

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
June 6, 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.

Members Absent: None.

Others Present: Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 6:56 P.M. There were seven members of the Zoning Board of Appeals present and none absent.

BOARD REORGANIZATION:

Harriet Gordon moved to nominate David M. Nicolau for Chair, Robert Littlefield for Vice Chair and Amy Germain for Clerk of the Zoning Board of Appeals, Robert Littlefield seconded and it was so voted, 7-0.

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 to postpone the case until the June 20, 2013 Public Hearing.

Tom Roberts moved to grant the request to postpone Case #FY13-54 to the June 20, 2013 Public Hearing, Joe Vasta seconded and it was so voted, 5-0.

NEW CASES:

FY13-72 **307 Commercial Street (Town Commercial Center Zone), Douglas E. Smart –**
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 and metal wall hangings up to 20 items. 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.

Board Discussion: The Board had no concerns.

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 pottery and metal wall hangings up to 20 items at the property located at 307 Commercial Street (TCC), to continue in effect until there is a change in ownership of the business, Robert Littlefield seconded and it was so voted, 5-0.

FY13-73 **74 Shank Painter Road (General Commercial Zone), Ewa Nogiec on behalf of Gallery Ehva –**

The applicant seeks a Special Permit under Article 3, Section 3214 of the Zoning By-Laws, the sign regulations, to install a sign pole with multiple signs and for a sandwich board. Amy Germain recused herself because of a conflict of interest. David M. Nicolau, Robert Littlefield, Harriet Gordon, Tom Roberts and Joe Vasta sat on the case.

Presentation: Ewa Nogiec presented the application.

Public Comment: None. There was 1 letter and 1 petition of support for the application in the file.

Board Discussion: The Board questioned Ms. Nogiec about the signs to be placed on the pole and the proposed location of the sandwich board. The Board requested that the sandwich board be kept at least 10' off the road as that is Town-owned land.

Joe Vasta moved to grant a Special Permit under Article 3, Section 3214 of the Zoning By-Laws, the sign regulations, to install a sign pole with multiple signs and for a sandwich board to be located at least 10' away from the road at the property located at 74 Shank Painter Road (GC), Tom Roberts seconded and it was so voted, 5-0. Harriet Gordon will write the decision.

FY13-74 **284 Commercial Street (Town Commercial Center Zone), Edward Fallas of Shirts R Us, Inc. d/b/a The Shirtery –**

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

Presentation: Edward Fallas presented the application. This is a renewal and the applicant has been in the same location since 1986.

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

Board Discussion: The Board questioned Mr. Fallas concerning how many shirts will be hanging on the doors. The applicant agreed to continue to hang 15 shirts only on the doors.

Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of clothing on doors at the property located at 284 Commercial Street (TCC), to continue in effect until there is a change in ownership of the business, Robert Littlefield seconded and it was so voted, 5-0.

FY13-75 **329 Commercial Street (Town Commercial Center Zone), Edward Fallas of Shirts R Us, Inc. d/b/a Shirts 'n Stuff -**

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

Presentation: Edward Fallas presented the application. This is a renewal.

Public Comment: None. 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 clothing on the exterior doors and front façade of the building and for a penny press at the property located at 329 Commercial Street (TCC), to continue in effect until there is a change in ownership of the business, Joe Vasta seconded and it was so voted, 5-0.

FY13-76

133 Bradford Street (Town Commercial Center Zone), Krista Kranyak of Ten Tables Restaurant & Bar –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to add non-amplified entertainment to the second floor dining room and for an outside service bar on the terrace. David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case.

Presentation: David Tobin and Michael Tonello presented the application. Mr. Tobin informed the Board that there had been an entertainment permit when the establishment was Cerutti's in 1998. The proposed entertainment will be non-amplified. The windows and doors are already closed due to a central air-conditioning system in the restaurant. The outside bar on the terrace would increase business for the restaurant and increase tax revenue for the Town.

Public Comment: Michael Tonello, a non-abutter, spoke in favor of the application. Lisa Molodec, an abutter, spoke against the application. There were 3 letters from abutters in opposition to the application. There was 1 noise complaint report filed with the Police Dept.

Board Discussion: The Board questioned Mr. Tobin about what kind of entertainment he was proposing to have and about the outside areas on the terrace and patio. Mr. Tobin indicated that the proposed hours of entertainment would be from 7:00 P.M to 11:00 P.M. There are 6 tables, 25 seats, on the patio. The restaurant already has service on the patio from 5:30 P.M. to 10:00 P.M. There is a waiter's station located outside and no music is allowed on the patio. The Board was concerned about the generation of noise at the outside bar given its close proximity to neighboring residences. The Board was also concerned about a waiter's station located on the patio. The Board discussed limiting the number of entertainers that could perform in the second floor dining room.

Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to add non-amplified entertainment to the second floor dining room at the property located at 133 Bradford Street (TCC) with the conditions that the indoor entertainment area as noted on the plans is on the second floor lounge, that the hours of entertainment are from 7:00 P.M. to 11:00 P.M., that the entertainment consist of only non-amplified music performed by no more than two entertainers, that all windows and doors be

closed during the hours of entertainment, that the Special Permit expire on January 2, 2014 and that the Special Permit runs with the applicant and to deny a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for an outside service bar on the terrace, Tom Roberts seconded and it was so voted, 5-0. David Nicolau will write the decision.

FY13-77 150 Bradford Street (Residential 3 Zone), Farland, Inc. d/b/a Farland Provisions –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for an increase in seating from 16 seats to 36 seats contingent upon sewer hook-up. Robert Littlefield recused himself because he was a direct abutter. David M. Nicolau, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.

Presentation: Tom Boland and Jim Farley presented the application. The applicants seek to add seats contingent upon the sewer system being expanded to their location. Mr. Boland thought it would in the fall. The seats are primarily used by locals during the winter months. Most of their business in the summer is from tourists who are on their way to the beach or walking somewhere.

Public Comment: None. There were 4 letters in the file.

Board Discussion: The Board agreed that the increase in seating would be of benefit to the Town and the applicants have contributed greatly to the community. *Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for an increase in seating from 16 seats to 36 seats contingent upon sewer hook-up at the property located at 150 Bradford Street (Res 3), Tom Roberts seconded and it was so voted, 5-0.* Amy Germain will write the decision.

FY13-78 8 Brewster Street (Residential 3 Zone), Ted Smith Architect LLC on behalf of Mark Albert –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second story addition and a two-story addition up and along the pre-existing, non-conforming rear yard setback. Amy Germain chaired the case. David M. Nicolau, Tom Roberts, Joe Vasta and Leif Hamnquist also sat on the case.

Presentation: Ted Smith and Mark Albert presented the application. The applicant seeks to put a 4' addition onto the building. It is a vertical expansion and is very close to the lot line. The rear yard setback is non-conforming and being extended, but no new non-conformity is being created. The first 7.5' of the 12' section along the south lot line is a one-story addition and the front part of it is one and a half stories. The applicant proposes to fill in a half story on the rear elevation. The addition will match the height of the main cottage. Mr. Smith reviewed the floor plans. He contended that there would be no environmental impact as a result of the project.

Public Comment: Patricia Benatti, an abutter, had no objection to the application, however she had a concern about a stone retaining wall on the property. There were 5 letters in support of the application.

Board Discussion: The Board requested that the applicant submit a Non-Conforming Checklist.

David M. Nicolau moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second story addition and a two-story addition up and along the pre-existing, non-conforming rear yard setback contingent upon the submission of a Non-Conforming Checklist, Leif Hamnquist seconded and it was so voted, 5-0. Tom Roberts will write the decision.

FY13-79 212 Commercial Street (Town Commercial Center Zone), Lydia Hamnquist of Global Gifts –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of clothing and a statue. Leif Hamnquist recused himself because of a conflict on interest. Robert Littlefield chaired the case. David M. Nicolau, Amy Germain, Tom Roberts and Joe Vasta also sat on the case.

Presentation: The applicant did not appear. This is a renewal.

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

Board Discussion: The Board decided that no more than 15 items should be displayed outdoors, in addition to a basket and a statue.

David M. Nicolau moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of no more than 15 items of clothing, a basket and a statue at the property located at 212 Commercial Street (TCC), to continue in effect until there is a change in ownership of the business, Tom Roberts 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. This case is postponed to the June 20, 2013 Public Hearing.

David M. Nicolau adjourned the Public Hearing at 8:30 P.M.

WORK SESSION

Chair David M. Nicolau reconvened the Work Session at 8:30 P.M.

PENDING DECISIONS:

FY13-49 16 Harry Kemp Way (Residential B Zone), Joy Futch Reis –

Robert Littlefield, Amy Germain, Harriet Gordon, Joe Vasta and Leif Hamnquist sat on the case. The reading of this decision is postponed to the June 20, 2013 Public Hearing.

MINUTES: May 30, 2013 – Robert Littlefield moved to approve the language as written,

Tom Roberts seconded and it was so voted, 4-0-1 (Amy Germain abstaining).

FY13-50 **1 High Pole Hill Road (Residential 3 Zone), John McDonagh on behalf of the Cape Cod Pilgrim Memorial Association –**
David M. Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Leif Hamnquist sat on the case. Robert Littlefield read the decision. *Amy Germain moved to approve the language as amended, Harriet Gordon seconded and it was so voted, 5-0.*

NEXT MEETING: The next meeting will take place on June 20, 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 9:00 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on June 20, 2013
David M. Nicolau, Chair