

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

Members Present: David M. Nicolau (left at 8:01 P.M.), Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong.

Members Absent: Amy Germain (excused) and Rob Anderson (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:

- FY15-73** **506 Commercial Street (*Residential 3 Zone*), Derik Burgess –**
David M. Nicolau, Jeffrey Haley, Rob Anderson and Bryan Armstrong sat on the case. David M. Nicolau revised the decision as he had to make a clerical correction. *Robert Littlefield moved to approve the language as amended, Bryan Armstrong seconded and it was so voted, 3-0.*
- FY15-76** **O 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.
- FY15-79** **73 Franklin Street (*Residential 3 Zone*), Gary Reinhardt on behalf of Jon Goode & Cary Raymond –**
David M. Nicolau, Robert Littlefield, Joe Vasta, Peter Page, and Rob Anderson sat on the case. The decision was not ready.
- FY15-81** **19 Bangs Street (*Residential 3 Zone*), Scott William Grady, Architect, on behalf of Dwight P. Russell –**
David M. Nicolau, Robert Littlefield, Joe Vasta, Rob Anderson and Bryan Armstrong sat on the case. The decision was not ready.
- FY16-01** **16 Ship's Way Road (*Residential 1 Zone*), Tom Thompson on behalf of Nicola Vichert (*postponed from August 6*) –**
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Jeffrey Haley read the decision. *Robert Littlefield moved to approve the language as written, Peter Page seconded and it was so voted, 5-0.*

FY16-03 11 Bradford Street (Residential 3 Zone), Don DiRocco of Hammer Associates on behalf of Frank Pantano –

David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. The decision was not ready.

MINUTES: September 3, 2015 – Robert Littlefield moved to approve the language as written, Peter Page seconded and it was so voted, 5-0.

Chair David M. Nicolau recognized Derik Burgess who had appeared to speak to the Board in regard to his concern about the correction that was made to the decision in Case #FY15-73. The original decision had given him the option of either installing a sprinkler system in the structure on the property or using fire retardant materials on the east side of the structure. He stated that Building Commissioner Geoff Larsen was of the opinion that ZBA applicants could not be held to a higher standard than what would be required by the State Building Code. Mr. Burgess said that he is planning to comply with the Building Code, but thought it was only fair that his project be held to the same standard as has been applied to other structures with similar issues. He did not want to be held to the sprinkler system-only standard, as the cost could be prohibitive. He is currently investigating the cost of a system and if the design costs are reasonable, he will consider installing it. He indicated that he had contacted an attorney who had speculated that there might be a legal issue in regard to the revision of the decision. Mr. Burgess requested a compromise that would leave the decision as originally written. The Board discussed the issue with Mr. Burgess. The latter will speak with Mr. Larsen, as will Chair Nicolau, and the issue will be put on the Work Session agenda for discussion at the October 1, 2015 Public Hearing.

Chair David M. Nicolau adjourned the Work Session at 7:07 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:07 P.M. There were six members of the Zoning Board present and two absent.

PUBLIC HEARINGS:

FY16-05 26 Montello Street (Residential 3 Zone), Ted Smith, Architect, LLC on behalf of Brad Fowler and Anthony Lofrumento (postponed from September 3) –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, Article 3, Section 3110, Change, Extension and Alteration, and Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and reconstruct an existing accessory structure with a second floor and construct a breezeway to connect the accessory structure to a principle structure. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: Attorney Lester J. Murphy, Ted Smith and Brad Fowler appeared

to present the application. Attorney Murphy stated that the project involved two buildings, each containing one dwelling unit, on an under-sized lot. The lot is non-conforming as to size, frontage, side and rear yard setbacks, the number of principle structures on it and the distance between the structures. The applicants seek to raze and remove the existing one-story cottage located on the south side of the property and replace it with a two-story structure that will connect to the main structure with a breezeway, thereby reducing the non-conformancies related to the number of principle structures on the lot and the distance between those structures. The existing setbacks will be maintained and the new addition will be bumped out slightly on the southerly side and appear as a modest 11'3" wide by 22' high, one-and-a-half-story cottage structure from the street with a footprint of 250 sq. ft. The new structure will have a bigger footprint and a larger scale than the existing main structure. Under Section 3115, subsection 2, if the proposed replacement structure will not have the same footprint and will be larger in scale than the existing structure, the project must comply with Section 5330 of the Zoning By-Laws. Attorney Murphy argued that the social, economic or other benefits of the project will outweigh any adverse effects. The new structure will be 20' 4" in height, which is only 7' higher than the existing structure, will only contain one bedroom and will be built in conformity with the State Building Code. Attorney Murphy argued that the new structure will be more attractive to the neighborhood and better complement the existing structure on the lot. It will provide a more usable and livable residence for the applicants and increase the tax base in the Town, while continuing the upgrades that are occurring in the neighborhood. There will be no increase in the number of bedrooms and therefore no increase in septic flowage and two non-conformancies will be removed, making the lot more conforming. The new structure will not be more detrimental to the neighborhood than what exists, pursuant to Section 3110. The neighborhood average scale is 11,398 cu. ft., the scale of the existing cottage is 2,180 cu ft., the maximum allowable scale is 14,248 cu. ft. The existing structure of the main house is 13,698 cu. ft. the addition will be 4,990 cu. ft., for a total of 18,688 cu. ft. This is a 36% increase in scale. Pursuant to Section 2640E, the structure will meet the requirements of subparagraph 5 in that it will integrate into its surroundings and be sited in a manner that minimized mass from the streetscape and not have negative effects on neighboring structures. The new structure has been designed to blend harmoniously with the main structure and is similar in design to other buildings in the neighborhood. There will be no detrimental impacts as a result of its construction.

