

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
July 17, 2015**

**Members Present:** David M. Nicolau, Robert Littlefield, Jeffrey Haley (arrived at 7:49 P.M.), Joe Vasta, Peter Page (arrived at 7:00 P.M.), Rob Anderson (arrived at 6:35 P.M.) and Bryan Armstrong.

**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 6:31 P.M.

**PENDING DECISIONS:**

**FY15-69**     **1 MacMillan Wharf** (*Town Commercial Center Zone/Harbor Overlay Zone*), **Provincetown Public Pier Corporation** –  
David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page and Rob Anderson sat on the case. The decision was not ready.

**FY 15-74**     **12 Mechanic Street** (*Residential 3 Zone*), **Tom Thompson on behalf of William A. Docker** –  
David M. Nicolau, Jeffrey Haley, 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.*

**MINUTES: June 18, 2015** – *Bryan Armstrong moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 4-0.*

**FY15-75**     **236 Commercial Street** (*Town Commercial Center Zone*), **Unitarian Universalist Meeting House** –  
David M. Nicolau, Jeffrey Haley, Rob Anderson and Bryan Armstrong sat on the case. David M. Nicolau read the decision. *Robert Littlefield moved to approve the language as written, Rob Anderson seconded and it was so voted, 4-0.*

**FY15-76**     **0 Conway Street** (*Residential 2 Zone*), **Salt Spray Sheds on behalf of Gary Danko** –  
Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case. The decision was not ready.

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 7:00 P.M. There were six members of the Zoning Board present and two absent.

### **PUBLIC HEARINGS:**

**FY15-57**      **143 Commercial Street (Town Commercial Center Zone), Sean A. Curran on behalf of Nicolas G. Tagaris (continued from June 2) -**

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. Rob Anderson recused himself from both cases because of a conflict of interest. Attorney Murphy noted that Peter Page did not attend the last meeting when these two cases were discussed and has not reviewed the video of that meeting in order to invoke the Mullin Rule. Chair David M. Nicolau asked Attorney Murphy how he would like to proceed given that fact. Attorney Murphy was concerned about jeopardizing any ruling that the Board might make. Mr. Nicolau said that the Board would be polled before a vote was taken and the applicant would have the option of continuing the case until Mr. Page has had an opportunity to review the video. Attorney Murphy chose to proceed with the discussion. David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page and Bryan Armstrong sat on both cases.

**Presentation:** Attorney Lester J. Murphy, Sean Curran and George Tagaris appeared to discuss the application. Attorney Murphy said that the applicant had listened to the Board's concerns and revised the plans for both buildings. The building scale of the rear building has been reduced. The changes include a reduction in the width of both structures by 1', from 18' 6" to 17' 6"; a reduction in the length of both structures by 2'; the first section from 31' to 29', the second section from 26' to 24'; a reduction in the deck by 1', from 10' to 9'; a reduction in overall height by 5", from 20' 2" to 19' 9"; and a reduction in the dormer height, from 6' 2" to 5' 9". These changes lessen the footprint of the structure. The other beachfront structures in the neighborhood have 2 stories plus and the proposed structure will be 1.5 stories in height. The proposed scale has been reduced to 16,950 cu. ft., less than the average of 24,468 cu. ft. for the other beachfront structures in the area. About 2,000 cu. ft. have been removed. Attorney Murphy added that the structure will be even less non-conforming as to the

Harborfront setback than the original design.

**Board Discussion:** The Board questioned Attorney Murphy, Mr. Curran and Mr. Tagaris. Chair David M. Nicolau expressed concern about the close proximity of the rear structure to neighboring structures and the possibility that a serious public safety issue could arise if a fire were to break out at the structure. He inquired as to whether the applicant would agree to install a sprinkler system in the structure. The applicant agreed. Some Board members had expressed concerns regarding the massing of the building, but given the reduction in scale, were satisfied with the revised structure. The Board discussed whether the structure was substantially more detrimental to the neighborhood than what existed.

**Robert Littlefield moved that the Board make a finding that the rear structure would not be substantially more detrimental than the existing non-conforming structures given that the applicant has agreed to install a sprinkler system for the purpose of public safety, Joe Vasta seconded.**

The Board discussed the motion. The Board directed the applicant to consult with the Building Department regarding sprinkler system requirements.

**The motion was so voted, 5-0.** Robert Littlefield will write the decision.

**FY15-58      143 Commercial Street (Town Commercial Center Zone), Sean A. Curran on behalf of Nicolas G. Tagaris (continued from June 2) –**

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.

