

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
March 20, 2014**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** David M. Nicolau (left at 8:40 P.M.), Robert Littlefield (arrived at 6:19 P.M. and left at 7:52 P.M.), Amy Germain (arrived at 6:30 P.M.), Harriet Gordon, Leif Hamnquist, Jeffrey Haley and Peter Page.

**Members Absent:** Joe Vasta (excused).

**Others Present:** Russ Braun (Building Commissioner) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

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

**PENDING DECISIONS:**

**FY14-43**     **2 Winthrop Place (*Residential 3 Zone*), Ted Smith, Architect, LLC on behalf of George Sauer –**  
Robert Littlefield, Amy Germain, Harriet Gordon and Leif Hamnquist sat on the case. Harriet Gordon read the decision. *Leif Hamnquist moved to accept the language as written, Jeffrey Haley seconded and it was so voted, 4-0.*

Chair David M. Nicolau adjourned the Work Session at 6:20 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 one absent.

**CONTINUED CASES:**

**FY14-41**     **838 Commercial Street (*Residential 1 Zone*), Mariellen Serena –**  
The applicant seeks a Special Permit under Article 3, Sections 3110 and 3115 of the Zoning By-Laws to demolish and reconstruct a garage, making the west side setback and front setback less non-conforming on the lot. Robert Littlefield, Amy Germain, Harriet Gordon, Leif Hamnquist and Jeffrey Haley sat on the case.

**Presentation:** Mariellen Serena appeared to discuss the application. Ms. Serena has submitted a Non-Conforming Situation Checklist as requested by the Board. *Amy Germain moved to grant a Special Permit under Article 3, Sections 3110 and 3115 of the Zoning By-Laws to demolish and reconstruct a garage, making the west side setback and front setback less non-conforming on the lot at the property located at 838 Commercial Street (Res 1), Leif Hamnquist seconded and it was so voted, 5-0.*

Leif Hamnquist read the decision. *Harriet Gordon moved to approve the language as amended, Jeffrey Haley seconded and it was so voted, 5-0.*

**FY14-42**

**175 Bradford Street Extension (Residential 3 Zone), Victor DePoalo –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for an increase in seating from a 33-seat restaurant to a 55-seat restaurant. David M. Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon and Jeffrey Haley sat on the case. Chair David M. Nicolau stated that new information has come to the attention of the Board and he would like the Board to re-open the public portion of the hearing. *Amy Germain moved to open the public portion of the hearing on Case #FY14-42, Robert Littlefield seconded and it was so voted, 5-0.*

**Presentation:** Attorney Robin B. Reid and Victor DePoalo appeared to discuss the case. Attorney Reid explained that an agreement with the Gale Force Condominium Trust had been reached. She submitted a letter from counsel for the Trust, which was read into the record. The letter stated that the Trust was withdrawing its opposition to the application. Also read into the record was a letter from abutter Steve Treon stating that he was withdrawing his opposition to the application. Attorney Reid requested that as part of the agreement between Mr. DePoalo and the Trust the following conditions be added to the Board's written decision: the restaurant will keep all doors and windows closed during the hours of operation, there shall be no service of drinks on the patio, the restaurant shall post a 'No alcohol outside' sign, the restaurant shall post signage advising patrons that there is no parking at the Galeforce or Willow Condominiums, the restaurant shall be a one-story building no higher than 24' 1" and the restaurant shall have no less than 18 parking spaces on site. She added that the space on an abutting property that Mr. DePoalo had made available to the Town has been committed to metered parking and the Town has agreed to limit the parking at those metered spaces to between 4:00 P.M. and midnight and a three-hour maximum in an effort to support the restaurant. There will be between seven and twelve parking spaces.

**Board Discussion:** The Board discussed the new information and the parking issue. There were no noise complaints filed in regard to the restaurant with the Police Dept.

