

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
May 7, 2015**

Members Present: David M. Nicolau (left at 9:30 P.M.), Robert Littlefield (arrived at 6:53 P.M.), Joe Vasta, Peter Page, Bryan Armstrong and Rob Anderson.

Members Absent: Amy Germain (excused) and Jeffrey Haley (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 6:36 P.M.

PENDING DECISIONS:

- FY15-56** **5 Telegraph Hill Road (Residential 1 Zone), William N. Rogers on behalf of James D. Epstein –**
Robert Littlefield, Jeffrey Haley, Peter Page and Rob Anderson sat on the case. Rob Anderson read the decision. *Peter Page moved to approve the language as amended, Rob Anderson seconded and it was so voted, 3-0-2 (David M. Nicolau and Bryan Armstrong abstaining).*
- 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 read the decision. *Rob Anderson moved to approve the language as written, Bryan Armstrong seconded and it was so voted, 4-0.*
- FY15-61** **85-87 Shank Painter Road (GC Zone), Sebastian Taffara 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. Joe Vasta read the decision. *Robert Littlefield moved to approve the language as written, Rob Anderson seconded and it was so voted, 5-0.*

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

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:00 P.M. There were six members of the Zoning Board present and two absent.

PUBLIC HEARINGS:

FY15-68 **294 Bradford Street (Residential 3 Zone), Notice of Appeal by Jonathan Sinaiko –**
Mr. Sinaiko seeks to appeal a decision of the Building Commissioner as specified under M.G.L. Chapter 40A, Section 15, regarding Building Permit #15-BPR-00260, which he believes to be in violation of Article 2, Section 2640, Building Scale, of the Zoning By-Laws. This case will be postponed to the May 21, 2015 Public Hearing. ***Robert Littlefield moved to postpone Case #FY15-68 to the May 21, 2015 Public Hearing, Rob Anderson seconded and it was so voted, 4-0-2 (David M. Nicolau and Peter Page abstaining).***

Chair David M. Nicolau announced that the Board would take several cases out of order. ***Robert Littlefield moved to take Case #FY15-67 out of order, Peter Page seconded and it was so voted, 6-0.***

FY15-67 **289 Commercial Street (Town Commercial Center Zone), Ed Steblein, dba Small Temptations –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to allow the display of merchandise hung upon the front of the building. David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page and Rob Anderson sat on the case.
Presentation: Ed Steblein appeared to present the application. He seeks to display items, such as antiques, collectibles and other objects related to his business, outside his store.
Public Comment: None. There was 1 letter in the file.
Board Discussion: The Board questioned Mr. Steblein concerning where the items would be placed. The Board was concerned about public safety in regard to where he wanted to place the merchandise and how the merchandise would be secured to the building. The Board requested that no objects be placed on the steps in front of the premises.
Joe Vasta moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to allow the display of merchandise hung upon the front of the building at the property located at 289 Commercial Street (TCC), with the conditions that there be nothing placed on the steps leading into the premises and that the applicant makes his best effort to not create a hazard to the public, Robert Littlefield seconded and it was so voted, 4-1 (Peter Page opposed).

Robert Littlefield moved to take Case #FY15-71 out of order, Joe Vasta seconded and it was so

voted, 5-0.

FY15-71 **244 Commercial Street (Town Commercial Center Zone), Erica Giokas on behalf of Provincetown Theater Company –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to allow the display of a sandwich board. Rob Anderson recused himself because of a conflict on interest. David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page and Bryan Armstrong sat on the case. **Presentation:** Erica Giokas appeared to present the application. The Provincetown Theater Company, which is located at 238 Bradford Street, seeks to set up a box office downtown, partnering with Christine Horovitz of Kiss and Make-up located at 244 Commercial Street. The proposed sandwich board will inform the public that a box office is located at the premises and will be located next to an existing signpost.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board had no questions for Ms. Giokas.
Robert Littlefield moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to allow the display of a sandwich board at the property located at 244 Commercial Street (TCC), Bryan Armstrong 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' Harborfront setback.

