Board discussed whether to grant the request to continue in light of how many continuances the Board has already granted in this case.
Amy Germain moved to require that the applicant withdraw without prejudice, Robert Littlefield seconded. Attorney Murphy noted that there were only four members of the Board available to hear the case and he would like to be heard by a full Board of five members.

*The motion was so voted, 0-4. The motion was defeated.
Amy Germain moved to postpone Case #FY13-40 to the June 20, 2013 Public Hearing, Tom Roberts seconded and it was so voted, 4-0.
Amy Germain moved to allow the applicant to waive the time constraints, Robert Littlefield seconded and it was so voted, 4-0.*

Attorney Lester J. Murphy requested that the Board allow Cases #FY13-54 and # FY13-61 to be heard next on the agenda as he represents both applicants and the former is being postponed and the latter is scheduled to be discussed last. *Amy Germain moved to hear Cases #FY13-54 and #FY13-61 out of order, Robert Littlefield seconded and it was so voted, 5-0.*

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 June 6, 2013 Public Hearing. *Robert Littlefield moved to grant the request to postpone Case #FY13-54 until the June 6, 2013 Public Hearing, Tom Roberts seconded and it was so voted, 4-0.*

FY13-61 **144 Bradford Street Extension (Residential 3 Zone), Jeffrey Epstein of Beach Market, Inc./Galeforce Bikes –**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of inflatable items, umbrellas, beach chairs and bicycles. David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.
Presentation: Attorney Lester J. Murphy and Jeffrey Epstein presented the application. Attorney Murphy stated that this is a renewal of a Special Permit and the applicant seeks to display bicycles, up to five inflatables, up to two umbrellas and up to two beach chairs. This is Mr. Epstein's eleventh year of displaying items outdoors in a mixed use, mostly residential neighborhood with not a lot of foot traffic. The outside display will not create any adverse effects such as hazard or congestion. All of the items displayed are sold in the store on the premises.
Public Comment: There were no speakers in support of, or in opposition to, the application. There were 4 letters, all from abutters, in support of the application.
Board Discussion: The Board requested that the applicant mark the location of the bicycles on the site plan.
Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of inflatable items, umbrellas, beach chairs and bicycles at the property located at 144 Bradford Street Extension (Res 3), Tom Roberts seconded and it was so voted, 5-0.
The Board discussed allowing the outside display to run in perpetuity unless there was a change in the outdoor display.
Amy Germain moved to rescind the previous motion and vote, Tom Roberts seconded and it was so voted, 5-0.

Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of inflatable items, umbrellas, beach chairs and bicycles at the property located at 144 Bradford Street Extension (Res 3) with the condition that the Special Permit will continue in perpetuity unless any changes to the outdoor display are made, Harriet Gordon seconded and it was so voted, 5-0.

CONTINUED 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. A quorum of Board members was not present to hear the case.
Amy Germain moved to continue Case #FY13-49 to the May 30, 2013 Public Hearing, Harriet Gordon seconded and it was so voted, 3-0-2 (David M. Nicolau and Tom Roberts 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. Chair David M. Nicolau explained to the applicant that since there were only four members of the Board available to be 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 chose to proceed. David M. Nicolau, Robert Littlefield, Amy Germain and Harriet Gordon sat on the case. Chair David M. Nicolau then called for a motion to rescind the vote made the Board regarding the case at the last Public Hearing.
Amy Germain moved to rescind the vote taken on May 2, 2013 in Case #FY13-50, Harriet Gordon seconded and it was so voted, 4-0.
Attorney Snow inquired if the public portion of the hearing was still open and noted that the case was posted as a public hearing. Attorney Snow wanted to add more comments about the application and to speak to the elements of the by-law from which the applicant is seeking relief. The Board briefly discussed the request. Chair David M. Nicolau stated that the public portion had been closed at the last hearing, as the Board had deliberated and that occurs only when the public portion has been closed. The Board discussed re-opening the public portion of the hearing.
Robert Littlefield moved to re-open the public portion of the hearing, Harriet Gordon seconded and it was so voted, 4-0.
Presentation: Attorney Christopher J. Snow and John McDonagh were present to discuss the application. Attorney Snow argued that the monument is an icon of the community and a destination for visitors. The original design of the building was confusing and the request for signs is merely to inform tourists how to reach the

monument and museum more easily. The applicant is merely trying to give visitors a sensible, informative way to find where the entrance and the exit are located. The requested signage does not create any hazard or congestion. There are economic and social benefits to having the monument as it provides employment and brings tourists to Town. Attorney Snow also added that he could not find any detriments that would result from the change in signage.

