

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
April 17, 2014**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** David M. Nicolau, Amy Germain (arrived at 6:40 P.M.), Harriet Gordon, Leif Hamnquist (left at 7:35 P.M.), Jeffrey Haley, Joe Vasta and Peter Page.

**Members Absent:** Robert Littlefield (excused).

**Others Present:** Gloria McPherson (Town Planner) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Chair David M. Nicolau called the Work Session to order at 6:31 P.M.

**MINUTES:** **March 6, 2014** – *Joe Vasta moved to approve the language as written, Harriet Gordon seconded and it was so voted, 6-0.*

**March 20, 2014** – *Joe Vasta moved to approve the language as written, Harriet Gordon seconded and it was so voted, 6-0.*

**April 3, 2014** – *Joe Vasta moved to approve the language as written, Harriet Gordon seconded and it was so voted, 6-0.*

**PENDING DECISIONS:**

**FY14-50**     **10 Harbour Drive (Residential 1 Zone), William N. Rogers, II, on behalf of Bay Harbour LLC, II** –  
Amy Germain, Harriet Gordon, Leif Hamnquist, Jeffrey Haley and Peter Page sat on the case. Harriet Gordon read the decision. Letters in support of the application have been submitted to the Board. *Leif Hamnquist moved to accept the language as written, Jeffrey Haley seconded and it was so voted, 4-0.*

**FY14-51**     **8 Harbour Drive (Residential 1 Zone), William N. Rogers, II, on behalf of Amanda Burden** –  
Amy Germain, Harriet Gordon, Leif Hamnquist, Jeffrey Haley and Peter Page sat on the case. Harriet Gordon read the decision. Letters in support of the application have been submitted to the Board. *Leif Hamnquist moved to accept the language as written, Jeffrey Haley seconded and it was so voted, 4-0.*

**FY14-55**      **22 Commercial Street (Residential 1 Zone), LEI Inn, LLC –**  
Peter Page, Harriet Gordon, Joe Vasta and Jeffrey Haley sat on the case. Peter Page read the decision. *Harriet Gordon moved to accept the language as written, Jeffrey Haley seconded and it was so voted, 4-0.*

**FY14-56**      **225 Commercial Street (Town Commercial Center Zone), Attorney Robin B. Reid on behalf of Topknot Properties, LLC –**  
David M. Nicolau, Amy Germain, Harriet Gordon, Joe Vasta and Jeffrey Haley sat on the case. The applicant submitted an exterior seating plan indicating where the busing station will be located. The reading of the decision was postponed.

The Board will hold just a Work Session on May 1, 2014 to read pending decisions and to discuss procedure and other issues. Board members should send ideas to Gloria McPherson.

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 7:01 P.M. He explained the Public Hearing procedures to the public. There were seven members of the Zoning Board of Appeals present and one absent.

### CONTINUED CASES:

**FY14-47**      **5 Dyer Street (Residential 3 Zone), Derik Burgess of Cape Associates on behalf of Jackie LaLonde (continued from April 3, 2014) –**  
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. Amy Germain, Joe Vasta, Leif Hamnquist, Jeffrey Haley and Peter Page sat on the case.

**Presentation:** Derik Burgess appeared to discuss the application. He submitted revised scale calculations, which are lower than previously presented. The neighborhood average scale is 16,067 cu. ft., the existing scale is 22,061 cu. ft., the proposed scale of the addition is 1,760 cu. ft. and the proposed total scale is 23,821 cu. ft. The allowable scale without relief is 18,477 cu. ft.

Acting Chair Amy Germain called for a motion to re-open the public portion of the hearing in order to read letters from the public. *Joe Vasta moved to re-open the public portion of the hearing, Jeffrey Haley seconded and it was so voted, 5-0.*

**Public Comment:** There were 3 letters in support of the application that had been read into the record at the April 3, 2014 Public Hearing.

**Board Discussion:** The Board questioned Mr. Burgess about the new scale calculations. The Board noted that not all elevation drawings had been submitted, specifically, the elevations where no work was being proposed. After a brief

discussion, Acting Chair Amy Germain polled the Board and all members indicated that they would vote to approve the application.

