

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
April 2, 2015**

Members Present: David M. Nicolau, Robert Littlefield, Jeffrey Haley, Peter Page and Rob Anderson.

Members Absent: Amy Germain (excused), Joe Vasta (excused) and Bryan Armstrong (excused).

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

WORK SESSION

CAUCUS HALL

Chair David Nicolau called the Work Session to order at 6:46 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. The Building Commissioner had approved the seating plan, which the Board signed.

FY15-59 **269 Commercial Street (*Town Commercial Center Zone*), Paul Melanson, dba Tin Pan Alley –**

David M. Nicolau, Robert Littlefield, Amy Germain, Peter Page and Rob Anderson sat on the case. David M. Nicolau will write the decision.

FY15-61 **85-87 Shank Painter Road (*GC Zone*), Sebastian Faffara on behalf of Bay Ocean Properties, LLC, dba Mac's Provincetown –**

David M Nicolau, Robert Littlefield, Amy Germain, Peter Page and Rob Anderson sat on the case. Robert Littlefield will write the decision.

MINUTES: *March 16, 2015 – Robert Littlefield moved to approve the language as written, Rob Anderson seconded and it was so voted, 4-0.*

March 19, 2015 – Peter Page moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 3-0.

Chair David M. Nicolau postponed the Work Session at 6:58 P.M.

PUBLIC HEARING

JUDGE WELSH ROOM

Chair David M. Nicolau called the Public Hearing to order at 7:03 P.M. There were five members of the Zoning Board present and three absent.

PUBLIC HEARINGS:

FY15-56 **5 Telegraph Hill Road (*Residential 1 Zone*), William N. Rogers on behalf of James D. Epstein –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2450, G12, Permitted Accessory Uses, of the Zoning By-Laws to install a swimming pool. Vice 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, Jeffrey Haley, Peter Page and Rob Anderson sat on the case.

Presentation: Gary Locke appeared to present the application. The applicant seeks to build a 10' by 24' in-ground saltwater pool with a bluestone patio. The equipment enclosure will be 4' by 8' and located on the northwest elevation next to the existing stairs. A 4' high stockade fence will surround the enclosure.

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

Board Discussion: The Board questioned Mr. Locke.

Peter Page moved to grant a Special Permit pursuant to Article 2, Section 2450, G12, Permitted Accessory Uses, of the Zoning By-Laws to install a swimming pool at the property located at 5 Telegraph Hill (Res 1), Rob Anderson seconded and it was so voted, 4-0. Jeffrey Haley will write the decision.

FY15-63 **48½ Bradford Street (*Residential 3 Zone*), Kaye McFadden of Cape Tip Construction on behalf of Leon Roy (*continued from March 19th*) –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to allow the construction of a dormer within the front yard setback upon the pre-existing, non-conforming residential structure. Robert Littlefield and Rob Anderson, neither of whom was present at the initial hearing of the matter, each stated that they had watched a video of the case's initial presentation and invoked the Mullin Rule in order to sit on the case. David M. Nicolau, Robert Littlefield, Jeffrey Haley, Peter Page and Rob Anderson sat on the case.

Presentation: Kaye McFadden appeared to discuss the application. She had submitted a revised site plan showing the access road to Bradford Street abutting the property as a 12' passage way, and not as a 12' private way, and a non-conforming checklist as requested by the Board. According to the revised site plan, the property has one front yard and one side yard setback. The proposed

dormer is located within the non-conforming front yard setback, but not within the side yard set back.

Public Comment: None. There was 1 letter of no concern from an abutter and 4 letters, 2 from non-abutters, in favor of the application.

Board Discussion: The Board questioned Ms. McFadden. The Board discussed which property in the area owned the abutting 12' passage way, as the site plan was unclear on the issue. A Town map showed the passage way as belonging to the back lot, however the revised site plan had a line drawn at the end of the passage way indicating that it did not belong to the back lot. The Board requested that Ms. McFadden submit a revised site plan clarifying the ownership of the passage way.

Robert Littlefield moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to allow the construction of a dormer within the front yard setback upon the pre-existing, non-conforming residential structure at the property located at 48 ½ Bradford Street (Res 3) with the condition that an accurate site plan be submitted indicating clearly which lot owned the 12' passage way, Peter Page seconded and it was so voted, 5-0.

FY15-57 143 Commercial Street (Town Commercial Center Zone), Sean A. Curran on behalf of Nicolas G. Tagaris –

The applicant seeks a Special Permit pursuant to Article 2, Section 2310, Harborfront Regulation, Article 2, Section 2550, Multiple Buildings Per Lot, Article 3, Section 3110, Change, Extension or Alteration, and Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to allow the demolition and reconstruction of two existing cottages and to combine the two residential structures into one new principle residential structure with a change in footprint on a non-conforming lot and continue the use of a deck beyond the 195' harbor front setback. The Board did not have a quorum to hear the matter. The Board postponed the matter until the May 7, 2015 Public Hearing. **Robert Littlefield moved to postpone Case #FY15-57 until the May 7, 2015 Public Hearing, Rob Anderson seconded and it was so voted, 5-0.**