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 decided to hear the Cases #FY15-57 and FY15-58 together. Rob Anderson recused himself because of a conflict of interest. David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page and Bryan Armstrong sat on both cases. **Presentation:** Attorney Lester J. Murphy, Sean Curran and William N. Rogers, II appeared to present the applications. Nicolas G. Tagaris and Gary Locke, who are also associated with the project, were present in the audience. Attorney Murphy stated that for many years, a mixed use, two and a half story structure existed on the front portion of the property. The building fell into disrepair, was torn down

and only a foundation exists. There are also two existing cottages located on the rear portion of the property. In 2000, the previous owner of the property had acquired permits in order to renovate the front building and tore it down leaving a foundation, but the project never went forward. The permits subsequently lapsed. The applicant, and current owner of the property, seeks to renovate, raze and replace the structures on the property, significantly upgrading it. Specifically, he seeks to raze the two cottage structures, collectively containing three residential units, and replace them with one structure containing one residential unit. In addition, he seeks to rebuild the front structure, replicating as much as possible the structure that had been there previously, except that it will contain two residential units instead of one. Thus, the number of structures and residential units currently on the lot will be maintained.

The property's non-conformancies include the size of the lot, the distance between structures on the lot, the frontage on Commercial Street and the east side yard setback. In addition, there is a deck on the south side of one of the cottages that is more than 195' southward of the northern edge of Commercial Street, which will require relief under Article 2, Section 2310, even though that distance will be shortened by close to 3'. In order to alter the configuration of the existing two structures in regard to the lot area non-conformancy, relief is sought pursuant to Article 2, Section 2550. Relief is also being sought under Article 3, Section 3115 and Section 3110 in order to raze the existing two cottages and replace them with one structure that will be longer, higher and have a larger footprint. The final relief sought is pursuant to Article 2, Section 2640E pertaining to the increase in scale of the front building.

As to the rear cottages, Attorney Murphy argued that the new single structure would not be substantially more detrimental than what exists. Since the waterfront deck on the rear structure will be built about 3' farther north, that Harborfront setback non-conformancy will become slightly more conforming. The non-conforming side yard setback on the northeast side will remain the same. The single structure will be built along the non-conforming side yard setback line, and will be wider, longer and higher than the existing structures. The existing two cottages contain three one-bedroom units whereas the new single structure will contain one two-bedroom unit. They have heights of about 15', whereas the proposed structure will be one and a half story with heights ranging from 20' to just over 23'. The existing scale of the two cottages is 7,540 cu. ft., the neighborhood average scale is 19,440 cu. ft., the proposed added scale is 11,025 cu. ft., the allowable scale is 22,356 cu. ft. and the total proposed scale is 18,565 cu. ft. Attorney Murphy argued that the economic, social and other benefits of the rebuilt structure outweigh any detrimental effects, such as hazard, congestion or environmental degradation, as two older buildings are being replaced with a new structure that will meet all current building codes, making the building safer and more comfortable in which to live. In addition, two buildings will become one and no new non-conformancies will be created.

Attorney Murphy said that scale relief pursuant to Article 2, Section 2640E has been requested for the front building. Efforts have been made by the applicant to replicate the single structure that used to exist. The neighborhood average scale is 18,763 cu. ft., the maximum allowable scale is 21,577 cu. ft., the proposed scale is 28,555 cu. ft. Pursuant to the scale by-law, the proposed building would satisfy the requirements of subparagraphs 1, 5 and 6. Attorney Murphy argued that the social, economic and other benefits of the proposed reconstruction of the front building would outweigh any detrimental effects such as hazard, congestion or environmental degradation. There is currently just a foundation where the new structure will be built and the new structure will conform to all zoning dimensional and setback requirements. The only issues that will be non-compliant are in regard to the lot size and the scale of the structure. The proposed height will be 30', only a foot or two higher than the structure that used to exist. The structure will contain two residential units and will be an improvement to the neighborhood, generating more property taxes than the hole in the ground that currently exists. Parking will be provided onsite. The structures on the property will be connected to the sewer. Attorney Murphy explained how the project, pursuant to subparagraph 1 of Section 2640E, will be in keeping with the goals and policies of the Local Comprehensive Plan, specifically Section 1, Goal 3 and Policy B and Section 4, Goal 2 and Policy A, B and C. Further, the proposed building will integrate successfully with its surroundings, is sited in such a manner so as to minimize the appearance of mass from the streetscape and does not interfere with the natural light to or views from neighboring structures as required by subparagraph 5 and, pursuant to subparagraph 6, is consistent with the guidelines of the Historic District Commission.