Board Discussion: The Board discussed the signs on the property and whether more and/or larger signs were necessary. The Board discussed whether the exit sign should be enlarged to 7' by 6' as requested by the applicant.

Amy Germain moved to deny 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 1/2' by 4' to a 7' by 6' exit sign at the property located at 1 High Pole Hill Road (Res 3). There was no second.

Amy Germain moved to grant 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 6' by 4' sign at the entrance stairs to the building and for a modification of a pre-existing 2 1/2' by 4' to a 4' by 6' exit sign at the property located at 1 High Pole Hill Road ((Res 3). There was no second.

David M. Nicolau moved to grant 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 exit sign measuring 2 1/2' by 4' not to exceed 6' by 4' at the property located at 1 High Pole Hill Road ((Res 3), Harriet Gordon seconded. The Board discussed the motion. The Board decided to continue the case.

Robert Littlefield moved to continue Case #FY13-50 to the May 30, 2013 Public Hearing, Harriet Gordon seconded and it was so voted, 4-0.

FY13-55 337 Commercial Street (Town Commercial Center Zone), Richard Gross on behalf of Craig Russell of Land's End Marine Supply –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of merchandise, outdoor power equipment and plants. David M. Nicolau recused himself because of a conflict of interest. Vice Chair Robert Littlefield explained to the applicant that since there were only four members of the Board available to be 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 chose to proceed. Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Richard Gross and Craig Russell presented the application. The business displays mulches, lawn mowers, wheel barrows, soils, patio furniture and plants in the southern portion of the parking area of the premises. The applicant stated that the business tries to keep the area aesthetically pleasing and accessible

to shoppers. The same types of merchandise will be displayed in the future and Mr. Gross requested that the Special Permit be granted in perpetuity unless there is a change in the outdoor display.

Public Comment: There were no speakers in support of, or in opposition to, the application. There were no letters in the file.

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

Tom Roberts moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of merchandise, outdoor power equipment and plants at the property located at 337 Commercial Street (TCC) with the condition that the three-year limitation be waived unless there is a change in the outside display, Harriet Gordon seconded and it was so voted, 4-0.

FY13-56 74 Shank Painter Road (General Commercial Zone), Ewa Nogiec on behalf of Gallery Ehva –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of sculptures. Amy Germain disclosed that she works as a model for Gallery Ehva, but stated that she would be able to render a fair decision. Chair David M. Nicolau noted that she had a financial interest in the matter. Amy Germain recused herself. David M. Nicolau, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Ewa Nogiec presented the application. This is a renewal of a Special Permit for the outdoor display of sculptures. The applicant would like to continue to display sculptures in front of the gallery.

Public Comment: There were no speakers in support of or in opposition to the application. There were no letters in the file.

Board Discussion: The Board questioned Ms. Nogiec about the number and types of sculptures she would be displaying. She said that the display would change but it would be difficult to say what would be shown so far ahead of time. The Board was concerned about the size of the sculptures that would be displayed and discussed putting a limitation on the height of objects located next to the street. Larger items could be located closer to the building on the property.

David M. Nicolau moved to renew the Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of sculptures at the property located at 74 Shank Painter Road (GC) with the conditions that the Special Permit expire in three years and that no future sculpture located on the street-front exceed 8', Robert Littlefield seconded and it was so voted, 4-0.

FY13-57 74 Shank Painter Road (General Commercial Zone), Ewa Nogiec on behalf of Gallery Ehva –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the entertainment of music, poetry readings, theater and video. Amy Germain recused herself because of a conflict of interest. David M. Nicolau, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Ewa Nogiec presented the application. The gallery is a large space and Ms. Nogiec needs to attract a lot of people for public events. She is requesting

that the Board allow amplified music to be played at some events.

Public Comment: There were no speakers in support of, or in opposition to, the application. There were no letters in the file.