FY15-58 143 Commercial Street (Town Commercial Center Zone), Sean A. Curran on behalf of Nicolas G. Tagaris –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws for the construction of a new residential structure outside of the district's setbacks to replace a structure that was demolished 14 years ago. The Board did not have a quorum to hear the matter. The Board postponed the matter until the May 7, 2015 Public Hearing. **Robert Littlefield moved to postpone Case #FY15-58 until the May 7, 2015 Public Hearing, Rob Anderson seconded and it was so voted, 5-0.**

FY15-60 19 Franklin Street (Residential 3 Zone), Lisa Pacheco Robb –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, and Section 3115, Demolition and Reconstruction, of the

Zoning By-Laws to allow the demolition and reconstruction of two portions of a pre-existing, non-conforming residential structure with a change in the footprint while maintaining the existing nonconforming setbacks from the side and rear yard lot lines. David M. Nicolau, Robert Littlefield, Jeffrey Haley, Peter Page and Rob Anderson sat on the case.

Presentation: Lisa Pacheco Robb and Barbara Robb appeared to present the application. Ms. Pacheco Robb seeks to renovate two additions, one on the east side and one on the south side, of the structure. Both are in a deteriorated state. The proposal includes tearing down and rebuilding the two additions and extending their footprints. The addition on the south side will be a 4' 6" x 8' 6" shed-like addition that will be extended by approximately 5', 2' in one direction and 2'9" in the other direction. The addition will not be more non-conforming than what exists. The east addition will be extended along a lot line. Ms. Robb asked to be heard under the *Goldhirsh v. McNear* ruling.

Public Comment: None. There were 2 letters from abutters in support of the application.

Board Discussion: The Board questioned Ms. Pacheco Robb and Ms. Robb. *Robert Littlefield moved to hear the Special Permit under Article 3, Section 3110 of the Zoning By-Laws under the Goldhirsh v. McNear ruling, Rob Anderson seconded and it was so voted, 5-0.* The Board decided that the applicant did not need to apply for a Special Permit under Article 3, Section 3115 of the Zoning By-Laws. The Board ruled that the change was not substantially more detrimental to the neighborhood than what existed.

Robert Littlefield moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to allow the demolition and reconstruction of two portions of a pre-existing, non-conforming residential structure with a change in the footprint while maintaining the existing nonconforming setbacks from the side and rear yard lot lines at the property located at 19 Franklin Street (Res 3) under the Goldhirsh v. McNear ruling, Jeffrey Haley seconded and it was so voted, 5-0.

FY15-62

532 Commercial Street (Residential 3 Zone), Mark Kinnane of Cape Associates on behalf of Romaine Macomb –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, and Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to allow the demolition and reconstruction of the rear portion of a pre-existing, non-conforming residential structure with an increase in the footprint while maintaining or reducing current non-conforming setbacks. David M. Nicolau, Robert Littlefield, Jeffrey Haley, Peter Page and Rob Anderson sat on the case.

Presentation: Mark Kinnane appeared to present the application. The applicant seeks to demolish a rear, kitchen section of the structure and rebuild the structure with a larger footprint. A rear deck will be decreased in size. The rebuild will be up and along a non-conforming side yard and front yard setback. The rebuilt addition will be increased by 10' 1" on the east side of the structure. Mr. Kinnane

argued that the change would not be substantially more detrimental to the neighborhood than what exists. The value of the house will be increased and increase the amount of taxes collected by the Town. The restoration is in keeping with the goals of the Local Comprehensive Plan, Chapter 4, Section 4.2 Goal 1.

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

Board Discussion: The Board questioned Mr. Kinnane.

Robert Littlefield moved to hear Case #FY15-62 under the Goldhirsh v. McNear ruling, 5-0-0.

Robert Littlefield moved that the Board make a finding that the proposed changes in Case #FY15-62 are not substantially more detrimental to the neighborhood and to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to allow the demolition and reconstruction of the rear portion of a pre-existing, non-conforming residential structure with an increase in the footprint while maintaining or reducing current non-conforming setbacks at the property located at 532 Commercial Street (Res 3), Rob Anderson seconded and it was so voted, 5-0.

FY15-64 **Kevin A. Bazarian of B+C Construction on behalf of Lyn Plummer –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to allow the construction of a 6' x 22' farmer's porch across the front of a pre-existing, non-conforming residential structure. The applicant requested a postponement of the case until the May 7, 2015 Public Hearing. *Rob Anderson moved to grant the request to postpone Case #FY15-64 until the May 7, 2015 Public Hearing, Jeffrey Haley seconded and it was so voted, 4-0-1 (David M. Nicolau abstaining).*

Chair David M. Nicolau adjourned the Public Hearing at 8:05 P.M.

WORK SESSION

Chair David M. Nicolau reconvened the Work Session at 8:05 P.M.

The Board signed plans.

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

ADJOURNMENT: *Jeffrey Haley moved to adjourn at 8:30 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on May 7, 2015

David M. Nicolau, Chair