

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

**Members Present:** Robert Littlefield, Amy Germain, Jeffrey Haley, Peter Page and Bryan Armstrong.

**Members Absent:** David M. Nicolau (excused), Joe Vasta (excused) and Rob Anderson (excused).

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

**WORK SESSION**

Vice Chair Robert Littlefield called the Work Session to order at 6:33 P.M.

**MINUTES: October 15, 2015 – *Amy Germain moved to approve the language as written, Bryan Armstrong seconded and it was so voted, 5-0.***

The Board discussed holding joint meetings with other Town Boards, such as Planning, when cases seeking relief from those Boards involve complicated issues. ***Amy Germain moved to hold joint meetings with other Town Boards with the approval of the applicant, Bryan Armstrong seconded and it was so voted, 5-0.***

**PENDING DECISIONS:**

**FY16-09      35 Province Road (*Residential 1 Zone*), Jay Gurewitsch -**  
David M. Nicolau, Robert Littlefield, Amy Germain and Jeffrey Haley sat on the case. The decision was read at the last hearing. ***Jeffrey Haley moved to approve the decision as amended, Bryan Armstrong seconded and it was so voted, 4-0.***

Vice Chair Robert Littlefield postponed the Work Session at 6:45 P.M.

**PUBLIC HEARING**

Vice Chair Robert Littlefield called the Public Hearing to order at 7:00 P.M. There were five members of the Zoning Board present and three absent.

## **PUBLIC HEARINGS:**

**FY16-10**     **52 Creek Road (Residential 3 Zone), Lester J. Murphy, Esq. on behalf of 3 Cottages, LLC –**  
The applicant seeks a Special Permit pursuant to Article 2, Section 2550, Multiple Buildings Per Lot, and Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to demolish three existing single-family structures and construct two duplex structures. Peter Page recused himself because of a conflict of interest. Only four Board members seated on the case when it was first heard were present. Attorney Lester J. Murphy appeared to request a continuance to the December 17, 2015 Public Hearing at 7:00 P.M. at which time a five-member Board could be seated. He has submitted a waiver of time constraints on behalf of his client. *Amy Germain moved to continue Case #FY16-10 until the December 17, 2015 Public Hearing at 7:00 P.M., Bryan Armstrong seconded and it was so voted, 4-0.*

**FY16-11**     **293 Commercial Street (Town Commercial Center Zone), Julesan, Inc. dba Twisted Pizza (postponed from October 15<sup>th</sup>) –**  
The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place an ice cream cone sculpture and pizza slice. Robert Littlefield, Amy Germain, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case.  
**Presentation:** Julie Knapp appeared to present the application. This is a renewal of a previous Special Permit to display two sculptures; a 6' ice cream cone and a 5' pizza slice, outside Twisted Pizza.  
**Public Comment:** None. There were no letters in the file.  
**Board Discussion:** The Board questioned Ms. Knapp about the sculptures. She said that the ice cream cone is bolted into cement and the pizza slice is very solid and has never fallen over in windy conditions or otherwise.  
*Amy Germain moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place an ice cream cone sculpture and pizza slice at the property located at 293 Commercial Street (TCC), Bryan Armstrong seconded, and it was so voted, 5-0.*  
The Board discussed whether the Special Permit should run with the applicant or if the applicant should be required to return to the Board to renew it every three years.  
*Amy Germain moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place an ice cream cone sculpture and pizza slice at the property located at 293 Commercial Street with the condition that the Special Permit expire on 1/2/19, Bryan Armstrong seconded and it was so voted, 3-2 (Robert Littlefield and Jeffrey Haley opposed).*  
The motion did not pass.  
*Jeffrey Haley moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place an ice cream cone sculpture and pizza slice at the property located at 293 Commercial Street with the condition that the Special Permit run with the current management, Robert*

*Littlefield seconded and it was so voted, 5-0.*

**FY16-12 99 Commercial Street (Residential 3 Zone), Siobhan Carew –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, to allow the continued use of the existing restaurant with a full liquor license but under new management and with no change to seating layout or increase in seating. Robert Littlefield, Amy Germain, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case.

