

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
August 1, 2013**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David M. Nicolau, Robert Littlefield (arrived at 6:35 P.M.), Tom Roberts, Harriet Gordon, Joe Vasta and Leif Hamnquist.

Members Absent: Amy Germain (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 6:32 P.M.

Applicant interview with Jeffrey Haley for an alternate position on the ZBA:

Mr. Haley appeared to introduce himself to the Board and answer questions.

Tom Roberts moved to appoint Jeffrey Haley as an alternate on the Zoning Board of Appeals, Joe Vasta seconded and it was so voted, 5-0.

MINUTES: July 11, 2013 – Tom Roberts moved to approve the language as written, Joe Vasta seconded and it was so voted, 6-0.

CONTINUED CASES:

FY14-04 212-214 Commercial Street (Town Commercial Center Zone), Benjamin deRuyter on behalf of New Art Realty Corp. –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of a sandwich board advertising Bogey's Bar. Leif Hamnquist recused himself because of a conflict of interest. David M. Nicolau, Robert Littlefield, Tom Roberts and Joe Vasta sat on the case. The applicant was asked if he would agree to proceed with only four members or if he would rather wait for a five-member Board to be seated. The applicant agreed to proceed.

Presentation: Ben deRuyter was present to discuss the application and submitted updated photographs of the existing signs on the property and the placement of the sandwich sign. The latter has been moved since the beginning of the season as it formerly constricted pedestrian access from the walkway exiting the building to the sidewalk. He is requesting that the sandwich sign be located both on the east and west sides of the planter.

Joe Vasta moved to grant a Special Permit under Article 3, Section 3420 of the

Zoning By-Laws for the outside display of a sandwich board advertising Bogey's Bar at the property located at 212-214 Commercial Street (TCC), with the condition that sandwich boards be located on the east and west sides of the planter, Robert Littlefield seconded and it was so voted, 4-0.

FY14-05 205-209 Commercial Street (Town Commercial Center Zone), Benjamin deRuyter on behalf of Aquarium Wharf Realty Trust –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of multiple sandwich boards advertising several businesses within the mall area. Leif Hamnquist recused himself because of a conflict of interest. David M. Nicolau, Robert Littlefield, Tom Roberts and Joe Vasta sat on the case. The applicant was asked if he would agree to proceed with only four members or if he would rather wait for a five-member Board to be seated. The applicant agreed to proceed.

Presentation: Ben deRuyter was present to discuss the application. He submitted an updated photograph of the five existing signs on the property.

Joe Vasta moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of multiple sandwich boards advertising several businesses within the mall area at the property located at 205-209 Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 4-0.

Chair David M. Nicolau adjourned the Work Session at 7:00 P.M.

PUBLIC HEARING

Chair David M. 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.

NEW CASES:

FY14-11 158 Bradford Street (Residential 3 Zone), Lester J. Murphy, Jr., Attorney, on behalf of 158 Bradford, LLC –

The applicant seeks a Special Permit under Article 3, Sections 3110 and 3115 of the Zoning By-Laws for the demolition and reconstruction of a lawful pre-existing, non-conforming structure, including changes to the footprint and an increase in scale requiring relief under Article 2, Section 2550 regarding side yard and building setbacks with no increase in the number of bedrooms or guest units. David M. Nicolau, Robert Littlefield, Tom Roberts, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Attorney Lester J. Murphy, Jr. and Robin Bazlen-Weglarz presented the application. Attorney Murphy gave a brief history of the project. The project has been modified, most importantly because the applicants are not asking for an increase in the number of guest units as was previously requested. The existing 8 guest units will not increase. The increase in density and the parking issues, as well as the issue of whether the previous project was an

alteration or an extension of a pre-existing, non-conforming use, are no longer applicable. The only issue before the Board now is the request to raze and replace the rear, flat-roofed, single story cottage with a new 1½ story as shown on the new plans. The applicant has returned to the very first design submitted to the Board. The cottage is non-conforming in regard to the setback between the two structures on the property and the north property line. The Board has to decide whether the social, economic or other benefits of the proposal to the neighborhood or Town outweigh any adverse affects such as hazard, congestion or environmental degradation. Attorney Murphy argued that those findings can clearly be made by the Board to support this application. He explained that the reason for the proposed razing of the cottage was that the cottage is old and in such a state of disrepair that a renovation was not feasible, according to builders and architects who examined the building. There were not enough structurally sound elements present in the building. The proposed cottage will be larger, more easily accessible and more user-friendly. The larger accommodations will result in increased tax revenue for the Town, while neither the parking nor the septic usage will increase. The Board must also find that the new structure, with a slight increase in footprint and a different scale, would be substantially more detrimental to the neighborhood than what exists. The cottage is non-conforming as to the required separation between two buildings on a lot, as it currently measures only 2.5 to 3.5' away from the main guesthouse building, and the distance from the northerly lot line, as it currently is only .1'. Both of these metrics would be increased as a result of the new project. The proposed new 1½ story structure would be 3.5' away from the main guesthouse and between 1' 5" and 4' 8" away from the northerly lot line. The increase in the size of the cottage would be 93 sq. ft. and the scale would increase from 5,260 cu. ft. to 10,315 cu. ft. The height increase will be from 10' 3" to 24', however it will still be lower than the main house. The new cottage will run parallel with the existing main guesthouse. A bedroom will be removed from the main house and added to the cottage basement, however it will only be used by guests of the applicant. It will be removed from the manager's quarters in the main building in order to expand the bathroom and closet in those quarters.

