

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
May 30, 2013**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon, Joe Vasta and Leif Hamnquist (arrived at 6:24 P.M.).

Members Absent: None.

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

Chair David M. Nicolau called the Meeting to order at 6:10 P.M. He announced that the Executive Session to discuss pending litigation for 158 Bradford Street LLC v. Zoning Board of Appeals, Barnstable Superior Court, C.A. No. BACV2012-00163 would be postponed until June 6, 2013.

Harriet Gordon moved to postpone the Executive Session to discuss pending litigation for 158 Bradford Street LLC v. Zoning Board of Appeals, Barnstable Superior Court, C.A. No. BACV2012-00163 until June 6, 2013, Robert Littlefield seconded and it was so voted, 6-0.

WORK SESSION

Chair David M. Nicolau called the Work Session to order at 6:15 P.M.

MINUTES: May 16, 2013 – Tom Roberts moved to approve the language as written, Joe Vasta seconded and it was so voted, 6-0.

Chair David M. Nicolau postponed the Work Session at 6:30 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 6:30 P.M. There were seven members of the Zoning Board of Appeals present and none absent.

There was a request to take Case #FY13-70 out of order. *Robert Littlefield moved to take Case #FY13-70 out of order, Amy Germain seconded and it was so voted, 7-0.*

NEW CASES:

FY13-70 368B Commercial Street (*Residential 3 Zone*), Jacqueline Beril Ives of Maison Décor, LLC -

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of merchandise such as two benches, pillows and beach bags. David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case.

Presentation: Jacqueline and John Ives presented the application. This is a renewal of a Special Permit.

Public Comment: Kelly Blake, Mary DeAngelis, Manuel Sousa, Marguerite Nyberg and Cindy Gast spoke in favor of the application. There was 1 letter of concern from a non-abutter.

Board Discussion: The Board addressed the issue raised in the letter, which concerned the possibility of outdoor merchandise impeding pedestrian traffic on Commercial Street.

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 two benches, pillows and beach bags at the property located at 368B Commercial Street (Res 3), Robert Littlefield 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. David M. Nicolau and Tom Roberts recused themselves because of conflicts of interest. Robert Littlefield, Amy Germain, Harriet Gordon, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Attorney Lester J. Murphy and Joy Futch Reis discussed the application with the Board. Attorney Murphy explained that Ms. Reis and her husband bought the property as rental units. When they experienced some financial trouble, it was necessary to take out a second mortgage on the property. Mr. Reis passed away and now Ms. Reis is trying to sell the property in order to satisfy the mortgages on the property. The bank holding the first mortgage has been paid, but the bank holding the second mortgage has not. In addition, Ms. Reis was forced to declare bankruptcy and the sale of the condominium units are now being overseen by a bankruptcy trustee. She has one building with three units left to sell. Two of those units are affordable rental units and one is an ownership unit. The property was marketed by a local real estate firm for over two years and all of the units have been sold except for the building containing the affordable rental units. If no one comes forward to buy the units, the bank will foreclose and take over ownership of the building. Ms. Reis has the option of giving the Special Permit back to the Town and converting the building to a one-family residential structure, however she does not want to do that. She would rather maintain the

two units as affordable, but for ownership purposes, not for rentals. If she is not able to make the units saleable and pay off the bank mortgage, the Town will lose the affordable units altogether. That is why she is seeking to amend the Special Permit to allow her to sell the units as affordable ownership units, for which Attorney Murphy contends there is a market in Town. The money from any sale would go to the bank to satisfy the second mortgage.

Public Comment: Joaquim Sandbichler, Fran Preeper and Bill Dougal spoke in favor of the application. There was a letter from Steward Lewis, a Robert Paul Properties realtor, relating his efforts to market the units in question. There were 2 letters from unit owners on the property and 2 letters from abutters in favor of the application and a letter from Joe Carleo, chair of the Community Housing Council, in opposition to the application. There was a letter from Michelle Jarusiewicz, the Town's community housing specialist, stating that affordable ownership units are needed.

Board Discussion: The Board discussed the deed restriction on the property and whether the Town should lose the affordable units as opposed to allowing them to be sold as affordable ownership. Given the circumstances leading up to the sale, the Board decided it would be in the interest of the Town to allow the amendment to the Special Permit, considering there is a need for affordable ownership units.

Amy Germain moved to grant 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 two affordable ownership units, deed-restricted in perpetuity, at the property located at 16 Harry Kemp Way (Res B), Joe Vasta seconded and it was so voted, 5-0. Amy Germain will write the decision.

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 M. Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Leif Hamnquist sat on the case. The Board members who heard the original presentation of the application on May 2, 2013, sat on the case. Chair David M. Nicolau asked the applicant if he was comfortable with who was seated and he responded that he was. The public portion of the meeting was closed and the Board will be deliberating.

Presentation: John McDonagh and Bill Dougal appeared before the Board.

Board Discussion: The Board discussed the signs in question, their sizes and purposes, and whether the increase in size of the signs would be substantially more detrimental than what currently exists.

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 5' sign at the entrance stairs to the building and for a modification of a pre-existing 2 ½' by 4' to a 5' by 4' exit

sign at the property located at 1 High Pole Hill Road (Res 3), and it was so voted, 5-0. Robert Littlefield will write the decision.