**Presentation:** Attorney Richard Joyce, Siobhan Carew, Attorney Donna Robertson and Laura Papetsas appeared to present the application. Attorney Joyce said that Ms. Carew seeks to continue operating Sal's Place with no changes in the existing conditions and with both outdoor and indoor seating. He argued that the change in ownership would not be detrimental to the neighborhood, but rather a benefit, and any negative effects on the community were outweighed by the benefits. The business will continue as a restaurant. Ms. Carew has had extensive experience managing restaurants since the 1990s. She is TIPS trained and ServSafe certified and is familiar with the Town and the community. She and her daughters will be living above the restaurant. He said that there was plenty of room to access the rear of the property for other condominium unit owners and to the restaurant for customers. The last seating for dinner service will be at 10:00 P.M.

**Public Comment:** Fred Long, an abutter, Fred Hemley, Craig Robbins, Clarence Walker, Marcene Marcoux, non-abutters, spoke in support of the application, Mark Walsh, an owner of a residential unit in the condominium at the property, and Linda Glen, a direct abutter, both had concerns about the change, Attorney Lester J. Murphy, on behalf of Greg Connors, a direct abutter, spoke in opposition to the application. There were 9 letters from non-abutters and 14 letters from abutters in support of the application and 1 letter of concern from a non-abutter. There were 28 letters in support of the application from out-of-towners.

**Board Discussion:** The Board questioned Attorney Joyce, Attorney Robertson, Ms. Papetsas and Ms. Carew about the access issue raised by Attorney Murphy and Mr. Walsh involving the parking space on the east side of the restaurant where the entrance to the restaurant is located. According to Attorney Murphy, the access to the restaurant and the pier behind the structure is only about 25" when a car is parked in his client's tandem parking space, a space measuring 7' by 16'. He questioned whether that was adequate for foot traffic, including patrons of the restaurant and residents and visitors to the pier's residential units, to pass.

Attorney Joyce explained that Ms. Papetsas had customarily parked two vehicles on the east side of the residence for many years and that the side door was the primary access for entrance and egress to the restaurant and the pier. Neither patrons nor residential condominium unit owners were impeded by the parked cars in accessing either the restaurant or the pier. The front door was to be used only for emergency purposes and ADA access. The restricted use of the front door, which is a potential noise, will continue.

He said that there will be a path kept open so foot traffic can access the rear of the pier. On the seating plan, there is egress and entrance to and from the pier from the restaurant area and into the private non-restaurant pier area. He added that access to the beach from the deck would be unobstructed.

Attorney Robertson addressed the safety concerns in regard to the east side access issue. She emphasized that there had never been a safety issue with the side entrance when cars had been parked there in the past. The access is well-lit, flat and short, albeit narrow like access to many businesses in Town. She clarified that there has been a reduction in the number of seats in the restaurant by 22 and argued that the access on the east side of the restaurant is reasonable for the reduced volume of patrons.

The Board expressed concern about the size of the access area and if it would be adequate for wheel chairs or fire or ambulance personnel and equipment. It was noted that the use of the front door was to cut down on noise, but was also a safety issue for patrons, as it was directly abutting Commercial Street.

Vice Chair Robert Littlefield reviewed the conditions that the Board had required in 2013 when a bar area was installed in the restaurant.

The Board requested that the applicant submit a certified plot plan to scale with easements delineated and the access dimensions labeled and a revised, accurate seating plan showing the beach access. The Board inquired if there had been any noise complaints related to the restaurant registered with the Provincetown Police Department. Ms. Papetsas said that there had been no noise complaints, however the Board would like that information verified independently.

The Board discussed the access issues and would like an opinion from the Acting Building Commissioner and possibly the Fire Chief about the size of the access area and decided to continue the case until the November 17, 2015 Public Hearing at 7:00 P.M., leaving the public portion of the hearing open.

**Public Comment:** Sheila LaMontagne asked a question the historic use and ownership of the property in regard to it being split up recently. Marcene Marcoux said that the property remains historic and any changes to the structures would have to come before the Historic District Commission for approval despite the fact that the property has been divided.

***Peter Page moved to continue Case #FY16-12 to the November 19, 2015 Public Hearing at 7:00 P.M., Amy Germain seconded and it was so voted, 5-0.***

Vice Chair Robert Littlefield adjourned the Public Hearing at 9:00 P.M.

## **WORK SESSION**

Vice Chair Robert Littlefield reconvened the Work Session at 9:00 P.M.

**PENDING DECISIONS:**

**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. Bryan Armstrong read the decision. *Peter Page moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 5-0.*

**NEXT MEETING:** The next meeting will take place on Thursday, November 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:** *Jeffrey Haley moved to adjourn at 9:30 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

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