**Presentation:** Mr. Tagaris explained that the top two dormers were removed on the front building, however the proposed height remained the same. The revised scale would be 26,415 cu. ft., reduced from 28,555 cu ft.

**Board Discussion:** The Board questioned Attorney Murphy, Mr. Curran and Mr. Tagaris. The Board discussed the mass of the building and if it would be in keeping with other structures in the neighborhood. Some Board members thought the size of the building was too large for the neighborhood and, since this was a new structure, would prefer to see a building that conformed to the scale by-law and would not require relief. Attorney Murphy said that the applicant would try to submit to the Board, for its review, a revised site plan showing all of the changes in both buildings and the parking configuration at the property. **Robert Littlefield moved to continue Case #FY15-58 to the August 6, 2015 Public Hearing, Bryan Armstrong seconded and it was so voted, 5-0.**

**FY15-68      294 Bradford Street (Residential 3 Zone), Notice of Appeal by Jonathan Sinaiko –**

The applicant 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. Chair David M. Nicolau recused himself because of a conflict of interest. Peter Page disclosed that he has done work for

Stan Sikorski, who is proposed buyer of the property and the recipient of the building permit, but was no longer employed by him and said that he would be able to render a fair and impartial decision in the matter. Robert Littlefield, Joe Vasta, Peter Page, Rob Anderson and Bryan Armstrong sat on the case.

**Presentation:** Attorney Brian Wall, representing Jonathan Sinaiko and Camille Cabrey, appeared to present the appeal. He argued that the proposed single-family structure that was the subject of the building permit would not conform to the Town's scale by-law. Attorney Wall described the proposed structure. He argued that the proposed scale of 33,810 cu. ft. would exceed the allowable scale for the site, requiring relief from the Board. He reviewed the purpose and intent of the scale by-law. He explained that because of the location of the lot, when Mr. Sikorski applied for a scale determination, the Assessor's office issued a document stating that the neighborhood average scale was zero. The building permit issued for the lot interpreted the number zero as no scale, essentially allowing a structure of unlimited size to be built on the property, subject to other relevant zoning requirements. The applicant has interpreted the number zero to mean that any development on the lot would result in an increase of more than the 25% that would be allowed under the Zoning By-Laws, and therefore would need a Special Permit. He reviewed some mathematical concepts related to zero. If zero is added to 33,810 cu. Ft. of scale, it results in an increase of 33,810 cu. ft. in scale. Since the neighborhood average scale is zero, the increase would be more than 25% of that scale. Attorney Wall said the Building Commissioner took the position that a scale of zero means that there is no neighborhood average scale and that the lot would not be subject to any scale limitations. He said that the applicant is of the opinion that this position is contrary to the mathematical concepts that he just reviewed and to the intent and customary usage of the scale by-law. Attorney Wall stated that the scale of the proposed structure is larger than the average scale for this neighborhood. The neighborhood average scale is 9,250 cu. ft., allowing for a structure of up to 11,562 cu. ft. to be built. He added that the Assessor's scale determination was initially written as a zero, but that figure was crossed off, and the letters 'N/A' put in its place. He argued that this indicated that the Assessor's office had made an interpretation of the Zoning By-Laws, however only the Zoning Enforcement Officer, which is the Building Commissioner, can make an interpretation of those laws. The applicant believes that the scale by-law is applicable and that the neighborhood average scale is zero.

Geoff Larsen, the Building Commissioner, explained his decision to issue a building permit. The reference to the neighborhood average as zero did not agree with the Assessor's scale calculation, which stated that it was N/A, or not applicable. The Board questioned Mr. Larsen. Mr. Larsen said that occasionally anomalies with the methodology of figuring out the scale of a neighborhood occur when there were no structures in the area to determine what the average should be. He said that the methodology that was established when he issued the building permit indicated that the scale by-law was not applicable. He argued that the software used to calculate building scale indicated that the scale by-law was not

applicable, not any one person in the Assessor's office. His determination to issue a building permit was based on the Assessor's office's that designation.

**Public Comment:** Attorney Christopher J. Snow, representing David Mayo, the landowner, Attorney Lester J. Murphy, representing Stan Sikorski, the proposed purchaser of the property, and Anthony Fisher, an abutter, spoke against the application. Mr. Sinaiko and Sherry Dranch and Will Walker, both abutters, spoke in support of the application. There were 2 letters in opposition to the application and 3 letters from abutters in support of the application.

