

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
September 18, 2014**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley (arrived at 6:35 P.M. and Peter Page (arrived at 6:45 P.M.).

Members Absent: Amy Germain (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 6:05 P.M.

PENDING DECISIONS:

- FY14-68** **152 Commercial Street (Town Commercial Center Zone), Janice Marlene Sawyer –**
David M. Nicolau, Robert Littlefield, Joe Vasta and Peter Page sat on the case. The Board signed the plans.
- FY14-75** **3 Fishburn Court Residential 3 Zone), John DeSouza on behalf of Thomas Thompson –**
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Robert Littlefield read the decision. *Joe Vasta moved to approve the language as written, David M. Nicolau seconded and it was so voted, 3-0.*
- FY15-05** **5 Nickerson Street (Residential 2, Zone) Ted Smith, Architects, LLC, on behalf of Jane Barker and Linda Rohler –**
Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Joe Vasta read the decision. *Robert Littlefield moved to approve the language as written, Joe Vasta seconded and it was so voted, 2-0-1.*
- FY15-13** **12 Atlantic Avenue (Residential 3 Zone), Vincent Edwards –**
Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Robert Littlefield read the decision. *Joe Vasta moved to approve the language as written, Robert Littlefield seconded and it was so voted, 2-0-1.*

MINUTES: September 4, 2014 – Robert Littlefield moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 4-0.

FY15-10 15 Cottage Street (Residential 3 Zone), William Needell –
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Jeffrey Haley read the decision. **Joe Vasta moved to approve the language as amended, Robert Littlefield seconded and it was so voted, 2-0-1.**

FY15-11 457 Commercial Street (Residential 3 Zone), Ezra Block –
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. The decision will be read at the next Public Hearing on October 2, 2014.

Chair David M. Nicolau postponed the Work Session at 7:00 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:02 P.M. There were five members of the Zoning Board present and one absent.

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. There was a request to postpone this matter until the October 2, 2014 Public Hearing. The applicant has submitted a waiver of time constraints. **Robert Littlefield moved to grant the request to postpone Case #FY14-80 until the October 2, 2014 Public Hearing, Joe Vasta seconded and it was so voted, 5-0.**

FY15-02 910 Commercial Street (Residential 1 Zone), Carolyn Collins and Dorothy Varon –
The applicants seek a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to deviate from neighborhood average building scale and to construct two dormers up and along a pre-existing, non-conforming setback. Peter Page recused himself because of a conflict of interest. David M. Nicolau, Robert Littlefield, Joe Vasta and Jeffrey Haley sat on the case.
Presentation: Attorney Lester J. Murphy and Carolyn Collins appeared to present the application. The applicants seek to construct a small doghouse on the front and a larger dormer on the rear of the structure and slightly increase the height of the building. The building is non-conforming as to the north side setback on Commodore Avenue. There will be no change in the footprint of the building. The proposed addition will raise the height by 4". Attorney Murphy requested that the

Board hear Article 3, Section 3110 under the *Goldhirsh v. McNear* ruling and make a finding that the proposed addition will not be substantially more detrimental to the neighborhood than the existing non-conformancy. He stated that permission has been obtained from the condominium association. The proposed building will be more attractive and will retain the look of a cape-style cottage, thereby fitting in with the surrounding structures in the neighborhood. Attorney Murphy argued that the scale increase is appropriate pursuant to Article 5, Section 5330 and meets two criteria set forth in Article 2, Section 2640E. The neighborhood average scale is 7,364 cu. ft., the maximum allowable scale is 9,205 cu. ft., the existing scale of the structure is 8,970 cu. ft., the proposed addition is 1,601 cu. ft., for a total of 10,571 cu. ft. This is an increase of 17.85 %. This is a modest addition and will be similar in scale to many structures in the neighborhood as this is in a neighborhood of structures of many varied heights and sizes. Pursuant to Section 5330, Attorney Murphy stated that the social, economic or other benefits of the project outweigh any detrimental effects such as hazard, congestion or environmental degradation. The benefits to the Town include the fact that the assessed value of the building will increase resulting in higher tax revenues for the Town. It will upgrade and enhance the residential use of the unit by creating more liveable and usable space on the second floor. And there will be no added use of the structure. It will enhance this area of the condominium development and is supported by the condominium association. Under Section 2640E, the addition, pursuant to subparagraph 1, is in keeping with the goals and objectives of the Local Comprehensive Plan, Chapter 1, Section 1.2, Goal 1, Policy B and Goal 3 and Chapter 4, Section 4.2, Goal 2, Policy A. The addition also conforms to subparagraph 5, as it successfully integrates into its surroundings and is sited in such a manner as to minimize the appearance of mass from the streetscape and will not have a significant impact on natural light or views from surrounding buildings.

Robert Littlefield moved to hear the request for a Special Permit under Article 3, Section 3110 at the property located at 910 Commercial Street (Res 1) under the Goldhirsh v. McNear ruling, Joe Vasta seconded and it was so voted, 4-0.

Public Comment: David Lupone spoke in favor of the application. Louis Frankel, and Klara Mueller spoke in opposition to the application. William von der Heydt made a comment about the Board's decision-making process. There were 38 letters, a majority from abutters, in support of the application and 4 letters in opposition.

Board Discussion: The Board questioned Attorney Murphy and Ms. Collins. The Board was of the consensus that the increase in height of the structure was modest and the addition of the dormers would not be out of character with the neighborhood. It made a finding that would not be substantially more detrimental to the neighborhood than what currently exists.

Robert Littlefield made a finding that the project would not be substantially more detrimental to the neighborhood than what exists and to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to construct two dormers up and along a pre-existing,

non-conforming setback at the property located at 910 Commercial Street (Res 1) under the Goldhirsh v. McNear ruling, Joe Vasta seconded and it was so voted, 5-0.