Public Comment: Ronnie Souza, a direct abutter, spoke in opposition to the application. There were 2 letters from abutters in support of the application and 1 letter from an abutter in opposition to the application.

Board Discussion: The Board questioned Attorney Murphy, Mr. Smith and Mr. Fowler about the project. The Board noted that the plans submitted by the applicant were incomplete. The Board raised the issue of whether the Zoning By-Laws required the breezeway connecting the two structures to be enclosed in order to be considered one structure. Attorney Murphy explained that the previous

Building Commissioner had required that, however the present Building Commissioner did not. The Board discussed whether the new structure will interfere with light and air to, and views from, an abutting structure and whether the new structure will create an appearance of mass from the streetscape. The Board decided to continue the case until staff resolved the issue concerning the breezeway. Attorney Murphy said that the applicants will review the plans to look at options to address the Board's concerns regarding the mass of the structure. Chair Nicolau encouraged Board members to make another site visit.

Robert Littlefield moved to continue Case #FY16-05 to the October 1, 2015 Public Hearing at 7:00 P.M., Jeffrey Haley seconded and it was so voted, 5-0.

FY16-06

4 Maple Court (Residential B Zone), Ted Smith, Architect, LLC on behalf of Paul Schofield and Andrew Jorgensen (continued from September 3) –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct an addition and second floor upon an existing single-story residential structure. David M. Nicolau recused himself because of a conflict of interest. Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case.

Presentation: Ted Smith, Paul Schofield and Andrew Jorgensen appeared to present the application. Mr. Smith explained that the applicants seek to put an addition on the existing structure and a second floor. They want to increase the living space in the structure, and the lot is large enough to accommodate a larger structure. The lot has an area of approximately 27,000 sq. ft. All setbacks will remain conforming. He argued that the building scale deviation is warranted as required by Section 2640E, subparagraph 4, which states that due to the size of the parcel of land involved, and to discourage subdivision into smaller parcels, the increase in scale is warranted if the proposed building or addition will not result in a structure that disrupts the character of the neighborhood. He said that the project will not be more detrimental to the neighborhood than the existing structure. The existing scale is 28,160 cu. ft., the allowable neighborhood scale is 23,793 cu. ft., the average neighborhood scale is 19,034 cu. ft., the proposed addition scale is 15,950 cu. ft., for a proposed total of 44,110 cu. ft.

Public Comment: None. There were 2 letters, one from an abutter and a non-abutter, stating no objection to the application.

Board Discussion: The Board questioned Mr. Smith, Mr. Schofield and Mr. Jorgensen about the project and asked how the applicants are justifying the project under the scale by-law. Mr. Smith replied that the project is in compliance with subparagraphs 4 and 5 of Section 2640E.

Peter Page moved to make a finding that the project meets test 5 of Article 2, Section 2640E of the Zoning By-Laws, Bryan Armstrong seconded and it was so voted, 5-0.

Bryan Armstrong moved to grant a Special Permit pursuant to Article 2, Section 2640E, Building Scale, of the Zoning By-Laws to construct an addition and second floor upon an existing single-story residential structure at the property located at 4 Maple Court (Residential B Zone), Joe Vasta seconded

and it was so voted, 5-0. Jeffrey Haley will write the decision.

FY16-07

99 Commercial Street, (Residential 3 Zone), David Berarducci on behalf of the Nathaniel Hopkins Condominium at Union Wharf –

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 and reconstruct a pier with an increase in height of 3.7 feet and no structural change to three existing dwelling units. Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case.

