

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
February 5, 2015**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David M. Nicolau (left at 8:00 P.M.), Robert Littlefield, Joe Vasta, Peter Page (arrived at 7:15 P.M.) and Rob Anderson

Members Absent: Amy Germain (excused), Jeffrey Haley (excused) and Bryan Armstrong (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 6:30 P.M.

PENDING DECISIONS:

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

David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page and Bryan Armstrong sat on the case. Robert Littlefield read the decision. *Joe Vasta moved to approve the language as written, Rob Anderson seconded and it was so voted, 4-0.* The Building Commissioner has not yet reviewed the seating plan.

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 signed the seating plan that has been approved by the Building Commissioner.

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.

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. Rob Anderson read the decision. *Robert Littlefield moved to approve the language as written, Joe Vasta seconded and it was so voted, 4-0.*

FY 15-39 **2 Conway Street (Residential 2 Zone), 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.

FY15-43 **37 Pleasant Street (*Residential 3 Zone*), Ted Smith Architect, LLC, on behalf of Mark Oldham –**
David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page and Bryan Armstrong sat on the case. The decision was not available.

FY15-45 **50 Commercial Street (*Residential 2 Zone*), Ted Smith Architect, LLC, on behalf of David High –**
David M. Nicolau, Robert Littlefield, Peter Page and Bryan Armstrong sat on the case. The decision was not available.

MINUTES: January 15, 2015 – *Robert Littlefield moved to approve the language as written, Joe Vasta seconded and it was so voted, 4-0.*

Chair David M. Nicolau postponed the Work Session at 6:45 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:01 P.M. There were four members of the Zoning Board present and four absent.

PUBLIC HEARINGS:

FY15-48 **252 Commercial Street (*Town Commercial Center Zone*), Christopher J. Snow, Esq. on behalf of Souza, LLC –**
The applicant seeks a Special Permit pursuant to Article 2, Section 2440 (B4e), Permitted Principle Uses, of the Zoning By-Laws to convert an existing neighborhood retail use to a package store use. Chair David M. Nicolau 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. David M. Nicolau, Robert Littlefield, Joe Vasta and Rob Anderson sat on the case.
Presentation: Attorney Christopher J. Snow, representing Souza, LLC, Vincent Duarte, Sr. and Vincent Duarte, Jr. appeared to present the application. The applicant seeks to move Adam's Pharmacy across the street to the west of its current location and to move the package store that is currently in that location into the pharmacy's location. The move is necessitated by the constraints of the package store's current location, including a combination of industry standards, a need for more floor space and cooler areas and the bottle bill. Attorney Snow argued that the change in use from retail use to package store use would have no

adverse effects such as hazard, congestion or environmental degradation. He said that the re-location of Adam's Pharmacy to the package store location was allowed by right in this neighborhood, subject to the required licensing, and that the benefits of the proposal outweighed any adverse effects.

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

Board Discussion: The Board had no questions for Attorney Snow or the applicant.

Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2440 (B4e), Permitted Principle Uses, of the Zoning By-Laws to convert an existing neighborhood retail use to a package store use at the property located at 252 Commercial Street (TCC), Rob Anderson seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

FY15-49 8 Cook Street (Residential 3 Zone), Regina Binder on behalf of Hank Hitopolous –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extension or Alteration and Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to construct a new covered porch. Chair David M. Nicolau 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. David M. Nicolau, Robert Littlefield, Joe Vasta and Rob Anderson sat on the case.

Presentation: Ginny Binder, representing Hank Hitopoulos, appeared to present the application. The applicant seeks to replace a hazardous set of exterior stairs leading to a small deck on the east side of the structure with a new set of stairs and to add a partially covered porch measuring 25' x 7' 9". The porch will be open on three sides. The existing stairs are being moved from the south to the north side of the building in order to improve function and privacy. The non-conforming elements on the lot are the front yard setback and the lot area. The project extends along the non-conforming side yard setback line with no further encroachment. Ms. Binder requested that the Special Permit under Article 3, Section 3110 be heard under the *Goldhirsh v. McNear* ruling. She argued that the proposal was not substantially more detrimental to the Town or the neighborhood than what currently existed.