As a result of Attorney Murphy's discussions with Town Counsel prior to this matter coming back before the Board, it was agreed that a Special Permit would be conditioned so that no additional guest accommodations could be added to the property and that the property owner would agree to grant a restrictive covenant that would be recorded. The new cottage will be in keeping with the main guesthouse and with the rest of the structures in the neighborhood. It will be an asset to the neighborhood and the Town. The structure will be sprinkled in response to the safety concerns of the Fire Chief concerning the close proximity of the two structures on the property.

Public Comment: Dale Conklin, a non-abutter, spoke in favor of the application. There were 6 letters from abutters and 3 letters from non-abutters in favor of the application. There was 1 letter from an abutter who had no issue with the project. There was a letter from the Fire Chief stating that he does not find that the proposal will create a safety hazard and will be much safer than what currently

exists.

Board Discussion: The Board asked the applicant about plans showing the parking on the property. The Board discussed what their findings would be for the purposes of the written decision.

Tom Roberts moved to grant a Special Permit under Article 3, Sections 3110 and 3115 of the Zoning By-Laws for the demolition and reconstruction of a lawful pre-existing, non-conforming structure, including changes to the footprint and an increase in scale requiring relief under Article 2, Section 2550 of the Zoning By-Laws regarding side yard and building setbacks with no increase in the number of bedrooms or guest units at the property located at 158 Bradford Street (Res 3) with the conditions that there be a recorded deed restriction of 8 bedrooms for the property and that all construction be done in accordance with the State Building Code and the Building Commissioner's approval, Leif Hamnquist seconded and it was so voted, 5-0.

FY14-06 410 Commercial Street (Residential 3 Zone), Brian O'Malley, Trustee for the Ralley Trust –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a small (3.5' in depth by 1.8' in width and 8.0' in height) addition up and along a pre-existing, non-conforming side yard setback under the existing second story overhang; and under Article 2, Sections 2450, G14, Permitted Accessory uses, 2550, Multiple Buildings per Lot and 2560, Dimensional Schedule, of the Zoning By-Laws to construct a utility/garden shed within the existing setbacks. Harriet Gordon recused herself because of a conflict of interest. David M. Nicolau, Robert Littlefield, Tom Roberts, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Ed Dusek and Brian O'Malley presented the application. The applicant seeks to fill in the area beneath a second story overhang. A portion of the addition will encroach into the side yard setback. In addition, the applicant seeks to construct a garden shed in the existing side yard setback. The proposed shed will be 96 sq. ft., the height will not exceed 9' and the lowest point of the shed will be 6" above the highest point of the natural grade. The shed will conform to footnote 2 of Section 2450 as the shed will meet at least 50% of the side and/or rear yard setback requirements of the district in which the property is located and at least 50% of building separation requirements. No doors or windows will face or open into an area of the standard side and rear yard setbacks. Both the addition and the location of the shed are located in the back of the building and are not visible from a public way.

Public Comment: None. There was 1 letter from an abutter in favor of the application.

Board Discussion: The Board found that the benefits of the project outweighed any adverse effects such as hazard, congestion and environmental degradation.

Tom Roberts moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a small (3.5' in depth by 1.8' in width and 8.0' in height) addition up and along a pre-existing, non-conforming side yard setback under the existing second story overhang; and under Article 2, Sections

2450, G14, Permitted Accessory uses, 2550, Multiple Buildings per Lot and 2560, Dimensional Schedule, of the Zoning By-Laws to construct a utility/garden shed within the existing setbacks at the property located at 410 Commercial Street (Res 3), Joe Vasta seconded and it was so voted, 5-0. Tom Roberts will write the decision.

FY14-07

942 Commercial Street (Residential 1 Zone), Gregory Delory –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second story and roof deck addition and extend the first floor rear deck up and along all pre-existing, non-conforming setbacks. David M. Nicolau, Robert Littlefield, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.

Presentation: Greg Delory presented the application. The building is on a very small lot that was part of a old subdivision created in the 1920s. The applicants seek to add second floor dormers that will support a second floor roof deck accessed by a spiral staircase in the rear of the structure. The dormers will be built within the existing footprint of the house. There is a proposed increase in the footprint of the building due to the spiral staircase. None of the proposed changes will encroach any farther into the setbacks than the existing non-conformancies. Mr. Delory argued that the proposed changes will not be more detrimental to the surrounding neighborhood or community at large. The structure is at least 115 feet away from abutting properties across the street and to the west. The east side of the property abuts the Marcey Oil storage area. The north side abuts the old railroad bed. Mr. Delory stated that the design of the renovations is consistent with Cape Cod coastal architecture and has many elements of Provincetown vernacular architecture, such as gable facades, shingles, dormers and widow's walks. This property had been on the market for 5 years prior to being purchased by the applicants, had small animals living inside of it and looked like an abandoned building. When the renovations have been completed, the building will be in keeping with the architecture of other structures in the Beach Point neighborhood. The project will not negatively impact the environment or unduly burden Town services. The current owners have connected to the Town sewer system, negating the need to install a Title V septic system, thereby minimizing site disruption. All new construction will conform to the current Stretch Energy Code, as well as all State Building Codes.