Presentation: Attorney E. James Veara and David Berarducci appeared to present the application. The applicant seeks to raze and replace an existing pier in the same footprint. The number and location of the piles and the width and length of the pier will remain the same. There will, however, be an increase in the elevation of a portion of the pier by 3.7'. This height is determined by the elevation requirements of FEMA's Velocity Zone. The pier needs to be elevated to comply with the FEMA elevation requirements because of the residential structures that sit on top of it. The pier has been permitted since 1927 and the structures on the pier are lawfully pre-existing, non-conforming residential structures located over Commonwealth tidelands. The pier is in disrepair and suffers from deterioration and rot. The applicant proposes no alterations to the three structures on the pier. They will be taken off the pier during the reconstruction process, placed on a barge and then put back on the pier after the project has been completed. The Building Inspector has rendered the opinion that the pier could be reconstructed with no increase in height as of right. However, the FEMA requirements for V Zone structures require an increase in height. The increase in the height of the pier does not require relief under Article 3, Section 3110 because there are no heights restrictions for piers in the Zoning By-Laws. Attorney Veara explained the the important issue is the structures on the pier, because they are lawfully pre-existing, non-conforming structures, any increase in height would need relief under Section 3110 as changes in a non-conforming structures. The Board must decide whether that change is substantially more detrimental to the neighborhood than what currently exists. He argued that there will be no detriments as a result of the proposed replacement, as there will be no change or intensification in use, no change in setbacks and there will be no alteration to the physical structures. In regard to Article 5, Section 5330, Attorney Veara argued that there would be no adverse effects created as a result of the project. The benefits include the fact that it is a pier preservation and enhancement and many piers have already disappeared in Town.

Public Comment: Linda Glen, an abutter, Attorney David Reid, representing Ms. Glen, Deborah Paine, an abutter, Steven and Eleanor Score, Harriet Gordon, an abutter, Ann McGuire, an abutter, and Gary Reinhardt, an abutter, all spoke in opposition to the application. Gregory Connors, an abutter, and Abigail O'Hara spoke in support of the application. There was 1 letter in opposition to, and 5 letters in support of, the application. In addition, there was 1 letter of no objection

to, and 1 letter of concern about, the project. The Board allowed Attorney Veara to address the concerns and rebut the arguments expressed by the public.

Board Discussion: The Board questioned Attorney Veara and Mr. Berrarducci. *Robert Littlefield moved to make a finding that the proposed elevation of the three structures at the property located at 99 Commercial Street by 3.7' will not be substantially more detrimental to the neighborhood, Joe Vasta seconded and it was so voted, 4-1 (Bryan Armstrong opposed).*

The Board discussed conditions, including a condition that the contractor hired to perform the work be required to perform the work in the most professional, workman-like manner in order to preserve the integrity of the structures. Attorney Veara said that the applicant would accept that condition.

Joe Vasta 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 and reconstruct a pier with an increase in height of 3.7 feet and no structural change to three existing dwelling units at the property located at 99 Commercial Street (Res 3), with the condition that the applicant will make its best efforts to replace the three structures as is, Jeffrey Haley seconded and it was so voted, 4-1 (Bryan Armstrong opposed). Peter Page will write the decision.

FY16-08 25 Tremont Street, Units E1 & E2 (Residential 2 Zone), Barry Pike and Paul J. Carey –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to connect two decks on the south of the residential structure. Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case.

Presentation: Barry Pike and Paul Carey appeared to present the application.

They seek to make improvements to the building and its appearance by increasing the center area of a deck by 14' by 6' and removing a pediment on the front of the building. The net increase in area will be 50 sq. ft. The applicants argued that this improvement will be a benefit to the Condominium Association and the neighborhood. The existing scale is 19,380 cu. ft., the neighborhood average scale is 16,954 cu. ft., the maximum allowable scale is 19,497 cu. ft., and the proposed addition is 540 cu. ft., for a total of 19,920 cu. ft. and a percentage increase of 2.7.

Public Comment: Deborah Paine spoke in favor of the application. There were 6 letters in support of the application.

Board Discussion: The Board had no questions.

Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to connect two decks on the south of the residential structure at the property located at 25 Tremont Street, Units E1 & E2 (Res 2), Joe Vasta seconded and it was so voted, 5-0. Bryan Armstrong will write the decision.

Vice Chair Robert Littlefield adjourned the Public Hearing at 10:00 P.M.

NEXT MEETING: The next meeting will take place on Thursday, October 1, 2015. It will consist of a Public Hearing at 6:30 P.M followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Joe Vasta moved to adjourn at 10:00 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

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