In regard to Article 2, Section 2640, the applicant seeks a deviation of 4,391 cu. ft. above the allowed neighborhood average scale. This is approximately 20% over the allowable scale of 20,669 cu. ft. The proposed increase in scale is a result of the partial covering of the porch, as the space beneath the porch is considered in the calculation of overall volume. Pursuant to Article 2, Section 2640E, subparagraph 1, the proposal is consistent with the chapters of the Local Comprehensive Plan relating to community character. The renovated building will be consistent with the character of the neighborhood. Pursuant to subparagraph 5,

the building successfully integrates into its surroundings and is cited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on light or views from abutting structures. Pursuant to subparagraph 6, the proposal is consistent with the guidelines of the Historic District Commission.

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

Board Discussion: The Board questioned Ms. Binder. The Board did not grant the request to hear the proposal under the *Goldhirsh v. McNear* ruling. The Board agreed that the applicant should not be permitted to enclose the porch.

Section 3110: *Robert Littlefield moved to make a finding that the proposal would not be substantially more detrimental than the existing non-conformancy at the property located at 8 Cook Street (Res 3), Rob Anderson seconded and it was so voted, 4-0.*

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 new covered porch at the property located at 8 Cook Street (Res 3) with the condition that the first level deck not be enclosed, Joe Vasta seconded and it was so voted, 4-0. David M. Nicolau will write the decision.*

FY15-46 **90 Bradford Street (Residential 3 Zone), William N. Rogers on behalf of EH Realty, LLC –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2450(G12), Permitted Accessory Uses, to construct a 10' x 18' swimming pool. David M. Nicolau recused himself because of a conflict of interest. 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. Robert Littlefield, Joe Vasta, Peter Page and Rob Anderson sat on the case.

Presentation: Gary Locke, of William N. Rogers, II, Engineers, and Kevin O'Shea, of EH Realty, LLC, appeared to present the application. The proposed pool will be saltwater. The pool will be located in an existing patio area. The pool equipment will be located in a 4' x 8' enclosure, which will be surrounded by a 4' high stockade fence. Mr. Locke said he had the decibel readings for the pumps, which he said were extremely quiet.

Public Comment: None. There was 1 letter in support of the application and 1 letter in opposition to the application. Both letters were from abutters.

Board Discussion: The Board questioned Mr. Locke and Mr. O'Shea. The Board was concerned about the noise from the pumps and discussed with the applicant restricting the hours that the pool could be used by guests of the Inn.

Peter Page moved to grant a Special Permit pursuant to Article 2, Section 2450(G12), Permitted Accessory Uses, to construct a 10' x 18' swimming pool at the property located at 90 Bradford Street (Res 3) with the condition that the pool only be open from 8:00 A.M. to 8:00 P.M., Rob Anderson seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

FY15-47 152 Commercial Street (Town Commercial Center Zone), Marlene Janice Sawyer -

The applicant seeks the renewal of a Special Permit pursuant to Article 2, Section 2440 (B7), Permitted Accessory Uses, of the Zoning By-Laws to allow a parking lot for 18 parking spaces. Rob Anderson recused himself because of a conflict of interest. Chair David M. Nicolau 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. David M. Nicolau, Robert Littlefield, Peter Page and Joe Vasta sat on the case.

Presentation: Marlene Sawyer and Michael Potenza appeared to present the application. Ms. Sawyer said that she had completed the requests made by the Board.

Public Comment: None. There were 3 letters in support of the application, a letter from the Chief of Police stating that he had no safety concerns in regard to the application and a note from the Building Commissioner approving the request.

Board Discussion: The Board noted that the Fire Chief had not yet commented on the application.

Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2440 (B7), Permitted Accessory Uses, of the Zoning By-Laws to allow a parking lot for 18 parking spaces at the property located at 152 Commercial Street (TCC), Joe Vasta seconded and it was so voted, 4-0. David M. Nicolau will write the decision.

