

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

Members Present: David M. Nicolau, Robert Littlefield, Jeffrey Haley, Joe Vasta, Peter Page (left at 7:13 P.M.), Bryan Armstrong, Rob Anderson and Jeffrey Gould.

Members Absent: Amy Germain (excused).

Others Present: Ilana Quirk (Town Counsel) (left at 6:45 P.M.), Gloria McPherson (Town Planner) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair David M. Nicolau called the Work Session to order at 6:06 P.M.

The Board discussed issues related to Article 3, Section 3110 and Article 5, Section 5330 of the Zoning By-Laws with Town Counsel Ilana Quirk. She volunteered to draft a revision to Section 3110 to clarify the criteria for the granting of a Special Permit pursuant to it. She reviewed and discussed with the Board dates and deadline requirements and their importance in the zoning process.

PENDING DECISIONS:

FY16-12 99 Commercial Street (*Residential 3 Zone*), Siobhan Carew –
Robert Littlefield, Jeffrey Haley, Peter Page, Bryan Armstrong and Rob Anderson sat on the case. Robert Littlefield read the decision. ***Rob Anderson moved to approve the language as amended, Jeffrey Haley seconded and it was so voted, 5-0.***

Chair David M. Nicolau called for a motion to extend the Work Session beyond 7:00 P.M.
Robert Littlefield moved to extend the Work Session beyond 7:00 P.M., Joe Vasta seconded and it was so voted, 8-0.

FY16-13 401½ Commercial Street (*Town Commercial Center Zone*), Kevin Bazarian on behalf of Zoltan’s Landing, LLC –
Robert Littlefield, Jeffrey Haley, Peter Page, Bryan Armstrong and Rob Anderson sat on the case. Robert Littlefield read the decision. ***Bryan Armstrong moved to approve the language as written, Rob Anderson seconded and it was so voted, 5-0.***

FY16-15 85-87 Shank Painter Road (*GC Zone*), Bay Ocean Properties, LLC, dba Mac’s Provincetown –
The decision was not ready.

Chair David M. Nicolau postponed the Work Session at 7:13 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:13 P.M. He announced that it was Peter Page's last ZBA meeting. He acknowledged and thanked him for his service to the Board. There were seven members of the Zoning Board present and one 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. David M. Nicolau recused himself because of a conflict of interest. Attorney Lester J. Murphy appeared on behalf of the applicant. Vice Chair Robert Littlefield explained that the Board was waiting for an opinion from Town Counsel clarifying the definition of a principal structure in the Zoning By-Laws and whether the existing structures at 52 Creek Road met that definition, an issue that was raised after the last hearing of the case on October 15, 2015. He added that there were only 4 members of the Board present now who sat on the case at that hearing. In light of these facts, he suggested that it would be to the benefit of both sides if the case were continued. Attorney Murphy agreed, as he was not willing to move forward with only a 4-member Board. He requested a continuance to the January 7, 2016 Public Hearing at 7:00 P.M. It was agreed that prior to that Hearing, Joe Vasta and/or Jeffrey Gould would watch the video tape of the October 15, 2015 Public Hearing in order to invoke the Mullin Rule. *Jeffrey Haley moved to grant a continuance of Case #FY16-10 to the January 7, 2016 Public Hearing at 7:00 P.M., Bryan Armstrong seconded and it was so voted, 4-0.*

FY16-18 6 Dyer Street (Residential 3 Zone), John DeSouza on behalf of Daniel Judas and Daniel Luethi –

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 construct a roof dormer on the north elevation within the required front yard setback. David M. Nicolau, Joe Vasta, Jeffrey Haley, Rob Anderson and Jeffrey Gould sat on the case.

Presentation: John DeSouza appeared to present the application. The structure is a mixed-use residential dwelling containing a seven-room guesthouse. On the south side of the structure, there is a shed dormer with four windows and on the north side there is a shed dormer with a single window. The applicants seek to extend the existing north side shed dormer by 7'4" in order to allow more

