

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
January 15, 2015**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** David M. Nicolau, Robert Littlefield, Joe Vasta (arrived at 6:15 P.M. and left at 8:18 P.M.), Peter Page and Bryan Armstrong (arrived at 6:20 P.M.).

**Members Absent:** Amy Germain (excused), Jeffrey Haley (excused) and Rob Anderson (excused).

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

**WORK SESSION**

Chair David Nicolau called the Work Session to order at 6:01 P.M.

**PENDING DECISIONS:**

**FY15-23**      **4 West Vine Street (*Residential 2 Zone*), Ted Smith, Architect, LLC on behalf of Jim McGuire –**  
Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Robert Littlefield read the decision. *Peter Page moved to approve the language as written, David M. Nicolau seconded and it was so voted, 3-0.*

**FY15-27**      **237-241 Commercial Street (*Town Commercial Center Zone*), Robin B. Reid on behalf of Ross' Grill, LLC –**  
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley, and Peter Page sat on the case. The Board took no action.

**FY 15-35**      **29 Conant Street (*Res 3 Zone*), DKR Developers –**  
Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case. The decision was not available.

**FY15-36**      **43 Race Point Road (*Residential 3, Zone*), Edward Malone on behalf of Community Housing Resource, Inc. –**  
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. David M. Nicolau read the decision. *Robert Littlefield moved to approve the language as written, Peter Page seconded and it was so voted, 4-0.*

**FY 15-37**      **31 Bradford Street (*Res 3 Zone*), Ruesch, dba Devon's Deep Sea Dive -**

Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case. Peter Page read the decision. ***Robert Littlefield moved to approve the language as written, Bryan Armstrong seconded and it was so voted, 5-0.***

**FY 15-38**      **11 Bradford Acres Road (Res 3 Zone), James Turner** - Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case. The decision was not available.

**FY 15-39**      **2 Conway Street (Res 2 Zoning District). Application by Regina Binder on behalf of Guy Busa** – Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case. The decision was not available.

**FY 15-40**      **42 Pleasant Street (Residential 3 Zone), Tupper Construction Co., on behalf of Kathy Kacergis** – Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case. Robert Littlefield read the decision. ***Joe Vasta moved to approve the language as written, Peter Page seconded and it was so voted, 4-0-1 (David M. Nicolau abstaining).***

**MINUTES: December 18, 2014** – ***Robert Littlefield moved to approve the language as written, Joe Vasta seconded and it was so voted, 5-0.***

The Board discussed Article 3, Section 3110.

Chair David M. Nicolau adjourned the Work Session at 6:50 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 three absent.

### **PUBLIC HEARINGS:**

**FY15-43**      **37 Pleasant Street (Residential 3 Zone), Ted Smith Architect, LLC, on behalf of Mark Oldham** – The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a covered porch and addition to the front of the structure. David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page and Bryan Armstrong sat on the case.  
**Presentation:** Ted Smith appeared to present the application. The applicant proposes to bump out a bedroom by 6’ 7”. The addition will be located on the south side of the structure. The front of the new bedroom wall will be connected

to the stairway going down to the basement. A covered porch will also be added. The building will be set back to meet a side yard setback. The existing scale of the structure is 16,940 cu. ft., the allowable neighborhood scale is 15,280 cu. ft., the neighborhood average scale is 15,280 cu. ft., the proposed addition is 3,010 cu. ft. and the total proposed scale will be 19,950 cu. ft. The percentage increase is 17.7. Mr. Smith said that about half the increase in scale was as a result of the addition of a covered porch. He argued that the project satisfied the requirement of Article 2, Section 2640, subparagraph 5, as it will integrate well into its surroundings and minimize the appearance of mass from the streetscape without interfering with natural light and views from abutting structures.

**Public Comment:** None. There was 1 letter from a direct abutter in opposition to the project.

**Board Discussion:** The Board questioned Mr. Smith, discussed the issues raised by the abutter and whether the project met the requirements of subparagraph 5 of Article 2, Section 2640.

**Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a covered porch and addition to the front of the structure at the property located at 37 Pleasant Street (Res 3), Joe Vasta seconded and it was so voted, 4-0-1 (David Nicolau abstaining).** Bryan Armstrong will write the decision.

**FY15-44      293 Commercial Street, Unit C (Town Commercial Center Zone), Jason P. Aubee –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, and Article 2, Section 2440 (B8), Permitted Principal Uses, of the Zoning By-Laws to change a former retail use to a fast order food establishment use (self-serve frozen yogurt shop). David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page and Bryan Armstrong sat on the case.