Public Comment: Karen Edlund, an abutter, spoke in opposition to the application. There were 10 letters in favor and 2 letters in opposition to the application. One of the letters in opposition was from Attorney E. James Veara, who was representing Ms. Edlund. Attorney Murphy was given the opportunity to rebut the issues raised by Attorney Veara's letter.

Board Discussion: The Board questioned Attorney Murphy, Mr. Rogers, Mr. Curran and Mr. Tagaris and discussed the proposed project. The Board asked if the applicant knew what the scale was of the original building that was located on the lot. After some discussion, some Board members expressed concern that the front building, particularly with the addition of two shed dormers, would be too large given the scale of the other structures in the neighborhood. The building did not have to be as large as proposed and might be able to be designed to conform to the scale requirements for the neighborhood. The Board was also concerned about the proposed size of the single cottage structure, as it would be much larger, longer and wider than the existing cottages but just as close to abutting structures. The Board discussed the possible effects of that proposed building mass on abutting structures. The Board was of the opinion that there was too much building mass proposed on such a narrow lot and that the proposed structures would be substantially more detrimental to the neighborhood than what existed.

The Board recommended that the applicant figure out if scale relief would be necessary if the shed dormers on the front building were eliminated, and to think about what the front building might look like if it were not to require scale relief. The Board continued both cases to the May 21, 2015 Public Hearing to give the applicant an opportunity to re-design the project.

Robert Littlefield moved to continue Cases #FY15-67 and FY15-68 until the May 21, 2015 Public Hearing, Joe Vasta seconded and it was so voted, 5-0.

FY15-69 1 MacMillan Wharf (Town Commercial Center Zone/Harbor Overlay Zone), Provincetown Public Pier Corporation –

The applicant seeks a Special Permit pursuant to Article 2, Section 2450 (G11), Permitted Accessory Uses, of the Zoning By-Laws to allow the sale of food from local vendors within the Pier pavilion. David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page and Rob Anderson sat on the case.

Presentation: Ellen C. Battaglini appeared on behalf of the PPPC to present the application. This is a renewal of a Special Permit for a pilot project to sell prepackaged food from local vendors at the Pier. The pilot project was never implemented last summer, as had been the intention of the PPPC, and the Special Permit expired at the beginning of the year. The pilot project will move forward this year and if successful, the PPPC will return to the Board to request a more permanent Special Permit.

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

Board Discussion: The Board briefly discussed the findings of the previous Special Permit and what conditions to impose on the current one. The Board decided to impose the same conditions as the previous Special Permit, except to eliminate the requirement to limit the number of vendors to four. It will expire in one year.

Joe Vasta moved to grant a Special Permit pursuant to Article 2, Section 2450 (G11), Permitted Accessory Uses, of the Zoning By-Laws to allow the sale of food from local vendors within the Pier pavilion at the property located at 1 MacMillan Wharf (TCC and Harbor Overlay) with the conditions that there be no limits on the number of vendors and that the Special Permit expire in 1 year, Rob Anderson seconded and it was so voted, 5-0. Peter Page will write the decision.

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 and to construct a dormer on the east side of the roof of a pre-existing, non-conforming residential structure. Bryan Armstrong recused himself because of a conflict of interest. Acting Chair Robert Littlefield explained that that there were only four members seated on the case and four favorable votes were needed for 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. Robert Littlefield, Joe Vasta, Peter Page and Rob Anderson sat on the case.

Presentation: Kevin Bazarian and Lyn Plummer appeared to discuss the application. Mr. Bazarian said that the proposal will include the construction of a farmer's porch and a dormer on the east, non-conforming side of the structure.