*Robert Littlefield moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for an increase in seating from a 33-seat restaurant to a 55-seat restaurant, superseding any prior decisions made by the Board regarding seating, at the property located at 175 Bradford Street Extension (Res 3) with the following conditions: the restaurant shall keep all doors and*

*windows closed during the hours of operation, there shall be no service of drinks on the patio, the restaurant shall post a 'No alcohol outside' sign, the restaurant shall post signage advising patrons that there is no parking at the Galeforce or Willow Condominiums, the restaurant shall be a one-story building no higher than 24' 1" and the restaurant shall have no less than 18 parking spaces on site, Jeffrey Haley seconded and it was so voted, 5-0. Robert Littlefield will write the decision.*

**FY14-44      85/87 Shank Painter Road (General Commercial Zone), MacGregor Hay on behalf of Bay Ocean Properties, LLC –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the approval of a final seating layout and to allow public entertainment. Chair David M. Nicolau recused himself because of a conflict of interest. Robert Littlefield, Amy Germain, Harriet Gordon, Jeffrey Haley and Peter Page sat on the case.

**Presentation:** Mac Hay and Sam Bradford appeared to present the application. Mr. Hay explained that he is seeking to re-configure the seating in the restaurant, reducing the seats from 142 to 122 inside, from 68 to 52 on the rear patio and to relocate 36 seats to picnic table-style seating to an inside fenced area on the front of the restaurant. He is also seeking to have entertainment at the property. Mr. Hay explained that he would like the opportunity to have entertainment once or twice a week. He surmised that the entertainment would consist of acoustic and amplified music and occasionally having a DJ playing amplified music. The latter would include the clearing of some tables to allow people to dance. He seeks to have entertainment between the hours of 11:00 A.M. and 1:00 A.M., which are also the hours of operation of the restaurant.

**Public Comment:** None. There were 2 letters of concern from abutters and 1 letter in opposition to the application.

**Board Discussion:** The Board questioned Mr. Hay and Mr. Bradford about clarifying the type of entertainment they were seeking. Most of the entertainment would be inside, however Mr. Hay wanted the opportunity to present acoustic music outside the restaurant.

**Public Comment:** The Board recognized Rick Murray. He suggested that the Board require the applicants to specifically define the type of entertainment that they are seeking, as it is a requirement of being granted a Special Permit.

**Board Discussion:** The Board discussed the applicants' ideas regarding entertainment. The Board discussed whether the case should be continued until the applicants could be more specific about the types of entertainment they were seeking. The Board requested that the applicants submit a revised floor plan showing the proposed location of the dance floor.

*Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the approval of a final seating layout and to allow public entertainment at the property located at 85/87 Shank Painter Road (GC) with the conditions that the Special Permit shall expire on January 2, 2015, all doors and windows shall be closed during the hours of entertainment, no amplified music shall occur outdoors and shall end by 6:00 P.M., the dance*

*floor shall not exceed 20' by 20', signage shall be placed at all exits stating that no alcohol shall leave the premises, the only forms of entertainment shall consist of a live band (indoor only), a DJ (indoor only) or acoustic music (indoor or outdoor) and the applicants will submit a revised floor plan showing the location of the dance floor, Harriet Gordon seconded and it was so voted, 4-0. Amy Germain will write the decision.*

**FY14-47      5 Dyer Street (Residential 3 Zone), Derik Burgess of Cape Associates on behalf of Jackie LaLonde –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a dormer on the rear elevation. David M. Nicolau and Harriet Gordon recused themselves because of conflicts of interest. Amy Germain, Leif Hamnquist, Jeffrey Haley and Peter Page sat on the case. Acting Chair Amy Germain explained to the applicant that since there were only four members of the Board seated on the case and the granting of a Special Permit required four assenting votes, the applicant had the choice of moving forward or postponing until a five-member Board could be seated. The applicant chose to proceed.

