

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

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David M. Nicolau (left at 9:50 P.M.), Robert Littlefield, Amy Germain, Jeffrey Haley, Joe Vasta and Peter Page.

Members Absent: None.

Others Present: Gloria McPherson (Town Planner).

WORK SESSION

Chair David M. Nicolau called the Work Session to order at 5:44 P.M.

PENDING DECISIONS:

- FY14-62** **386 Commercial Street (Town Commercial Center Zone), Al Gordon -**
David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Amy Germain read the decision. *Jeffrey Haley moved to approve the language as written, Joe Vasta seconded and it was so voted, 3-0.*
- FY14-63** **8 Winthrop Street (Residential 3 Zone), Robert H. Quigley –**
Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Jeffrey Haley read the decision. The decision will be amended.
- FY14-64** **3 Creek Round Hill Road (Residential 1 Zone), William N. Rogers, II on behalf of Robert R. McBride et al. -**
David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Joe Vasta read the decision. The decision will be amended.
- FY14-65** **307 Commercial Street (Town Commercial Center Zone), Steve Milliken, dba Dolphin Fleet –**
David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. The Board signed the site plan and a photograph of the outdoor display.
- FY14-66** **322 Commercial Street (Town Commercial Center Zone), Steven Underwood –**
David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. The Board signed the site plan and a photograph of the outdoor display.
- FY14-67** **11 Mermaid Avenue (Residential 1, Zone), William N. Rogers, II, on behalf of Neil Hanscomb –**
David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on

the case. The reading of the decision is postponed to the August 7, 2014 Public Hearing.

FY14-71 **333 Commercial Street (Town Commercial Center Zone), Nancy Ann Meads –**
Robert Littlefield, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Amy read the decision. *Robert Littlefield moved to approve the language as amended, Joe Vasta seconded and it was so voted, 5-0.*

FY14-72 **56 Commercial Street (Residential 3 Zone), Donald Murphy –**
Robert Littlefield, Amy Germain, Jeffrey Haley and Peter Page sat on the case. Amy Germain read the decision. *Robert Littlefield moved to approve the language as amended, Jeffrey Haley seconded and it was so voted, 4-0.*

FY14-73 **586 Commercial Street (Residential 2, Zone), B&C Construction on behalf of Louise Silver –**
Robert Littlefield, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Robert Littlefield read the decision. *Amy Germain moved to approve the language as written, Joe Vasta seconded and it was so voted, 4-0.*

FY14-74 **1 MacMillan Wharf (Town Commercial Center and Harbor Overlay Zones), Provincetown Public Pier Corporation –**
Robert Littlefield, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Joe Vasta read the decision. *Robert Littlefield moved to approve the language as amended, Amy Germain seconded and it was so voted, 5-0.*

MINUTES: June 5, 2014 – Joe Vasta moved to approve the language as written, Amy Germain seconded and it was so voted, 4-0.

June 19, 2014 – The approval of these minutes are postponed to the July 23, 2014 Public Hearing.

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 7:15 P.M. There six members of the Zoning Board of Appeals present and none absent.

FY14-59 **169 Bradford Street, (Residential 3 Zone), Don DiRocco on behalf of PTown Landing, LLC (continued from June 5, 2014) –**
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. Robert Littlefield recused himself because of a conflict of interest. David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.
Presentation: Attorney Lester J. Murphy and Christine Barker appeared to

