

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
November 7, 2013**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta.

**Members Absent:** David M. Nicolau (excused), Jeffrey Haley (excused) and Leif Hamnquist (excused).

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

**WORK SESSION**

Vice Chair Robert Littlefield called the Work Session to order at 6:45 P.M.

**MINUTES: October 17, 2013 – Amy Germain moved to approve the language as written, Harriet Gordon seconded and it was so voted, 5-0.**

**PENDING DECISIONS:**

**FY14-25      698 Commercial Street (*Residential 1 Zone*), Christopher J. Snow, Esq. on behalf of 698 Commercial Street Realty, LLC –**  
David M. Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Jeff Haley sat on the case. Amy Germain read the decision. ***Tom Roberts moved to accept the language as written, Joe Vasta seconded and it was so voted, 5-0.***

Amy Germain requested an update from staff concerning two outside display Special Permit enforcement issues that were discussed at the last meeting and on the issue of flags, signs and outside displays in general. Ms. Germain briefly discussed the latter issue with Russ Braun, including whether some outdoor displays in Town constituted a hazard and created congestion.

Vice Chair Robert Littlefield postponed the Work Session at 7:00 P.M.

**PUBLIC HEARING**

Vice Chair Robert Littlefield called the Public Hearing to order at 7:00 P.M. There were five

members of the Zoning Board of Appeals present and three absent. He called for a motion to take Case #FY14-28 out of order and hear it first on the agenda.

*Tom Roberts moved to take Case #FY14-28 out of order and hear it first on the agenda, Amy Germain seconded and it was so voted, 5-0.*

## **NEW CASES:**

**FY14-28      664R Commercial Street (Residential 3 Zone), Brad Locke Development, Inc. on behalf of Basil P. Santos et ux –**

The applicant seeks a Special Permit under Article 2, Sections 2440, footnote 8 and Section 2640 of the Zoning By-Laws for the construction of more than six dwelling units on a lot and for a deviation in building scale.

**Presentation:** Attorney Lester J. Murphy and Brad Locke appeared before the Board. Attorney Murphy asked that part of the application be withdrawn without prejudice and that the remainder be postponed until a later date, due to an amendment to Article 2, Section 2440, footnote 8 adopted at Town Meeting. The amendment would make the Planning Board, not the Zoning Board, the Special Permit granting authority for proposals involving the construction of four or more units on a lot. If that amendment is upheld by the Attorney General's office, the Board would not hear the case, but it would be heard under the Planning Board's site plan review process. He suggested a Public Hearing date of February 6, 2014, by which time a decision should be forthcoming from the AG's office. In addition, the plans have been revised to the extent that relief from the building scale by-law is no longer needed, as it is within the maximum allowed under Article 2, Section 2640. Attorney Murphy submitted a letter requesting these specific actions as well as a waiver of the time constraints.

*Amy Germain moved to postpone Case #FY14-28 in regard to the relief requested under Article 2, Section 2440, footnote 8, until the February 6, 2014 Public Hearing, Tom Roberts seconded and it was so voted, 5-0.*

*Amy Germain moved to accept the withdrawal without prejudice of Case #FY14-28 in regard to the relief requested under Article 2, Section 2640, Tom Roberts seconded and it was so voted, 5-0.*

**FY14-26      35B Franklin Street, Unit #2 (Residential 3, Zone), Gary Reinhardt on behalf of Mark Doherty –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along the side yard setback by adding a small mud room over an existing porch. Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.

**Presentation:** Gary Reinhardt presented the application. The applicant seeks to add a mudroom to the structure, covering over an existing porch. The main house encroaches into both front yard setbacks and these non-conformancies will not be increased. The social benefits to the proposal, according to Mr. Reinhardt, will be that Mr. Doherty will be allowed to remain in his home, enhancing to the vibrancy

and character of the neighborhood and Town, and the additional living space will contribute to an increase in the tax revenue to the Town. There will be no adverse effects. Mr. Reinhardt explained that the Local Comprehensive Plan encourages and promotes the renovation of existing structures to maintain the integrity of neighborhoods in Section 1.2, Goal 1, Policy B.