FY15-50 75 Franklin Street (Residential 3 Zone), Christian P. Dittrich on behalf of Lee Giroux –

The applicant seeks a Special Permit pursuant to Article 2, Section 2450 (G12), Permitted Accessory Uses, of the Zoning By-Laws to construct a new 16' x 12' swimming pool. David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page and Rob Anderson sat on the case.

Presentation: Chris Dittrich, of Shoreline Pools, appeared to present the application. The pool will be saltwater, located in the rear corner of the property and will be enclosed by a fence. The filtration area will be enclosed by a 4' fence. The decibel levels for the pumps will be the same as for the pool at 90 Bradford Street. The water will be trucked in from off site.

Public Comment: None. There was 1 letter in opposition to the application.

Board Discussion: The Board questioned Mr. Dittrich. The Board was concerned about the location of the mechanicals in relation to abutters of the property. Mr. Dittrich agreed to move the filtration area to another part of the lot in order to minimize the potential for disturbing neighbors.

Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2450 (G12), Permitted Accessory Uses, of the Zoning By-Laws to construct a new 16' x 12' swimming pool at the property located at 75 Franklin Street (Res 3), with the condition that the mechanicals be moved to a location closer to

Parcel ID 7-1-50, Rob Anderson seconded and it was so voted, 5-0. Rob Anderson will write the decision.

FY15-51 214 Commercial Street (Town Commercial Center Zone), Ben deRuyter on behalf of New Art Realty Corp. –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permits Requirements, of the Zoning By-Laws to relocate the bar and create a new seating layout with no increase in seating. Rob Anderson recused himself because of a conflict of interest. Chair David M. Nicolau 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. David M. Nicolau, Robert Littlefield, Joe Vasta and Peter Page sat on the case.

Presentation: Ben deRuyter, one of the owners of the property, appeared to present the application. He seeks to change the seating layout within the restaurant space at the premises. There will be no change in the number of seats. The bar will be relocated from the northerly wall to the westerly wall in front of the kitchen. No flex-seating is being proposed.

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

Board Discussion: The Board questioned Mr. deRuyter in regard to the seating. Mr. deRuyter stated that the 28 seats shown on the proposed plan are included in the previously approved 78 seats and are the same 78 seats being proposed, so at this time there is no flex-seating. However, he said, that situation might change in the future, depending upon whether the business becomes year-round or not. If that does happen, he will come back to the Board to request moving some portion of those 28 seats inside. The Board questioned Mr. deRuyter about how the restaurant and bar would operate. The Board was concerned about the potential for alcohol to be taken from the exterior premises into the street.

Robert Littlefield moved to grant Special Permit pursuant to Article 2, Section 2460, Special Permits Requirements, of the Zoning By-Laws to relocate the bar and create a new seating layout with no increase in seating at the property located at 214 Commercial Street (TCC) with the condition that appropriate signage will be placed at all points of egress from the building to prevent the removal of alcoholic beverages to the street, Joe Vasta seconded and it was so voted, 4-0. David M. Nicolau will write the decision.

FY15-52 8 Fishburn Court (Residential 3 Zone), B+C Construction on behalf of Russell A. Friedman & Wayne E. Briggs –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, and Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish an existing shed and reconstruct a new shed that is two feet taller within the same footprint. 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.

Robert Littlefield, Joe Vasta, Peter Page and Rob Anderson sat on the case.

Presentation: Kevin Bazarian, of B+C Construction, appeared to present the application. The applicants seek to demolish an existing shed and rebuild a shed measuring 14'4" by 6'3" and 9' high. The footprint of the shed will remain the same and it will be built on cinder block footings. The gable roof pitch will be increased in the interest of historical detail. The back and side of the shed will have no windows or doors.

Public Comment: None. There was 1 letter of 'no objection' from an abutter in the file.

Board Discussion: The Board questioned Mr. Bazarian. The Board noted that no windows would be located on the side of the shed facing an abutting property.

Peter Page moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, and Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish an existing shed and reconstruct a new shed that is two feet taller within the same footprint, Joe Vasta seconded and it was so voted, 4-0. Rob Anderson will write the decision.

FY15-53

429 Commercial Street (Residential 3, Zone), Ron Robin –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, to create a new seating layout. 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. Robert Littlefield, Joe Vasta, Peter Page and Rob Anderson sat on the case.