**Presentation:** Derik Burgess appeared to present the application. Mr. Burgess submitted plans that had been revised per the request of the Historic District Commission. The revision reduces the scale of the structure. He also submitted photographs. Acting Chair Amy Germain stated that it has been the custom of the Board not to hear matters when plans for the project are submitted at the hearing. In addition, she noted that a new scale calculation had not yet been prepared. She suggested that the case be continued to the April 3, 2014 Public Hearing.

*Amy Germain moved to continue Case #FY14-47 until the April 3, 2014 Public Hearing, Leif Hamnquist seconded.*

The Board briefly discussed the motion.

*The motion was so voted, 4-0.*

**FY14-48      4 Bradford Street (Residential 3, Zone), Kenneth Johnson –**

The applicant seeks a Special Permit under Article 3, Sections 3110, Changes, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to enlarge a cottage with pre-existing, non-conforming side and rear yard setbacks. There was a request from the applicant to postpone this matter until the April 3, 2014 Public Hearing. *Harriet Gordon moved to grant the request to postpone Case #FY14-48 until the April 3, 2014 Public Hearing, Jeffrey Haley seconded and it was so voted, 5-0.*

**FY14-49      9 Wareham Road (Residential 3 Zone), Helen Ryde and Kate Schiappa –**

The applicants seek a Special Permit under Article 3, Sections 3110, Changes, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and replace within the same footprint a pre-existing, non-conforming shed. David M. Nicolau, Amy Germain, Leif Hamnquist, Jeffrey Haley and Peter Page sat on the case.

**Presentation:** Helen Ryde and Kate Schiappa appeared to present the application.

The applicants seek to demolish a dilapidated shed on the property and re-build a replica in the same footprint. The shed will be built by Pine Harbor Wood Products.

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

**Board Discussion:** The Board briefly questioned the applicants and requested that a Non-Conforming Checklist be submitted. The plans were prepared by Pine Harbor Wood Products, which was so noted on the plans.

***Amy Germain moved to grant a Special Permit under Article 3, Sections 3110, Changes, Extensions or Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and replace within the same footprint a pre-existing, non-conforming shed at the property located at 9 Wareham Road (Res 3), Leif Hamnquist seconded and it was so voted, 5-0. Leif Hamnquist will write the decision.***

Chair David M. Nicolau requested the indulgence of the Board to hear Case #FY14-52 next because he could not sit on Cases #FY14-50 and #FY14-51.

**FY14-52      247 Commercial Street (Town Commercial Center Zone), Crown and Anchor, LLC –**

The applicant seeks a Special Permit under Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase seating from 136 to 166 seats. David M. Nicolau, Amy Germain, Harriet Gordon, Jeffrey Haley and Peter Page sat on the case.

**Presentation:** Rick Murray appeared to present the application. He is requesting 30 additional seats because he is changing an area of service. The location of the areas of service are not changing, however the dimensions of the outdoor courtyard area will be slightly larger. The interior of the restaurant will remain the same as will the cabaret space and the covered deck area. He explained that the change will have no effect on the water supply and the restaurant is connected to the sewer system. There are three drains on the property to accommodate run-off and mitigate drainage issues. There will be no filling, cutting or alteration of the topography, there will be no impact on adjacent access or other serving roads, there will be no new service requirements, no additional burdens on public safety or on the Town administration, no impact on solar access of adjacent buildings and no ecological effects. According to Mr. Murray, the advantages to an increase in seating will far outweigh any detrimental effects, such as hazard, congestion or environmental degradation. He has contributed a large amount of money to the state and Town for meals and lodging taxes, which will increase with the increase in seating.

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

**Board Discussion:** The Board questioned Mr. Murray about the flex-seating plan at the restaurant and asked if he needed an Economic Development Permit for the extra flow.

***Amy Germain moved to grant a Special Permit under Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase seating from 136 to 166 seats at the property located at 247 Commercial Street (TCC),***

*contingent upon the submission of a revised seating plan verified by the Building Commissioner and pending the grant of an Economic Development Permit, Jeffrey Haley seconded and it was so voted, 5-0.* Amy Germain will write the decision.