**Presentation:** Attorney Christopher J. Snow and Jason Aubee appeared to present the application. According to Attorney Snow, Mr. Aubee owns the Sweet Waves frozen yogurt business and he is seeking to install a store at the premises. This would be a change in use for the unit, which is located on the west side of the premises, as a retail store was previously located there. He emphasized that this Sweet Waves was not a ‘formula business’ and there was no national equivalent of the business. Furthermore, the business did not meet the definition of ‘formula business’ as defined by the Zoning By-Laws. Mr. Aubee and his wife operate a Sweet Waves store in Mashpee Commons and will be opening a similar store in Chatham. Attorney Snow stated that frozen yogurt was a substitute for ice cream and would not compete with any ice cream in business, including the direct abutting business. Mr. Aubee proposes a seasonal operation and will hire local people. Attorney Snow argued that there will be no additional traffic created and there will be very little impact in terms of an increase in the volume of refuse or water use at the premises. He reminded the Board that it couldn’t consider the impact of this business on competing businesses in Town when evaluating the application. Both Town Counsel and the Attorney General of the Commonwealth

have weighed in on that issue. Mr. Aubee has had no complaints related to his business in Mashpee during the last two years.

**Public Comment:** None. There was 1 letter from a direct abutter, 12 letters from non-residents and 4 letters from residents in opposition to the application and 1 letter of concern about the application.

**Board Discussion:** The Board questioned Attorney Snow and Mr. Aubee. Ms. McPherson reviewed the criteria in footnote 12 of Article 2, Section 2440, which required the Board to make several findings in regard to the project. The Board discussed possible findings. It discussed whether the potential benefits outweighed the potential detriments of the proposal, such as impacts on traffic, pedestrian congestion, etc. The Board discussed whether the issue of customer service, given the fact that the business is self-serve, could be considered as a detriment. Attorney Snow argued that the Board needed to weigh the claims regarding the proposal's adverse effects made in the relevant letters, those from Town residents, as to whether those assertions were significant or insignificant. He claimed that the issues raised in the letters were insignificant as to those adverse effects.

*Robert Littlefield moved that after consideration of public input, the Board found that most of the concerns expressed were misplaced and found that after consideration of all the requirements of Article 2, Section 2440, footnote 12, including the issue of customer service, that the applicant met the requirements and that the benefits of the proposal outweighed any detrimental effects, Bryan Armstrong seconded and it was so voted, 5-0.*

The Board discussed the conditions of a Special Permit, including that the Permit would run with the applicant and would be valid for one year as it is a new business.

*Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, and Article 2, Section 2440 (B8), Permitted Principal Uses, of the Zoning By-Laws to change a former retail use to a fast order food establishment use (self-serve frozen yogurt shop) at the property located at 293 Commercial Street, Unit C (TCC), with the conditions that the Special Permit elapse on January 2, 2017, and that it run with the applicant, Bryan Armstrong seconded and it was so voted, 5-0. Robert Littlefield will write the decision.*

**FY15-45      50 Commercial Street (Residential 2 Zone), Ted Smith Architect, LLC, on behalf of David High –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to reconfigure an existing deck and reconstruct as a new covered porch. David M. Nicolau, Robert Littlefield, Peter Page and Bryan Armstrong sat on the case. Acting Chair Robert Littlefield explained 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:** Ted Smith appeared to present the application. The applicant seeks to rebuild and reconfigure an existing deck on the west side of the structure and convert it to a covered porch. The increase in scale is a result of the fact that the porch will be covered. The existing scale is 26,351 cu. ft., the neighborhood average scale is 17,285 cu. ft., the allowable scale is 20,453 cu. ft., the proposed addition would add 1,920 cu. ft. to the existing scale, for a total of 28,271 cu. ft. This is a 7.3% increase in scale. Pursuant to Article 2, Section 2640, subparagraph 5, the project integrates well into its surroundings and minimizes the appearance of mass from the streetscape, without interfering with natural light and views from abutting structures. And pursuant to subparagraph 6, the project is in keeping with the guidelines of the Historic District Commission.

**Public Comment:** None. There was 1 letter from an abutter in support of the application.

**Board Discussion:** The Board questioned Mr. Smith and noted that no existing elevation drawings had been submitted.

**Robert Littlefield moved to approve a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to reconfigure an existing deck and reconstruct it as a new covered porch at the property located at 50 Commercial Street (Res 2), with the condition that the new porch not be enclosed unless the applicant applies for a Special Permit to enclose it and contingent upon the submission of existing elevation drawings, David M. Nicolau seconded and it was so voted, 4-0.** Robert Littlefield will write the decision.

**NEXT MEETING:** The next meeting will take place on Thursday, February 5, 2015. It will consist of a Work Session at 6:00 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Robert Littlefield moved to adjourn at 8:45 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on February 5, 2015  
David M. Nicolau, Chair