- FY13-63** **274-276 Commercial Street (Town Commercial Center Zone), Cynthia Belle Gast –**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of merchandise such as lobster traps, buoys, starfish, shells and a face sign. David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case.
Presentation: Cynthia Belle Gast presented the application. The shop is located on a side street where the sidewalk is 10’ wide, so there will be no safety issues in regard to the outdoor display.
Public Comment: Kelly Blake, Mary DeAngelis, and Marguerite Nyberg spoke in favor of the application. There was 1 letter in favor of the application.
Board Discussion: The Board had no questions for the applicant.
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 lobster traps, buoys, starfish, shells and a face sign at the property located at 274-276 Commercial Street (TCC), which will be in effect until there is a change in ownership of the business, Tom Roberts seconded and it was so voted, 5-0.
- FY13-64** **140 Commercial Street (Town Commercial Center Zone), Manuel Sousa of Provincia –**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of merchandise such as pottery items. David M. Nicolau, Robert Littlefield, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.
Presentation: Manuel Sousa presented the application. This is a renewal.
Public Comment: Kelly Blake, Mary DeAngelis, and Marguerite Nyberg spoke in favor of the application. There were 3 letters in favor of the application.
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 pottery items at the property located at 140 Commercial Street (TCC), which will remain in effect until there is a change in ownership of the business, Joe Vasta seconded and it was so voted, 5-0.
- FY13-65** **377 Commercial Street (Town Commercial Center Zone), Mary L. DeAngelis and Jamie Kryszkiewikz of Silk & Feathers –**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of a dress form. David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case.
Presentation: Mary DeAngelis presented the application. The dress form is adorned with clothing and it not located on the sidewalk, but just outside the door to the store.
Public Comment: Kelly Blake and Marguerite Nyberg spoke in favor of the

application. There were no letters in the file.

Board Discussion: The Board had no questions.

Tom Roberts moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of a dress form at the property located at 377 Commercial Street (TCC, which will remain in effect until there is a change in ownership of the business, Joe Vasta seconded and it was so voted, 5-0.

FY13-66 371 Commercial Street (Town Commercial Center Zone), Kelly Blake of Go Fish -

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

Presentation: The mannequin is located off the sidewalk, near the door to the store.

Public Comment: Mary DeAngelis and Marguerite Nyberg spoke in favor of the application. There were no letters in the file.

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

Joe Vasta moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of a clothing on a mannequin at the property located at 371 Commercial Street (TCC), which will remain in effect until there is a change in ownership of the business, Tom Roberts seconded and it was so voted, 5-0.

FY13-67 432 Commercial Street (Residential 3 Zone), James Lyman and Kathryn Baltivik of Charles-Baltivik Gallery and Lyman-Eyer Gallery –

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

Presentation: The applicant did not appear.

Public Comment: None. The Board waived the reading of the letter in the file.

Board Discussion: None.

Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for a display case for the display of art at the property located at 432 Commercial Street (TCC), which will remain in effect until there is a change in ownership of the business, Robert Littlefield seconded and it was so voted, 5-0.

FY13-68 208 Bradford Street (Residential 3 Zone), Berta Walker of Berta Walker Gallery -

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

Presentation: The applicant did not appear.

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

Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of

the Zoning By-Laws for the outside display of sculptures at the property located at 208 Commercial Street (Res 3), which will remain in effect until there is a change in ownership of the business, Robert Littlefield seconded and it was so voted, 5-0.

- FY13-69** **349 Commercial Street (Town Commercial Center Zone), Nicoletta Poli of Poli Gallery –**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of artwork on an easel. David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case.
Presentation: The applicant did not appear.
Public Comment: None. The Board waived the reading of the letter in the file.
Board Discussion: None.
Joe Vasta moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of artwork on an easel at the property located at 349 Commercial Street (TCC), which will remain in effect until there is a change in ownership of the business, Tom Roberts seconded and it was so voted, 5-0.

- FY13-71** **315 Commercial Street (Town Commercial Center Zone), Angela Vital-Martowski of Provincetown Ghost Tours –**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of a display board advertising ghost tours. David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case.
Presentation: The applicant did not appear.
Public Comment: None. The Board waived the reading of the letter in the file.
Board Discussion: None.
Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of a display board advertising ghost tours at the property located at 315 Commercial Street (TCC), which will remain in effect until there is a change in ownership of the business, Tom Roberts 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. This case is postponed to the June 6, 2013 Public Hearing.
- 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. This

case is postponed to the June 20, 2013 Public Hearing.

Chair David M. Nicolau adjourned the Public Hearing at 7:45 P.M.

WORK SESSION

Chair David M. Nicolau reconvened the Work Session at 7:45 P.M.

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. The Board has received revised plans. Robert Littlefield read the decision. *Amy Germain moved to approve the language as written, David M. Nicolau seconded and it was so voted, 5-0.*

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. Robert Littlefield read the decision. *Amy Germain moved to approve the language as amended, Joe Vasta seconded and it was so voted, 4-0.*

NEXT MEETING: The next meeting will take place on June 6, 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 6:30 P.M.

ADJOURNMENT: *Amy Germain moved to adjourn at 8:30 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on June 6, 2013
David M. Nicolau, Chair