*Leif Hamnquist moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a dormer on the rear elevation at the property located at 5 Dyer Street (Res 3), with the condition that dated, proposed plans of all elevations, not just elevations undergoing changes, are submitted, Joe Vasta seconded and it was so voted, 5-0.* Joe Vasta will write the decision.

Chair David M. Nicolau called for a motion to take Case #FY14-54 out of order. *Amy Germain moved to take Case #FY14-54 out of order, Joe Vasta seconded and it was so voted, 5-0.*

**FY14-54      39 Bradford Street, Unit 1 (Residential 3 Zone) Daniel Skahen and Brad Mallow (continued from April 3, 2014) –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-laws to demolish and reconstruct a shed within a side yard setback. David M. Nicolau explained to the applicant that since there were only four members of the Board available to be seated on the case and the granting of a Special Permit required four assenting votes, he had the choice of moving forward or postponing until a five-member Board could be seated. The applicant chose to proceed. David M. Nicolau, Amy Germain, Joe Vasta and Peter Page sat on the case.

**Presentation:** Joel Harms appeared to present the application. The applicants seek to demolish and reconstruct a shed in the same footprint. The shed is in a dilapidated state and the applicants have contracted with a company that will replace the existing shed with an exact replica.

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

**Board Discussion:** The Board briefly discussed the project.

*Joe Vasta moved to grant a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-laws to demolish and reconstruct a shed within a side yard setback at the property located at 39 Bradford Street, Unit 1 (Res 3), Amy Germain seconded and it was so voted, 4-0.* David M. Nicolau will write the decision.

**FY14-53      39 Bradford Street, Unit 4 (Residential 3 Zone), Pavel Fiodarau on behalf of Johnny Pak –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to install a roof over an existing pergola. Jeffrey Haley recused himself because of a conflict of interest. David M. Nicolau, Amy Germain, Harriet Gordon, Joe Vasta and Peter Page sat on the case.

**Presentation:** Pavel Fiodarau appeared to present the application. The existing scale is 21,760 cu. ft., the allowable scale is 16,881 cu. ft., the scale of the proposed addition is 1,040 cu. ft. and the total proposed scale is 22,800 cu. ft. The neighborhood scale is 14,679 cu. ft. The applicant seeks to install a roof over an existing pergola. The roof will be made of asphalt or cedar shingles.

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

**Commission Discussion:** The Board noted that there was no site plan submitted and the east and southeast elevation drawings were missing from the application. The Board discussed its concern that the area beneath the pergola area may become enclosed at some future date. In order to prevent that from happening, the Board decided that as a condition of the Special Permit, the area beneath the pergola can never be enclosed with any type of material.

*Amy Germain moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to install a roof over an existing pergola at the property located at 39 Bradford Street, Unit 4 (Res 3), contingent upon the submission of dated and fully-dimensioned plans of all elevations and a site plan and that the covered porch shall remain unenclosed by any materials whatsoever, Joe Vasta seconded and it was so voted, 5-0. Harriet Gordon will write the decision.*

**FY14-59      169 Bradford Street, (Residential 3, Zone), Don DiRocco on behalf of PTown Landing, LLC –**

The applicant seeks a Special Permit under Article 2, Section 2640, Building Scale, of the Zoning By-Laws to build an addition to the existing dwelling. There was a request from the applicant to postpone until the May 15, 2014 Public Hearing. *Amy Germain moved to approve the request to postpone Case #FY14-59 until the May 15, 2014 Public Hearing, Joe Vasta seconded and it was so voted, 5-0.*

**FY14-60      205-209 Commercial Street, (Town Commercial Center Zone), Aquarium Wharf Realty Trust –**

The applicant seeks a Special Permit under Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase seating from 56 to 138 seats. David M. Nicolau, Amy Germain, Harriet Gordon, Joe Vasta and Jeffrey Haley sat on the case.