discuss the application. The applicant has submitted revised plans to the Board. Attorney Murphy briefly reviewed the history of the project. The applicant has sought to reduce the size of the project after hearing the opinions of several Board members who thought that the extent of the original proposed addition was too much. The current revised project showed the addition's width, looking at the structure from Bradford Street, as reduced by 3'2", from a width of 19'2", to a width of 16'. The length of the structure will remain the same at 18'8". The sizes of the first floor living room and second floor master bedroom have been reduced. The scale of the proposed addition is 8,000 cu. ft., reduced from 9,575 cu. ft., and the total scale of the structure was reduced to 28,190 cu. ft. from 29,765 cu. ft., a 16.5% reduction. This is a 39.6% proposed increase instead of a 47% increase as previously requested. He argued that the scale is similar to other structures in the neighborhood and it would be compatible and harmonious with the Bradford Street neighborhood. Attorney Murphy reminded the Board that many abutters were supportive of the original proposal and that there were 20 letters and speakers in support of it. The revised proposal, he argued, would not disrupt the character of the neighborhood. Given the good faith effort to reduce the scale, but still come up with a useful structure, and very importantly, provide legal and proper egress to all three units in the building, he hoped that the Board would approve the new proposal.

Public Comment: Steve Katsurinis spoke in support of the proposal. There were no new letters in the file.

Board Discussion: The Board questioned Attorney Murphy and Ms. Barker. Two Board members were of the opinion that the 40% increase in scale was still too large. The applicant requested to withdraw without prejudice.

Amy Germain moved to grant the request to withdraw Case #FY14-59 without prejudice, Joe Vasta seconded and it was so voted, 5-0.

FY14-68 152 Commercial Street (Town Commercial Center Zone), Janice Marlene Sawyer (continued from June 5, 2014) –

The applicant seeks a Special Permit under Article 2, Section 2440, B7, Permitted Principle Uses, of the Zoning By-Laws to reconfigure and add additional parking spaces. Amy Germain and Jeffrey Haley recused themselves because of conflicts on interest. David M. Nicolau, Robert Littlefield, Joe Vasta and Peter Page sat on the case. Chair David M. Nicolau stated that the public portion of the hearing was still open and that there were only four members seated on the case and four votes would be needed in order to grant a Special Permit.

Presentation: Marlene Sawyer and Michael Potenza appeared to discuss the application.

Public Comment: According to Article 2, Section 2440, B7, both the Police Chief and Fire Chief are required to approve the reconfiguration and the addition of parking spaces. The Police Chief has given a verbal assent, however, there has been no communication from the Fire Chief. Daniel McCurdy spoke against the application. Attorney John McCluskey, on behalf of Paul Ditacchio, spoke against the application. Shannon Patrick had a question about the drainage related to the

new structures on Conant Street. Chair David M. Nicolau read a letter from Deputy Director Eric Larsen of the Dept. of Public Works suggesting some mitigation for the runoff from the applicant's property.

Board Discussion: Chair David M. Nicolau related his observations during various site visits he took to the property during rainy weather. He noted that Mr. Ditacchio's property seemed to be the lowest in the neighborhood. He observed a great deal of water pouring out of a gutter on the northeast corner of Ms. Sawyer's house. He suggested that in order to control the gutter runoff, she install a drywell beneath that gutter and that in order to control the runoff from her parking lot that she install a French drain that DPW would find appropriate along the width of the driveway on Atlantic Avenue. He suggested that a berm be built in front of Mr. Ditacchio's gated entrance. As for the parking lot and an abutter's fear of vehicles accidentally rolling down the hill to damage his property, he suggested that Ms. Sawyer install signs in front of parking spaces 16 and 17 specifying that a vehicle's tires be angled in order to prevent the car from rolling down the hill in case of a parking brake failure. He stated that the benefit to the Town of the applicant's parking lot is that the property provides much needed parking spaces, many of which are being taken away in that part of Town. His proposed conditions include an expiration date of December 31, 2014 for the Special Permit, the installation of a French drain approved by DPW on Atlantic Avenue and parking signage in front of parking spaces 16 and 17 requiring that a vehicle's tires be angled. The Board discussed a deadline for the work to be completed and suggested that Ms. Sawyer endeavor to get the work done within the next month. The Board noted that the numbering of the parking spaces on the ground did not match the site plan.

