

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
May 1, 2014**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** David M. Nicolau, Amy Germain, Harriet Gordon, 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 6:34 P.M.

**PENDING DECISIONS:**

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

Amy Germain, Joe Vasta, Leif Hamnquist, Jeffrey Haley and Peter Page sat on the case. Joe Vasta read the decision. The applicant did not submit plans as requested by the Board. *Harriet Gordon moved to accept the language as written, Jeffrey Haley seconded and it was so voted, 5-0.*

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

David M. Nicolau, Amy Germain, Harriet Gordon, Joe Vasta and Peter Page sat on the case. Harriet Gordon read the decision. The applicant had submitted plans as requested by the Board. *Joe Vasta moved to accept the language as amended, Jeffrey Haley seconded and it was so voted, 5-0.*

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

David M. Nicolau, Amy Germain, Joe Vasta and Peter Page sat on the case. David M. Nicolau read the decision. *Amy Germain moved to accept the language as amended, Harriet Gordon seconded and it was so voted, 5-0.*

**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. Amy Germain read the decision. *Harriet Gordon moved to accept*

*the language as written, Joe Vasta seconded and it was so voted, 5-0.*

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

David M. Nicolau, Amy Germain, Harriet Gordon, Joe Vasta and Jeffrey Haley sat on the case. The applicant did not submit revised plans showing the recycling areas as requested by the Board. The reading of the decision was postponed.

**FY14-61      288 Bradford Street, (Residential 3, Zone), Provincetown Tennis Club –**

David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. David M. Nicolau read the decision. *Amy Germain moved to accept the language as written, Joe Vasta seconded and it was so voted, 5-0.*

Anne Howard, Building Inspector, and Leif Hamnquist, Permit Coordinator, joined the discussion.

The Board discussed what kinds of plans it would like submitted with an application. It has, in the past, required north, south, east and west elevation drawings from applicants. It was discussed whether this should be the standard or, if in some cases, all elevation drawings would not be needed. The Board's requirements for shed/artist studios plans were discussed. It was decided that a checklist should be compile by staff to give to applicants. It should include the shed/artist studio dimensions, drawings of all elevations (can be hand-drawn) showing doors and windows, a site plan showing the location of the /artist studio and the location of the lot line and pictures, if possible, of what the shed/artist studio will look like. The checklist should also include the requirement that existing and proposed plans have the same scale.

Any applicant who comes before the Board, whether for scale or for an addition, must identify all the non-conformances on the property. After some discussion, the Board decided it preferred that all applicants submit a non-conforming checklist because it summarizes information in one place.

The Board briefly discussed signs and outdoor displays. It would like to review the outdoor display letter that Russ Braun sent out to business owners last year. Ms. McPherson will locate the letter.

The Board talked about applications seeking relief under Article 2, Section 2460 and what information needed to be shown on seating plans. Ms. McPherson said that the Licensing Board would like to holding a joint meeting with the Board in order to clarify what each Board does in relation to restaurants. The Board agreed to meet with the Licensing Board.

Chair David M. Nicolau reminded the Board to be aware of making unnecessary, distracting noises during meetings.

Amy Germain commented on the issue of Board deliberations and the importance of listening to what members are saying without interrupting them. Chair David M. Nicolau reminded the Board that a lot of the work of the Board should be done before meetings in order not to spend

excessive time discussing an application. Ms. McPherson volunteered to help Board members review plans before hearings if they have questions or concerns. There is room to improve the efficiency of the meetings, including managing applicants and their agents. The Board discussed the issue.

Peter Page suggested that if the Building Dept. is revising forms and making a checklist that they should be consistent with regard to such things as Building personnel and fonts. He also brought up the issue of the amount of noise that is emitted by pool mechanicals and was of the opinion that the Board should pay attention to that when looking at pool applications and considering requiring some kind of sound attenuation. He also had a question about who can speak and when during an application hearing. The Board discussed the issue. Ms. McPherson suggested that the Board could consider keeping the public portion of a hearing open until the decision is read.

Chair David M. Nicolau talked about the role of staff during meetings. Once the Board starts to deliberate, he doesn't want the flow of conversation to be changed unless there is a technical point be discussed that is incorrect. He said that it is still a learning process between the Board and Ms. McPherson and other staff. The Board briefly discussed the topic. He didn't know how much the Board should rely on staff once deliberations have begun. He would like to find out from Town Counsel. He doesn't want the process to be tainted and end up leading to an appeal of the Board's decision. Ms. McPherson said that the role of staff was to correct the Board if it was misinterpreting a Zoning By-Law or a point of law. She added that if the Board is putting the Town in a position where it might likely get sued, it is the duty of staff to point out the fault in the Board's reasoning or interpretation of a by-law. Amy Germain suggested re-instituting staff notes. The Board discussed the matter.

Amy Germain said that the Board should discuss file management, conflict of interest and the purpose and intent of zoning by-laws. Ms. McPherson said that there are trainings available and that the Board could bring people from the Commonwealth to discuss zoning issues. She suggested that they could be scheduled on Thursday of the last week of months that have five weeks. She said that in terms of conflict of interest, if there is an appearance of a conflict, the Board member should fill out a form in the Clerk's Office in order to be able to sit on a case. Chair David M. Nicolau reminded the Board that it is up to the person who has the potential conflict to identify that issue, and not up to anyone else to point that out. Ms. McPherson added that the Chair has the right to ask a Board member who may have a conflict, or the appearance of a conflict, if he or she is able to render a fair decision in a particular case.

## **PUBLIC HEARING**

**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. This case is postponed until the May 15, 2014 Public Hearing.

**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 15, 2014. It will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Amy Germain moved to adjourn at 9:30 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on May 15, 2014  
David M. Nicolau, Chair