The Board discussed whether there were any adverse effects as a result of the project.

Robert Littlefield made a motion to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to deviate from neighborhood average building scale and to construct two dormers up and along a pre-existing, non-conforming setback at the property located at 910 Commercial Street (Res 1), Joe Vasta seconded and it was so voted, 5-0. David M. Nicolau will write the decision.

FY15-07 **220A Commercial Street (Town Commercial Center Zone), Christopher Stein, dba Quintessential Cape Cod (continued from September 4, 2014) –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outside Display, of the Zoning By-Laws to display merchandise on an outdoor patio.

Robert Littlefield recused himself because of a conflict of interest. Chair David M. Nicolau explained that that there were only four members seated on the case and four favorable votes are needed or a Special Permit. The applicant had the choice of proceeding or continuing until a five-member Board could be seated. The applicant chose to proceed. David M. Nicolau, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: Chris Stein appeared to present the application. He explained that the outdoor display consisted of items related to the patio, such as garden furniture, art, outdoor lighting, outdoor art and outdoor plant-related merchandise.

Public Comment: None. There was a letter from the owner of the property granting permission for the outdoor display as long as the applicant is mindful of not blocking access to the sidewalk and that he adheres to all Town By-Laws.

Board Discussion: The Board questioned Mr. Stein about the number of items that will be displayed.

Peter Page moved to grant a Special Permit pursuant to Article 3, Section 3420, Outside Display, of the Zoning By-Laws to display merchandise on an outdoor patio at the property located at 220A Commercial Street (TCC) as shown on the plan, Jeffrey Haley seconded and it was so voted, 4-0.

FY15-08 **169 Bradford Street (Residential 3, Zone), Don Di Rocco on behalf of Christine Barker –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to build an addition to the existing dwelling. The applicant requested to continue until the October 2, 2014 Public Hearing. The applicant submitted a waiver of time constraints. *Peter Page moved to grant the request to continue Case #FY15-08 to the October 2, 2014 Public Hearing, Jeffrey Haley seconded and it was so voted, 5-0.*

FY15-09 **69 Commercial Street (Residential 2 Zone), Ted Smith, Architects, LLC on**

behalf of Richard O'Reagan and Richard Hanson –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to construct a new entry stoop within a front yard setback. David M. Nicolau recused himself because of a conflict of interest. Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: Delwyn Trent appeared to present the application. The applicants seek to relocate the front entry door to its original location. There will be 3' between the stoop and the property line. Doors, windows and siding will also be replaced. An internal staircase will be relocated to its original position to the east side of the structure. Photographs were submitted with the site plan and floor plans. Mr. Trent stated that the project conformed to the conditions of Article 5, Section 5300 and the project is in keeping with the objectives of the LCP. The project has been approved by the Historic District Commission.

Public Comment: None. There were 2 letters in support of the application and 1 letter of concern about the project.

Board Discussion: The Board questioned Mr. Trent about the project. The Board was of the consensus that the changes were not substantially more detrimental than what exists.

Peter Page moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to construct a new entry stoop within a front yard setback at the property located at 69 Commercial Street (Res 2), Jeffrey Haley seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

FY15-12 1 Fortuna Road (Residential 1 Zone), Scott Grady Architects on behalf of Stan Sikorski –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to build a dormer on an existing dwelling. There was not a quorum to hear this case. The case is postponed until the October 2, 2014 Public Hearing.

FY15-14 53 Bradford Street (Residential 3 Zone), Deborah Paine –

The applicant seeks a Special Permit pursuant to Article 12, Section 2440, Permitted Principal Uses, of the Zoning By-Laws to change the use of an existing structure from an art gallery to a professional services office. There was a request from the applicant to withdraw the application without prejudice. *Jeffrey Haley moved to grant the request to withdraw Case #FY15-14 without prejudice, Peter Page seconded and it was so voted, 5-0.*

FY15-17 351 Commercial Street (Town Commercial Center Zone), B&C Construction on behalf of Evelyn M. Genteman –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to construct a stair on the east side of the building within a side yard setback. David M. Nicolau recused himself

because of a conflict of interest. Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: Kevin Bazarian and Evelyn M. Gentemann appeared to present the application. The applicant seeks to install a staircase as a second means of egress on the east side of the structure. The stairs will start at the back of the building and will stay within the side lot line setback and run to the front of the building where they will be about 3” from the side lot line setback. The installation of the stairs is for safety reasons as well as convenience for the applicant.

Public Comment: None. There was 1 letter in support of the application.

Board Discussion: The Board discussed the side yard setback requirements, which are 6’ for this structure, and ruled that the non-conformancy will be intensified or encroach farther into the setback if the stairs are built. The applicant would need a Variance for relief and not a Special Permit. Mr. Bazarian requested to withdraw the case without prejudice.

Joe Vasta moved to grant the request to withdraw Case #FY15-17 without prejudice, Jeffrey Haley seconded and it was so voted, 4-0.

FY15-15 293 Commercial Street (Town Commercial Center Zone), Stephen Rome, dba Kung Fu Dumplings –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase seating from 8 seats to 20 seats. The applicant did not appear and the case was postponed until the October 2, 2014 Public Hearing.

Chair David M. Nicolau adjourned the Public Hearing at 9:00 P.M.

WORK SESSION

Chair David M. Nicolau reconvened the Work Session at 9:00 P.M. The Board signed documents.

NEXT MEETING: The next meeting will take place on Thursday, October 2, 2014. It will consist of a Work Session at 6:15 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Jeffrey Haley moved to adjourn at 9:15 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on October 2, 2014

David M. Nicolau, Chair