Board Discussion: The Board reviewed the conditions of the previous Special Permit.

Robert Littlefield moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the entertainment of music, poetry readings, theater and video at the property located at 74 Shank Painter Road (GC) with the same conditions noted in the decision in Case #FY10-37 with the exception that amplified music shall be allowed, that the Special Permit expires on 1/2/15 and that all doors and windows be closed during the hours of entertainment, Harriet Gordon seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

FY13-58 353 Commercial Street (Town Commercial Center Zone), William Conley on behalf of Kennedy Gallery –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of art. David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Chris Rego presented the application. There will be two easels displaying paintings outside the premises.

Public Comment: There were no speakers in support of or in opposition to the application. There were no letters in the file.

Board Discussion: There was no discussion. The Board requested that Mr. Rego mark on the site plan where the easels will be located.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of art at the property located at 353 Commercial Street (TCC) with the condition that the three-year limitation be waived unless there are changes to the outside display, Harriet Gordon seconded and it was so vote, 5-0.

FY13-59 235 Commercial Street (Town Commercial Center Zone), Elizabeth Patrick, Trustee of Marspec, Inc., dba Marine Specialties, Inc. –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of merchandise such as wooden shoe lasts, dog sled handles, lobster pots, glass floats, lobster buoys, ship's wheels, BW brushes and net floats. David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Patrick Patrick and Elizabeth Patrick presented the application. This is a renewal of a Special Permit and there is no change in the outside display. The applicant seeks a waiver of the three-year limitation.

Public Comment: H. Bradford Rose spoke in favor of the application. There were no letters in the file.

Board Discussion: There was no discussion.

Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of merchandise such as wooden

shoe lasts, dog sled handles, lobster pots, glass floats, lobster buoys, ship's wheels, BW brushes and net floats at the property located at 235 Commercial Street (TCC) with the condition that the three-year limitation be waived unless there are changes to the outside display, Robert Littlefield seconded and it was so voted, 5-0.

FY13-60 173 Commercial Street (Town Commercial Center Zone), William Todd Dever of Forbidden Fruit –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of merchandise such as sculptures and outdoor rugs/mats. David M. Nicolau recused himself because of a conflict of interest. Chair Robert Littlefield explained to the applicant that since there were only four members of the Board available to be 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 chose to proceed. Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

Presentation: William Todd Dever presented the application. This is Mr. Dever's third renewal. There are no substantive changes or additions. The business strives to continuously maintain ADA accessibility to the store. Mr. Dever requests a waiver of the three-year limitation.

Public Comment: There were no speakers in support of, or in opposition to, the application. There was 1 letter of concern from a non-abutter about outdoor displays in general.

Board Discussion: The Board questioned Mr. Dever about the plants in front of the store and about the number of objects displayed.

Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of merchandise such as sculptures and outdoor rugs/mats as reflected on a plan prepared by William Todd Dever, dated May 16, 2013, at the property located at 173 Commercial Street (TCC) with the condition that the three-year limitation be waived unless there are changes to the outside display, Tom Roberts seconded and it was so voted, 4-0.

FY13-62 220A Commercial Street (Town Commercial Center Zone), Nick Robertson of ID –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of merchandise such as cast-iron sculptures, planters, hanging bird houses, bird baths and metal fish. David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Nick and Sian Robertson presented the application. This is a renewal, the third requested. The outside display area is the same, but different items are shown. Mr. Robertson requests a waiver of the three-year limitation.

Public Comment: There were no speakers in support of or in opposition to the application. There were no letters in the file.

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

Tom Roberts moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of merchandise such as cast-iron sculptures, planters, hanging bird houses, bird baths and metal fish at the property located at 220A Commercial Street (TCC) with the condition that the three-year limitation be waived unless there are changes to the outside display, Robert Littlefield seconded and it was so voted, 5-0.

Chair David M. Nicolau adjourned the Public Hearing at 9:04 P.M.

WORK SESSION

Chair David M. Nicolau reconvened the Work Session at 9:04 P.M.

NEXT MEETING: The next meeting will take place on May 30, 2013. It will consist of an Executive Session at 6:00 P.M. followed by 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 9:13 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on May 30, 2013
David M. Nicolau, Chair