Public Comment: None. There was 1 letter in the file from an individual that had no issue with the project.

Board Discussion: The Board questions Mr. Delory about access to the roof deck.

Harriet Gordon moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second story and roof deck addition and extend the first floor rear deck up and along all pre-existing, non-conforming setbacks at the property located at 942 Commercial Street (Res 1), Tom Roberts seconded and it was so voted, 5-0. David M. Nicolau will write the decision.

FY14-08

7 Commercial Street, #1(Residential 1 Zone), Scott William Grady, Architect, Inc., on behalf of Todd Elmore –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a 6' x 4'+- addition on the northeast elevation up and along the pre-existing, non-conforming side yard setback. David M. Nicolau recused himself because of a conflict of interest. Robert Littlefield, Tom Roberts, Harriet Gordon, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Scott Grady presented the application. The applicant seeks to fill in a small niche in the building on the northeast side, which will add more space to the kitchen area. The addition will make the kitchen more accessible and useful to the applicant who is in his eighties and has limited mobility. Mr. Grady reviewed the plans. The height will not be increased and the building mass will increase only slightly. A similar project was approved and constructed in two other units in the condominium association and a third made their niche into an outdoor shower. The proposed addition has a minimal impact on the exterior space.

Public Comment: Bernard Pont spoke in favor of the application. There was a letter from a Trustee of the Condominium stating that the project had been unanimously approved by the unit owners at an annual meeting and was reflected in the minutes from that meeting, 1 letter from an abutter in support and 1 letter in opposition to the application.

Board Discussion: The Board clarified the applicant's standing in response to the letter in opposition to the project that alleged that the applicant did not own the property and thus did not have the proper standing to seek relief. After questioning Mr. Grady and reading the condominium minutes, the Board made a finding that the applicant did have the right to appear and seek relief for the project. The Board had no questions about the project itself.

Tom Roberts moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a 6' x 4'+- addition on the northeast elevation up and along the pre-existing, non-conforming side yard setback at the property located at 7 Commercial Street, #1 (Res 1), Joe Vasta seconded and it was so voted, 5-0. Harriet Gordon will write the decision.

FY14-10

7A Sandy Hill Lane (Residential 3 Zone), Luis M. Ribas –

The applicant seeks a Special Permit under Article 2, Sections 2440, G14, footnote, and 2560 of the Zoning By-Laws for relief from side yard setbacks to construct a garden shed not to exceed 96 square feet. David M. Nicolau, Robert Littlefield, Tom Roberts, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Attorney Christopher Fiset and Luis M. Ribas presented the application. The applicant seeks to install a pre-fabricated shed, not to exceed 96 sq. ft., on his property. The shed will conform to footnote 2 of Section 2450 as it will meet at least 50% of the side and/or rear yard setback requirements of the district in which the property is located and at least 50% of building separation requirements. The shed will be placed 6.6' from the existing structure and 3.55' from the side yard setback. This is the only location that is available to the applicant. The shed will be placed on cement blocks per a ruling by the Conservation Commission and there will be windows in the front of the shed, not

on the side facing an abutting property.

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

Board Discussion: The Board had no questions for Attorney Fiset.

Robert Littlefield moved to grant a Special Permit under Article 2, Sections 2440, G14, footnote, and 2560 of the Zoning By-Laws for relief from side yard setbacks to construct a garden shed not to exceed 96 square feet at the property located at 7A Sandy Hill Lane (Res 3), Tom Robert seconded and it was so voted, 5-0. Leif Hamnquist will write the decision.

FY14-09 182 Commercial Street (Town Commercial Center Zone), Lawrence Moran – The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of a body work chair, an easel with a poster board announcing henna tattoos on the brick patio and a small basket with henna products for use. David M. Nicolau recused himself because of a conflict of interest. Robert Littlefield, Tom Roberts, Harriet Gordon, Joe Vasta and Leif Hamnquist 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 questions regarding the outside display. **Tom Roberts moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of a body work chair, an easel with a poster board announcing henna tattoos on the brick patio and a small basket with henna products for use at the property located at 182 Commercial Street (TCC), Joe Vasta seconded and it was so voted, 5-0.**

Chair David M. Nicolau adjourned the Public Hearing at 9:00 P.M.

NEXT MEETING: The next meeting will take place on September 5, 2013. It will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: **Robert Littlefield moved to adjourn at 9:00 P.M. and it was so voted unanimously.**

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on September 5, 2013
David M. Nicolau, Chair