Robert Littlefield moved to grant a Special Permit under Article 2, Section 2440, B7, Permitted Principle Uses, of the Zoning By-Laws to reconfigure and add additional parking spaces at the property located at 152 Commercial Street (TCC) with the following conditions: that a drywell be installed beneath the gutter on the northeast corner of the applicant's property, that a French drain approved by DPW be installed along the length of the driveway on Atlantic Avenue, that parking spaces 16 and 17 have signs indicating that vehicle wheels be turned at a 45° angle when parked, that the Special Permit expire on December 31, 2014, that the SP will run with the applicant and that the work requested shall be completed by August 15, 2014, Joe Vasta seconded and it was so voted, 4-0. If the work has not been completed by the date requested, the applicant must return to the Board to discuss an extension. The applicant will need to submit a revised plan showing the correct numbering of the parking spaces. David M. Nicolau will write the decision.

FY14-69 63 Shank Painter Road, (General Commercial Zone), Elizabeth Athineos
(continued from June 5, 2014) –

The applicant seeks a Special Permit under Article 3, Section 3420, Outside Display, of the Zoning By-Laws to have an outdoor display. Ms. McPherson stated that the violations on the property still exist. The applicant was not present.

The Board briefly discussed the property and possible conditions to place on a Special Permit if one were to be granted. *Amy Germain moved to table the matter until the end of the Public Hearing, Robert Littlefield seconded and it was so voted, 5-0.*

FY14-70 173 Bradford Street, (Residential 3 Zone), William N. Rogers, II on behalf of Young's Court East Condominium –

The applicant seeks a Special Permit under Article 3, Section 3110, Nonconformancy – Change, Extensions or Alterations, of the Zoning By-Laws to construct a shed dormer and roof deck. David M. Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case.

Presentation: Attorney Lester J. Murphy, Gary Locke and Tito Stefani appeared to present the application. This proposal includes altering and extending a two-family structure. All renovations are being done within the existing footprint of the structure. A similar proposal came before the Board about a year ago. That proposal has been modified and reduced in scope. The structural changes include expanding a dormer on the north side of the property from 8'4" to 17' and the construction of a dormer with a roof deck on the south side of the structure. The proposal also includes a reduction in septic flow as the number of bedrooms in one of the units will be eliminated. The structure is non-conforming as to its rear yard setback. It is at its closest point 4.14' from the lot line. Attorney Murphy argued that the proposal is not substantially more detrimental to the neighborhood than what currently exists. The alterations on the south side of the property include a 30' 8.5" dormer, the middle of which will include an enclosed roof deck. The proposal will have no significant effect on the privacy of the owners of the abutting property located at 5 Young's Court. The roof deck is set into the building and not located on the top of the structure. The deck area will be 8'2" by 7'6" and will include an HVAC system, a 30" by 30" access door and a ladder to the structure below. The deck will be too small to become a noise hazard according to Attorney Murphy. He argued that the proposal would be an enhancement to the neighborhood. The applicant has listened to and heard the neighbors' concerns and tried to design the new proposal to accommodate them. The redesign attempted to minimize any impact on the neighbors. He had a letter from the Police Dept. stating that there is no record of noise complaints from this property since 2009.

Public Comment: George Libone and Bill Meves, both abutters, spoke against the application. There were 3 letters, one signed by 7 people, in opposition to the application. There were 20 letters in support of the application.

Board Discussion: The Board questioned Attorney Murphy, Mr. Stefani and Mr. Locke. The Board looked at the location of the abutter's skylight in relation to the deck. The Board discussed whether the project was substantially more detrimental to the neighborhood.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110, Nonconformancy – Change, Extensions or Alterations, of the Zoning By-Laws to construct a shed dormer and roof deck at the property located at 173

Bradford Street (Res 3) with the condition that only an access ladder be installed to the roof deck, Joe Vasta seconded and it was so voted, 4-1 (Amy Germain opposed). David M. Nicolau will write the decision.