Presentation: John DeSouza, representing Ron Robin, appeared to present the application. The building is mixed use restaurant and residential. The restaurant operates year-round and the change in seating will be accommodated within the existing interior area of service. The seats being moved already exist on the licensed plan for the premises and are house seats located at high-top tables near the bar. The high-top tables customarily seat 4 customers, however because of space limitations, the two high-top tables located closest to the bar only seat 2 customers. Those 4 seats never existed at those high-tops, but were instead used at other tables in the restaurant. They will now be moved to the end of the bar and remain full service food seats. He said that the proposal was in keeping with the LCP, Chapter 5, Goal 1, Policy A and B, will not create any disruption to the character of the neighborhood and will be of economic benefit. The benefits will include increasing food service operations for a year-round population and continuing the restaurant's contributions to the local tax and employment bases.

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

Board Discussion: The Board questioned Mr. DeSouza.

Joe Vasta moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, to create a new seating layout at the property

located at 429 Commercial Street (Res 3), Rob Anderson seconded and it was so voted, 4-0.

Mr. DeSouza submitted a draft decision for the Board's consideration. Ms. McPherson said that the Building Commissioner had reviewed and approved the seating plan. She then read the decision. *Joe Vasta moved to approve the language as written, Rob Anderson seconded and it was so voted, 4-0.*

FY15-54

368 Commercial Street (Town Commercial Center Zone and Residential 3 Zone), William N. Rogers on behalf of 368 Commercial Street, LLC –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, to raise the roof of an existing retail space by 1' 7", construct a 10' x 10' addition to the east side of the retail space and construct two dormers. 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. Robert Littlefield, Joe Vasta, Peter Page and Rob Anderson sat on the case.

Presentation: Attorney Lester J. Murphy, representing the applicant, Gary Locke, Kevin Bazarian and Lyn Plummer appeared to present the application. The applicant seeks to substantially upgrade and renovate the property. The property is surrounded on three sides by streets and the structure on the premises is significantly non-conforming as to its setbacks. The setback off of Commercial Street is 9.61', 7.53' off of Johnson Street and a 1/16 of a foot off of Arch Street. The lot coverage is currently 39% and will be reduced to 36%. There will be an increase in green space from 9% to 24%. There will be only a 180 cu. ft. increase in the total building scale, so relief will not be required under the scale by-law. Retail units will remain on the site, albeit altered in layout and size. Presently, towards the rear of portion of the structure, there are four dwelling units, one of which constitutes a guesthouse with eight guestrooms. The proposal includes the installation of a basement area underneath the front retail portion for storage purposes. The retail area will also be modified by constructing a 10' by 10' addition to the east side of this area, removing an 11' x 9' portion of the area and raising the roof by 1' 7". The existing guestroom dwelling portion of the building will be reconfigured into two one-bedroom and two two-bedroom dwelling units. Thus, a 12- bedroom structure will be reduced to a 6-bedroom one. Attorney Murphy argued that these alterations and extensions would not be substantially more detrimental to the neighborhood than what existed. The proposed dormers will be installed within the current setbacks. No new non-conformancies will be created and the number of bedrooms will be reduced, thus lessening the density of dwelling units on the lots and the use of the property. Mr. Locke reviewed the specifics of the proposed changes.

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

Board Discussion: The Board questioned Attorney Murphy, Mr. Locke, Mr. Bazarian and Ms. Plummer. The Board agreed to make a finding that the changes

were not substantially more detrimental to the neighborhood or Town than what existed.

Joe Vasta moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, to raise the roof of an existing retail space by 1' 7", construct a 10' x 10' addition to the east side of the retail space and construct two dormers at the property located at 368 Commercial Street (TCC & Res 3), Rob Anderson seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

WORK SESSION

Acting Chair Robert Littlefield reconvened the Work Session at 8:40 P.M.

The Board signed and stamped plans.

NEXT MEETING: The next meeting will take place on Thursday, February 19, 2015. It will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Rob Anderson moved to adjourn at 8:50 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on February 19, 2015
David M. Nicolau, Chair