**Board Discussion:** The Board discussed the intent of the scale by-law and its interpretation by both the Building Commissioner and the applicant. The Board ruled that the Building Commissioner's interpretation of the scale by-law was valid and it supported his issuance of a building permit.

**Robert Littlefield moved to deny the appeal of 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, Bryan Armstrong seconded and it was so voted, 5-0.** Robert Littlefield will write the decision.

**FY15-73**      **506 Commercial Street (Residential 3 Zone), Derik Burgess (continued from June 4) –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a second floor addition upon the north portion of a residential structure. David M. Nicolau, Jeffrey Haley, Rob Anderson and Bryan Armstrong sat on the case.

**Presentation:** Derik Burgess appeared to discuss the application. David M. Nicolau explained that he was concerned about the close proximity of the building to abutting structures and the issue of public safety if a fire were to occur in the structure. He would be in favor of the project if the applicant would agree to install a water wall or a sprinkler system, or utilize fire retardant material on the east side of the structure to address that issue. Mr. Burgess stated that he would be willing to entertain options for fire suppression.

**Public Comment:** Kristen Hein and Phillip Cozzi, abutters, spoke against the application.

**Board Discussion:** The Board discussed the matter and made a finding that the project would not be substantially more detrimental to the neighborhood as long as fire suppression measures were taken to protect public safety.

**Jeffrey Haley moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a second floor addition upon the north portion of a residential structure at the property located at 506 Commercial Street (Res 3), with the condition that the applicant install a water wall on the east side of the addition and utilize fire retardant materials approved by the Building Commissioner, Bryan Armstrong seconded and it was so voted, 5-0.**

**FY15-78**      **99 Commercial Street (Residential 3 Zone), Lara Papetsas –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to reconfigure and reduce seating from 135 to 100. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Bryan Armstrong sat on the case.

**Presentation:** Lora Papetsas appeared to present the application. She seeks to reduce the seating by 22 seats.

**Public Comment:** None. There were 5 letters in support of the application.

**Board Discussion:** The Board briefly discussed the application.

**Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to reconfigure and reduce seating from 135 to 100 at the property located at 99 Commercial Street (Res 3), Joe Vasta seconded and it was so voted, 5-0.** David M. Nicolau will write the decision.

**FY15-77**

**48A Bradford Street (Residential 3 Zone), Cape Tip Construction on behalf of Ferreira Family Trust –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to demolish and redesign the entire structure to make it conforming, add scale by bringing an existing basement dwelling unit above grade and maintain the current three-dwelling units. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Bryan Armstrong sat on the case.

**Presentation:** Kaye McFadden, Bianca and Robert Ferreira and Brenda Dean appeared to present the application. Ms. McFadden explained that the structure has a failed foundation and the applicant seeks to demolish the house, install a new foundation and then rebuild the house. The current structure is a pre-existing, non-conforming three-family structure that will be relocated on the lot, with an addition, in order to bring the basement unit, which does not have proper egresses, above grade. This will require the height of the structure to increase beyond the allowed neighborhood scale. The structure is non-conforming as to lot size and as to setbacks. By relocating the building, the required setbacks and parking requirements will be met. Ms. McFadden argued that the new structure would not be substantially more detrimental to the Town or the neighborhood than what currently exists. The lot coverage will increase by 4' and the proposed foundation will measure 27' by 54' in order to accommodate the proposed 3 dwelling units comprised of 2 bedrooms each. The project will allow all units to meet the current building requirements regarding egresses.

**Public Comment:** None. There were 11 letters in support of the application.

**Board Discussion:** The Board questioned Ms. McFadden. The Board noted that the scale numbers were incorrect. Ms. McFadden will obtain the correct numbers from the Assessor's office. The Board discussed the massing of the new structure from the streetscape of Shank Painter Road. The Board was of the opinion that the house was set back far enough from Shank Painter Road that the appearance of mass from that streetscape would be mitigated and would thus meet the requirement of subparagraph 5 of Article 2, Section 2640E of the Zoning By-

Laws.

*Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to demolish and redesign the entire structure to make it conforming, add scale by bringing an existing basement dwelling unit above grade and maintain the current three-dwelling units at the property located at 48A Bradford Street (Res 3), Rob Anderson seconded and it was so voted, 5-0. David M. Nicolau will write the decision.*

**FY15-79      73 Franklin Street (Residential 3 Zone), Gary Reinhardt on behalf of Jon Goode & Cary Raymond –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a 12' x 15' addition on the south side of the structure. David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page, and Rob Anderson sat on the case.

