

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
November 19, 2015**

Members Present: Robert Littlefield, Amy Germain (left at 7:30 P.M.), Jeffrey Haley, Peter Page and Rob Anderson

Members Absent: David M. Nicolau (excused), Joe Vasta (excused) and Bryan Armstrong (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 6:32 P.M.

PENDING DECISIONS:

FY16-07 99 Commercial Street, (*Residential 3 Zone*), David Berarducci on behalf of the Nathaniel Hopkins Condominium at Union Wharf –
Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case. Robert Littlefield read the decision. *Rob Anderson moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 3-0.*

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

The Board briefly discussed Board member vacation schedules and quorums.

Discussion with Jeffrey Gould, seeking appointment to the ZBA: The Board questioned Mr. Gould about the alternate position. *Amy Germain moved to approve the appointment of Jeffrey Gould to an alternate position on the Zoning Board of Appeals, Rob Anderson seconded and it was so voted, 5-0.*

Vice Chair Robert Littlefield adjourned the Work Session at 6:55 P.M.

PUBLIC HEARING

Vice Chair Robert Littlefield called the Public Hearing to order at 7:01 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. This case has been continued to the December 17, 2015 Public Hearing at 7:00 P.M.

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. Vice Chair Robert Littlefield stated that Rob Anderson has watched a video of the previous presentation of the case and the Board was invoking the Mullin Rule, allowing him to sit on the case. The applicant agreed with the Board. Robert Littlefield, Amy Germain, Jeffrey Haley, Peter Page and Rob Anderson sat on the case.

Presentation: Attorney Christopher J. Snow, Siobhan Carew and Lora Papetsas appeared to discuss the application. Attorney Snow submitted a packet of documents and photographs for the Board's review related to the issues that were raised at the last hearing. He argued that the only issue to be considered by the Board in this case was a transfer of ownership and management of the restaurant and that the applicant was eminently qualified to purchase the business. The Board had no other purview over the property. The documents in the packet submitted included a letter from Ms. Papetsas' insurer, certifying that there had been no bodily injury or damage claims related to the property, a letter from the Provincetown Police Dept. indicating that there had been no noise complaints during the operation years of 2013 and 2014 and a document showing provisions of the easement, including a requirement that the neighbor accommodate the needs of the restaurant.

Attorney Snow said that the easement in question can only be utilized by the owner of 101 Commercial Street and that it is not the obstruction it was made out to be at the last hearing. And, even if it were, it is an element of use that has been customary since 1940, and is therefore grandfathered. He argued that the Board has no jurisdiction over the use. He called the Board's attention to a photograph in the packet of a wheelchair ramp that is utilized in entrancing and exiting the restaurant and correspondence from a surveyor who measured the easement and made sure that its location allowed adequate egress and access in the same way as has been practiced since 1940. He also noted that in the packet was correspondence from Ted Smith, an architect, who has been retained by Ms. Papetsas to prepare a seating plan. Attorney Snow reiterated that the seating was outside the scope of the Board. The seating arrangements have been secured by

previous Special Permits. He said a new seating plan would be provided to the Board, not for its approval, but to update the Town's file on the property. He argued that many restaurants in Provincetown have equal or reduced customer access and that it is not a legitimate condition of approval for a Special Permit because they would not be able to meet it.

Public Comment: Attorney Lester J. Murphy, representing an abutter, spoke in opposition to the application. He had spoken with the Fire Chief who is not satisfied with the 24" wide access way proposed on the applicant's plans, and will communicate that to the Board. He reminded the Board that when it is considering a Special Permit pursuant to Article 2, Section 2460, it must look at Article 5, Section 5330 to determine whether the economic and other benefits of the change outweigh any detrimental effects. He argued that due to the changes made by Ms. Papetsas to the property and her granting of an easement to his client, the operation of the restaurant is now more hazardous to the neighborhood than it was before that happened and thus the Special Permit should be denied.

Board Discussion: The Board discussed the matter. The Board noted that the applicant had not submitted opinions of the easement from the Building Commissioner and the Fire Chief and a seating plan from an architect as requested by the Board. Both the applicant and the Board agreed to continue the case to the December 3, 2015 Public Hearing at 7:00 P.M. *Peter Page moved to continue Case #FY16-12 until the December 3, 2015 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 5-0.*

FY16-13 401½ Commercial Street (Town Commercial Center Zone), Kevin Bazarian on behalf of Zoltan's Landing, LLC –

The applicant seeks a Special Permit pursuant to Article 2, Section 2550, Multiple Buildings Per Lot, Article 3, section 3110, Change, Extension or Alteration and Section 3115, Demolition and Reconstruction, to demolish an existing single-story building and reconstruct a two-story building within the existing footprint and to preserve the two principle structures on the lot without the required square footage. Vice Chair Robert Littlefield explained that since there were only four members of the Board present 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. A representative of the applicant, Lyn Plummer, chose to proceed as long as a poll of the Board could be taken before it voted. The applicant would like to have the option of withdrawing if the results of the polling showed that the vote would not be in the applicant's favor. The Board agreed. Robert Littlefield, Jeffrey Haley, Peter Page and Rob Anderson sat on the case.

Presentation: Kevin Bazarian and Lyn Plummer appeared to present the application. Ms. Plummer said that the property had two principal structures on a lot that did not have the requisite size of 10,000 sq. ft. for them. The applicant seeks to demolish the residential structure and reconstruct it within the same footprint and raise it by a half story. Mr. Bazarian said that the existing single-story building on a concrete slab is in a state of disrepair and not salvageable. The

applicant seeks to put in a foundation and rebuild in the same footprint. An existing deck will be replaced. The current structure is 11' 7" from the ground to the peak and the proposed structure will be 21' 6.5" in height. Ms. Plummer reviewed the non-conforming checklist.

Public Comment: Attorney Lester J. Murphy, representing Mark Levin, an abutter, and Frank Muzzy and Elena Hall, both abutters, spoke in opposition to the application. There were 5 letters from abutters in opposition to the project and one letter of concern from an abutter.

Board Discussion: The Board questioned Ms. Plummer and Mr. Bazarian. Ms. Plummer argued that the change would not be more detrimental to the Town or the neighborhood because the buildings around the structure are substantial and the proposed structure is below the average neighborhood scale and it will remain a single bedroom residence with the same owner. Vice Chair Robert Littlefield said he hadn't yet done a site visit and would like to and suggested that other Board members do so as well. Ms. Plummer said that a deed for the property would be submitted at the next Public Hearing. ***Jeffrey Haley moved to continue Case #FY16-13 until the December 3, 2015 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 4-0.***

NEXT MEETING: The next meeting will take place on Thursday, December 3, 2015. It will consist of a Work Session at 6:45 P.M followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Jeffrey Haley moved to adjourn at 8:20 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

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