FY14-75 3 Fishburn Court (Residential 3 Zone), John DeSouza on behalf of Thomas Thompson –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to deviate from neighborhood average building scale to extend two porches, one of which is to be enclosed to create a mudroom. The Board decided to postpone this case until the July 23, 2014 Public Hearing. ***Amy Germain moved to postpone Case #FY14-75 until the July 23, 2014 Public Hearing, Joe Vasta seconded and it was so voted, 5-0.***

FY14-69 63 Shank Painter Road, (General Commercial Zone), Elizabeth Athineos (continued from June 5, 2014) –

The applicant seeks a Special Permit under Article 3, Section 3420, Outside Display, of the Zoning By-Laws to have an outdoor display. Ms. McPherson stated that the violations on the property still exist. The Board decided to continue the case until the July 23, 2014 Public Hearing. ***Amy Germain moved to postpone Case #FY14-69 until the July 23, 2014 Public Hearing, Joe Vasta seconded and it was so voted, 5-0.***

FY14-77 478 Commercial Street (Residential 3 Zone), Ambrose Homes, Inc., on behalf of David Krohn –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws, to raise the pre-existing, non-conforming structure to construct a new foundation underneath and construct a new second floor deck. David M. Nicolau recused himself because of a conflict of interest. Robert Littlefield, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: Attorney Lester J. Murphy and David Krohn appeared to present the application. Attorney Murphy requested that the Board hear the case under the *Goldhirsh v. McNear* ruling.

Peter Page moved to hear the case under the Goldhirsh v. McNear ruling, Joe Vasta seconded and it was so voted, 4-1 (Amy Germain opposed).

Attorney Murphy explained that the lot is non-conforming as to lot area and frontage and the structure is non-conforming as to the east side and rear yard setbacks. The applicant seeks to lift the building, install a new foundation, re-frame the floor joists between the foundation and first floor and between the first and second floors, add a foot of ceiling height and enclose an area beneath a second floor deck that will become part of the first floor. The deck and 5' extension towards the front of the building are the only changes to the footprint of the building. In addition, the stairs on the west side will be removed and a wrap-around deck will be installed. The first floor, which is now a garage, will be converted to a bedroom, a living area and a garage. The foundation is in need of

repair and the floor joists have been cut to accommodate the plumbing, lessening their structural support. The structure will be upgraded and enhanced and brought into conformity with the State Building Code. Attorney Murphy argued that the proposal is not substantially more detrimental to the neighborhood than what exists. The proposal is a significant improvement to the structure and an enhancement and improvement to the neighborhood.

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

Board Discussion: The Board questioned Attorney Murphy and Mr. Krohn. *Amy Germain moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws, to raise the pre-existing, non-conforming structure to construct a new foundation underneath and construct a new second floor deck at the property located at 478 Commercial Street (Res 3) under the Goldhirsh v. McNear ruling, Peter Page seconded and it was so voted, 5-0.*

- FY14-78** **26 Alden Street (Residential 3 Zone), 26 Alden, LLC –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws, to demolish and reconstruct two pre-existing, non-conforming stairways within the front yard setback.
- FY14-79** **26 Alden Street (Residential 3 Zone), 26 Alden, LLC –**
The applicant seeks a Special Permit pursuant to Article 4, Section 4170, Change of Use/Non-Residential to Residential Use Conversions, of the Zoning By-Laws, to convert the existing municipal use to a nine-unit multi-family use, including three affordable units. The Board decided to postpone these cases until the July 23, 2014 Public Hearing. *Amy Germain moved to postpone Cases #FY14-78 and 14-79 until the July 23, 2014 Public Hearing, Joe Vasta seconded and it was so voted, 5-0.*
- FY14-80** **10 Young's Court (Residential 3 Zone), John Pompeii –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to add a second floor and a dormer within the side yard setback. This case has been postponed to the August 7, 2014 Public Hearing.

Vice Chair Robert Littlefield adjourned the Public Hearing 10:15 P.M.

NEXT MEETING: The next meeting will take place on July 23, 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 10:15 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on August 4, 2014
David M. Nicolau, Chair