**Presentation:** Ben deRuyter appeared to present the application. He seeks to increase the fast food seats at the site from 56 to 138. The maximum allowed occupancy of the seating area is 155 seats. Mr. deRuyter decided to request less than 155 seats when he took into consideration the nature of the site, how the tables and seats fit into it and how the flow of traffic would work most efficiently. The benefits of the proposed increase in seating are that it will enhance economic opportunities for all 12 businesses located at the site. The nature of the site is such that all seats are made available to the general public, whether or not they are patronizing the businesses on the site. According to Mr. deRuyter, he will continue to operate in this manner, which is a service to visitors and to the Town. He is also willing to make the restrooms on site, which are now only accessible to patrons, available to the general public if he can acquire the gallons for the expanded seating. Another benefit is that he would try to extend the season for the businesses on the site, at least until the end of October or November if possible, however that plan would be weather-dependent. He argued that these benefits outweigh any detriments.

**Public Comment:** None. There were 5 letters in favor of the application and a memo from the Building Commissioner about the occupancy load.

**Commission Discussion:** The Board questioned Mr. deRuyter about his existing trash/recycling plan. He responded that his business does all the trash and recycling handling itself. He added that he is looking to purchase a food dehydrator this season that will generate potable water and compost, and significantly reduce the amount of food waste on the site. He will educate and train his tenants on how to use the dehydrator and install signage for patrons. The Board discussed its concern that any increase in seating could create detrimental effects given the location of a bar in the seating area. The Board decided to limit the Special Permit for a year and review any issues that may have occurred during that period of time.

*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 56 to 138 seats at the property located at 205-209 Commercial Street (TCC) with the following conditions: that signs shall be posted at all exits stating that no alcohol shall be removed from the premises, that the Special Permit shall expire on January 1, 2015, that the seating plan shall be revised to reflect the location of trash/recycling plan with a minimum of four stations, that there be no live or amplified music in excess of two existing speakers at the bar, that the Special Permit is pending the granting of Economic Development permit, that the restrooms shall become accessible to the public and that the Special Permit will run with the applicant, Joe Vasta seconded and it was so voted, 5-0. Amy Germain will write the decision.*

**FY14-61**

**288 Bradford Street, (Residential 3, Zone), Provincetown Tennis Club –**

The applicant seeks a Special Permit under Article 3, Section 3110, Non-Conformancy – Change, Extensions or Alterations, of the Zoning By-Laws to replace a pre-existing, non-conforming 12-ft. high fence partially located within a setback. David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

**Presentation:** Doug Gable and Peter Deveney appeared to present the application. The applicant seeks to install a fence on the east side of the property. The benefits include repairing a fence that is in serious disrepair and is posing a public safety issue to patrons of the Club. The Club is a benefit to the Town and has been providing tennis players with courts for 75 years. It holds events for children and allows the public to play for free 2 hours a week.

**Public Comment:** Sherry Dranch, an abutter, and Jason Chapman, Ray Faulkner and Patrick Devine, all non-abutters, spoke in favor of the application. There were 2 letters from abutters in favor of the application.

**Board Discussion:** The Board questioned Mr. Gable and Mr. Deveney about the project. The length of the proposed fence is approximately 320', the length of three tennis courts.

*Amy Germain moved to grant a Special Permit under Article 3, Section 3110, Non-Conformancy – Change, Extensions or Alterations, of the Zoning By-Laws to replace a pre-existing, non-conforming 12-ft. high fence partially located*

*within a setback at the property located at 288 Bradford Street (Res 3), Joe Vasta seconded and it was so voted, 5-0. David M. Nicolau will write the decision.*

**FY14-62**      **386 Commercial Street, (Town Commercial Center Zone), Al Gordon –**  
The applicant seeks a Special Permit under Article 2, Section 2640, Building Scale, of the Zoning By-Laws to alter the seating layout and add flex seating, but not increase the total number of seats. This case is postponed to the May 15, 2014 Public Hearing.

**NEXT MEETING:** The next meeting will take place on May 1, 2014. It will consist of a Work Session at 6:30 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 May 1, 2014  
David M. Nicolau, Chair