**Public Comment:** None. There were 10 letters, all from abutters, in favor of the application.

**Board Discussion:** The Board noted that the Non-Conformancy Checklist was missing from the application and requested that it be submitted by Mr. Reinhardt. *Amy Germain moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along the side yard setback by adding a small mud room over an existing porch at the property located at 35B Franklin Street, Unit #2 (Res 3) with the condition that a Non-Conformancy Checklist be submitted, Tom Roberts seconded and it was so voted, 5-0.* Tom Roberts will write the decision.

**FY14-27      674A Commercial Street (Residential 1 Zone), Brad Locke Development, Inc. on behalf of Elizabeth Reid –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a dormer up and along a pre-existing, non-conforming setback. Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.

**Presentation:** Brad Locke presented the application. There is an existing double shed dormer on both sides of the house and the dormer in question is on the west facing elevation on the second floor. There is an approximately 2-3' section towards the rear of the structure that was moved forward and the proposal is to move that section back again about 2'. It is on a pre-existing, non-conforming line. There are no detrimental effects on the Town or the neighborhood. The benefits are that more headroom will be created inside and make the structure more user-friendly.

**Public Comment:** None. There were 3 letters, all from abutters, in favor of the application.

**Board Discussion:** The Board questioned Mr. Locke about the proposal. Amy Germain pointed out that a Non-Conformancy Checklist had not been submitted. In addition, Mr. Locke will need to put his name and the date on the plans that were drawn. She also noted that the submitted plans were not complete and fully dimensioned and she was not prepared to render a decision based on those plans. The Board discussed the issue and each member was asked whether he or she would be able to render an informed decision based on the submitted plans.

*Robert Littlefield moved to proceed with a vote on the application, Joe Vasta seconded and it was so voted, 4-1 (Amy Germain opposed).*

*Joe Vasta moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a dormer up and along a pre-existing, non-conforming setback at the property located at 674A Commercial Street (Res 1), Harriet Gordon seconded and it was so voted, 4-1 (Amy Germain opposed).*

Robert Littlefield will write the decision.

**FY14-29**      **168 Commercial Street (Town Commercial Center Zone), Michael McIntyre –**  
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along a pre-existing, non-conforming setback; Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale; and Article 2, Section 2630 of the Zoning By-Laws for relief from dormering more than 50% of the rear roof. Tom Roberts recused himself because of a conflict of interest. Vice Chair Robert Littlefield explained that since there were only four Board members remaining and a unanimous vote would be required for approval of the Special Permit, the applicant had the choice of proceeding or postponing until a five-member Board could be seated. The applicant requested a postponement until the December 5, 2013 Public Hearing. *Amy Germain moved to grant the request for a postponement until the December 5, 2013 Public Hearing, Joe Vasta seconded and it was so voted, 5-0.*

**FY14-30**      **303 Commercial Street (Town Commercial Center Zone), John Drago of Timtanman Corp., dba Post Office Café –**  
The applicant seeks the renewal of Special Permit FY13-22 under Article 2, Sections 2460 and 2440 for the outdoor service of food and alcoholic beverages on the patio area. Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.  
**Presentation:** John Drago presented the application. The applicant seeks a renewal with the same conditions as the previous Special Permit.  
**Public Comment:** None. There were no letters in the file.  
**Board Discussion:** The Board discussed the conditions of the Special Permit. *Amy Germain moved to grant the renewal of Special Permit FY13-22 under Article 2, Sections 2460 and 2440 for the outdoor service of food and alcoholic beverages on the patio area at the property located at 303 Commercial Street (TCC) with the condition that the Special Permit run with the applicant and that it expire on January 2, 2017.* Amy Germain will write the decision.

Vice Chair Robert Littlefield adjourned the Public Hearing at 7:45 P.M.

## WORK SESSION

Vice Chair Robert Littlefield reconvened the Work Session at 7:45 P.M.

The Board continued the discussion of flags, signs and outdoor displays with staff. It was agreed that staff will recommend criteria related to this issue, submit it to the ZBA for discussion and then take the Board's suggested changes to the Planning Board for review.

**NEXT MEETING:** The next meeting will take place on November 21, 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 8:20 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on November 21, 2013  
David M. Nicolau, Chair