**FY14-50      10 Harbour Drive (Residential 1 Zone), William N. Rogers, II, on behalf of Bay Harbour LLC, II –**

The applicant seeks a Special Permit under Article 2, Section 2450, Permitted Accessory Uses, of the Zoning By-Laws for the approval of the installation of a 34' by 12' in-ground swimming pool. Amy Germain, Harriet Gordon, Leif Hamnquist, Jeffrey Haley and Peter Page sat on the case.

**Presentation:** Attorney David Reid, Jason Stone and Jen Malila appeared to present the application. The applicant seeks to install a small saline swimming pool in the east side yard. The proposed pool will measure 12' wide by 25' long on one side and 34' long on the other side with a built-in round spa area. A 4' safety fence will be located at each end of the pool and an existing 6' solid cedar fence is located on the sideline abutting the neighbor. Additional landscaping will be added. Attorney Reid stated that no detrimental effects, such as hazard, congestion or environmental degradation will result from this project. It is in the best interest of the Town and the neighborhood that the property be developed in an appropriate fashion and at appropriate levels for its economic value and for the use and enjoyment of the owner. The lot is very large and the house is an appropriate size for the lot and this kind of amenity is not out of proportion or out of the norm for this kind of a subdivision.

**Public Comment:** None. There were seven letters in favor of the application.

**Board Discussion:** The Board questioned Attorney Reid about the lighting on the property. The Board questioned Attorney Reid about the noise emanating from an equipment shed and its potential effect on the neighbors. The Board requested that the water be trucked in and trucked out, if necessary, and that any exterior lighting adhere to dark sky protocols.

*Leif Hamnquist moved to grant a Special Permit under Article 2, Section 2450, Permitted Accessory Uses, of the Zoning By-Laws for the approval of the installation of a 34' by 12' in-ground swimming pool at the property located at 10 Harbour Drive (Res 3) with the conditions that water be trucked in and out, that no additional speakers, other than the three existing speakers, be placed outdoors and that any exterior lighting adhere to dark sky protocols, Harriet Gordon seconded and it was so voted, 5-0.* Harriet Gordon will write the decision.

**FY14-51      8 Harbour Drive (Residential 1 Zone), William N. Rogers, II, on behalf of Amanda Burden –**

The applicant seeks a Special Permit under Article 2, Section 2450, Permitted Accessory Uses, of the Zoning By-Laws for the approval of the installation of a 34' by 12' in-ground swimming pool. Amy Germain, Harriet Gordon, Leif Hamnquist, Jeffrey Haley and Peter Page sat on the case.

**Presentation:** Attorney David Reid, Jason Stone and Jen Malila appeared to

present the application. The applicant seeks to install a small saline swimming pool in the east side yard. The proposed pool will measure 12' wide by 25' long on one side and 34' long on the other side with a built-in round spa area. A 4' safety fence will be located at each end of the pool and an existing 6' solid stockade fence is located on the sideline abutting the neighbor. Pool and ground lighting will be low voltage, low level and downward-facing. Additional landscaping will be added. Attorney Reid stated that no detrimental effects, such as hazard, congestion or environmental degradation will result from this project. The benefits to the Town and the neighborhood are the same as stated for the previous application.

**Public Comment:** None. There were seven letters in favor of the application.

**Board Discussion:** The Board briefly questioned Attorney Reid.

***Leif Hamnquist moved to grant a Special Permit under Article 2, Section 2450, Permitted Accessory Uses, of the Zoning By-Laws for the approval of the installation of a 34' by 12' in-ground swimming pool at the property located at 8 Harbour Drive (Res 3) with the conditions that water be trucked in and out, that no additional speakers, other than the three existing speakers, be placed outdoors and that any exterior lighting adhere to dark sky protocols, Jeffrey Haley seconded and it was so voted, 5-0. Harriet Gordon will write the decision.***

**NEXT MEETING:** The next meeting will take place on April 3, 2014. 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 9:15 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on April 3, 2014  
David M. Nicolau, Chair