**Presentation:** Gary Reinhardt, Jon Goode and Cary Raymond appeared to present the application. Mr. Reinhardt said that the applicants seek to enlarge a bedroom by putting an addition on the first floor where an existing deck and pergola are located. The streetscape will not be altered. Pursuant to Article 2, Section 2640E, subparagraph 1, the project will be in keeping with the goals of the Local Comprehensive Plan, which encourages and promotes the viability of a year-round community and the renovation of existing structures in order to maintain the integrity of neighborhoods. The relevant sections of the LCP also include Chapter 1, Section 1.2 Goal 1, Policy B; Goal 1, Policy E; and Goal 7. And pursuant to subparagraph 5 of Article 2, Section 2640E, the structure will minimize mass from the streetscape, successfully integrate into its surroundings and not have a negative effect on light and air to surrounding structures. Mr. Reinhardt argued that the social and economic benefits outweigh any adverse effects such as hazard, congestion or environmental degradation because the addition will allow the applicants to live permanently in their home, enhancing the character and vibrancy of the neighborhood and the Town. The economic benefits are that the property will generate more tax revenue for the Town.

**Public Comment:** None. There were 8 letters from abutters in support of the application.

**Board Discussion:** The Board had no questions.

*Rob Anderson moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a 12' x 15' addition on the south side of the structure at the property located at 73 Franklin Street (Res 3), Robert Littlefield seconded and it was so voted, 5-0. Rob Anderson will write the decision.*

**FY15-80      293 Commercial Street (Town Commercial Center Zone), Stephen Rome, dba Kung Fu Dumplings –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place a 2' x 3' A-frame sign along

Commercial Street. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Rob Anderson sat on the case.

**Presentation:** Stephen Rome appeared to present the application. He seeks to put a sign on Commercial Street advertising his business, as he is located in the back of the building and is not visible from the street.

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

**Board Discussion:** The Board questioned Mr. Rome.

*Jeffrey Haley moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place a 2' x 3' A-frame sign along Commercial Street at the property located at 293 Commercial Street (TCC), with the condition that the sign has a base filled with water or sand for stabilization, Robert Littlefield seconded and it was so voted, 5-0.*

**FY15-81      19 Bangs Street (Residential 3 Zone), Scott William Grady, Architect, on behalf of Dwight P. Russell –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a second floor upon the northwest portion of the residential structure within the required front and side yard setbacks. David M. Nicolau, Robert Littlefield, Joe Vasta, Rob Anderson and Bryan Armstrong sat on the case.

**Presentation:** Scott Grady and Ben Stone, the current owner, along with his wife, of the property, appeared to present the application. The applicants seek to put a second story addition over the existing footprint of the structure. The structure is non-conforming as to its front and side yard setbacks. Mr. Grady said that the applicants would also like to install a front bay window, as an aesthetic element, that would extend 1' outward from the structure.

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

**Board Discussion:** The Board discussed the bay window with the applicant. The Board informed the applicant that the bay window would need relief in the form of a Variance, which would most likely not be granted. The Board made a finding that the proposed changes to the structure would not be 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 construct a second floor upon the northwest portion of the residential structure within the required front and side yard setbacks at the property located at 19 Bangs Street (Res 3), on the condition that the bay window does not intrude farther into the setback and that the applicant submit a revised plan, Joe Vasta seconded and it was so voted, 5-0. Bryan Armstrong will write the decision.*

**FY15-82      336 Commercial Street (Town Commercial Center Zone), AIDS Support Group of Cape Cod –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place a 2' x 3' sandwich board sign along

Commercial Street. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Rob Anderson sat on the case.

**Presentation:** Max Sandusky appeared to present the application. The applicant seeks to put a sign that promotes sexual health screening for gay men at the property in question.

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

**Board Discussion:** The Board had no questions.

***Jeffrey Haley moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place a 2' x 3' sandwich board sign along Commercial Street for the property located at 336 Commercial Street (TCC), Joe Vasta seconded and it was so voted, 5-0.***

The Board signed plans.

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

**ADJOURNMENT:** *Jeffrey Haley moved to adjourn at 10:30 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on August 6, 2015  
David M. Nicolau, Chair