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

Board Discussion: The Board questioned Mr. Bazarian and Ms. Plummer. Robert Littlefield proposed that the Board make a finding that the addition of the farmer's porch and dormer will not be substantially more detrimental to the neighborhood 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 allow the construction of a 6' x 22' farmer's porch across the front of a pre-existing, non-conforming residential structure at the property located at 414 Commercial Street (TCC), Joe Vasta seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

FY15-65

1 Winthrop Street (Town Commercial Center Zone), Chris Mathieson -

The applicant seeks a Special Permit pursuant to Article 3, Section 310, Change, Extension or Alteration, of the Zoning By-Laws to allow a second floor deck to increase in size by 3' along a pre-existing, non-conforming setback. Robert Littlefield, Joe Vasta, Peter Page, Rob Anderson and Bryan Armstrong sat on the case.

Presentation: Chris Mathieson appeared to present the application. He requested that the matter be heard under the *Goldhirsh v. McNear* ruling.

Joe Vasta moved to hear Case #FY15-65 under the Goldhirsh v. McNear ruling, Rob Anderson seconded and it was so voted, 5-0.

Mr. Mathieson argued that the increase in the second floor deck would not be more detrimental than what exists. He argued that the social, economic and other benefits outweigh any hazard, congestion or environmental degradation. The social benefits are that the property was formerly a commercial building converted to a residential structure, making it conforming to the residential zone usage. In addition, the house was vacant for a period of time before he bought it and the commercial space was not working in that neighborhood. He is a year-round resident and supports the Town socially and economically all year. The neighborhood is supportive of his plans and his conversion of the property to a single-family residence. His improvements to the structure will make it consistent with other structures in the neighborhood and be a benefit to the neighborhood. He argued that the project would not create any hazard, congestion or environmental degradation.

Public Comment: None. There was 1 letter signed by 9 abutters and 2 non-abutters in favor of the application.

Board Discussion: The Board questioned Mr. Mathieson.

Peter Page moved to grant a Special Permit pursuant to Article 3, Section 310,

Change, Extension or Alteration, of the Zoning By-Laws to allow a second floor deck to increase in size by 3' along a pre-existing, non-conforming setback with no further encroachment into any setback at the property located at 1 Winthrop Street (TCC) under the Goldhirsh v. McNear ruling, Rob Anderson seconded and it was so voted, 5-0.

FY15-66 166 Commercial Street (Town Commercial Center Zone), Christopher Fiset on behalf of Four Bays, Inc., dba Queen Vic Guest House –
The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the sale of alcoholic beverages to registered guests of the Guest House. Robert Littlefield, Joe Vasta, Peter Page, Rob Anderson and Bryan Armstrong sat on the case.
Presentation: Attorney Christopher Fiset, Josh Scaturro and Stanley Cottner appeared to present the application. Attorney Fiset said that the applicants seek to sell alcoholic beverages to their guests. The alcoholic beverages will be available to guests and guests of guests only and not to the general public. The applicant seeks to serve from 9:00 A.M. to 9:00 P.M. and there will be no specified seating for the consumption of alcoholic beverages. Attorney Fiset said that Mr. Scaturro and Mr. Cottner had developed security protocols for the service of alcohol. The economic and social benefits would outweigh any detrimental effects such as hazard, congestion and environmental degradation.
Public Comment: Chris Mathieson spoke in favor of the application. There were 7 letters in support of the application and 2 letters in opposition to the application.
Board Discussion: The Board questioned Attorney Fiset, Mr. Scaturro and Mr. Cottner. The Board was concerned about the ability of Mr. Scaturro and Mr. Cottner to monitor the consumption of alcohol strictly by guests and guests of guests, making sure that members of the public would not be buying or consuming alcohol on the premises. The Board was also concerned about the possibility of guests taking alcohol off the property. Mr. Scaturro and Mr. Cottner explained the protocols they would implement in regard to the service of alcohol.
Joe Vasta moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the sale of alcoholic beverages to registered guests of the Guest House at the property located at 166 Commercial Street (TCC) with the condition that there be no service of alcohol outside the guesthouse, Rob Anderson seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

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

WORK SESSION

Vice Chair Robert Littlefield reconvened the Work Session at 10:15 P.M.

MINUTES: April 2, 2015 – Joe Vasta moved to approve the language as written, Rob Anderson seconded and it was so voted, 5-0.

The Board signed plans.

NEXT MEETING: The next meeting will take place on Thursday, May 21, 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 10:30 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on May 21, 2015
David M. Nicolau, Chair