headroom in an existing guest bathroom. According to Mr. DeSouza, the proposed change would alleviate a safety hazard in an area of public accommodation. The space being added is within a pre-existing, non-conforming front yard setback. The current square footage of the structure will not change. The proposed dormer addition measures 79 sq. ft., which is an increase of 2.9% in scale. The existing scale is 27,409 cu. ft., the neighborhood average scale is 16,392 cu. ft., the allowable neighborhood scale is 18,851 cu. ft., the proposed addition is 791 cu. ft., for a total proposed scale of 28,200 cu. ft. Pursuant to Article 2, Section 2640E, subparagraph 1, Mr. DeSouza argued that the project is in keeping with the goals and policies of the Local Comprehensive Plan, Chapter 1, Goal 1, Policy B, Goal 2, Policy A and Chapter 4, Goal 2, Policy A and to subparagraph 5, in that the proposed addition successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the street and will not have a significant negative impact on natural light to or views from neighboring structures. He also argued that the proposed changes would create no disruption in the character of the neighborhood. Pursuant to Article 3, Section 3110, the proposed change and extension will not intrude further into the existing setback and will not be substantially more detrimental to the Town or the neighborhood than the existing non-conformancy. Pursuant to Article 5, Section 5330, Mr. DeSouza alleged that there would be no adverse effects as a result of the changes. The benefits to the Town will include an improvement in a public lodging facility due to the reduction of a hazard, an increase in the Town's tax base and continued financial contributions by the applicants to the local economy.

Public Comment: None. There were 7 letters from abutters in support of the application.

Board Discussion: The Board questioned Mr. DeSouza. The Board discussed with him whether the project was in conformity with Article 2, Section 2630C, 1), which states that above the second story of a building, a dormer cannot exceed coverage of 50% of the floor area directly below the contiguous roof in which the dormer would be located and requested the calculations related to that issue. Mr. DeSouza explained how that the proposed project did not meet the 50% threshold. Thom Thompson joined the discussion and produced the relevant calculations. He explained that he and Mr. DeSouza had discussed the issue with the Acting Building Commissioner, who agreed that the project did not meet the threshold. Chair Nicolau, however, said that he had not received that information from the Acting Building Commissioner when he asked her about it. The Board discussed how to proceed.

Rob Anderson moved to make a finding that the proposed dormer would not be substantially more detrimental to the neighborhood than the existing non-conformancy at the property located at 6 Dyer Street (Res 3) and to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws, Joe Vasta seconded and it was so voted, 5-0.

Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section

2640E, Building Scale, of the Zoning By-Laws to construct a roof dormer on the north elevation within the required front yard setback at the property located at 6 Dyer Street (Res 3), with the condition that the Building Commissioner verify that according to the plans, the proposed dormer is consistent with Article 2, Section 2630C, 1), Joe Vasta seconded and it was so voted, 5-0. Rob Anderson will write the decision.

FY16-19

1 MacMillan Wharf (Town Commercial Center Zone and Harbor Overlay District), Provincetown Public Pier Corporation –

The applicant seeks a Special Permit pursuant to Article 2, Sections 2450 (G11), Permitted Accessory Uses, and 2460, Special Permit Requirements, of the Zoning By-Laws to allow the service of food and alcohol and public entertainment in an existing trap shed area and in the pavilion. David M. Nicolau, Joe Vasta, Bryan Armstrong, Rob Anderson and Jeffrey Gould sat on the case.

Presentation: Ellen C. Battaglini appeared to present the application. The Pier Corp. seeks to combine two Special Permits that will encompass the service of food and alcohol and allowing public entertainment in the Pavilion and in the trap shed areas of MacMillan Wharf and will allow the sale of pre-packaged food in the Pavilion. Ms. Battaglini stated that the Pier Corp. has had a Special Permit pursuant to Article 2, Section 2460 for the last several years to allow events to be held in the Pavilion and is looking to expand the service and entertainment area to the artists' trap sheds located at the beginning of the Wharf in order to hold Friday evening gallery openings for the trap shed artists, similar to those held in East End galleries during the summer.

The Board has granted two one-year Special Permits to allow the Pier Corp. to conduct a pilot project for the sale of pre-packaged food in the Pavilion. The pilot project has not gotten underway, however the Pier Corp. is committed to making this commercial venture a priority for the summer of 2016. There will be no adverse effects as a result of this pilot project or the events that are held in the Pavilion and proposed for the trap shed area. MacMillan Wharf is very busy in the summer and the proposed events and the sale of pre-packaged food will attract the attention of the numerous people that already utilize this transportation hub. There are no plans for any entertainment in the trap shed area at this time, but the Pier Corp. would like to reserve the option in the future. In order to help promote the artists who occupy the trap sheds and their work, the Pier Corp. would like to hold gallery openings on Friday evenings. When these events are planned, orange barricades will be placed on the west side of the area and an Assistant Harbormaster will be stationed on the south and north end of the trap shed vicinity, all of which will prohibit alcohol from leaving the area. Two recycling bins and three garbage containers will be placed in the area for debris control.

The proposed projects are in keeping with the goals and policies of the LCP, Chapter 5, Section 5.2, Policy B and C, which encourage the promotion of activities related to tourism, fishing, marine science, aquaculture, shell-fishing,

environmentally-oriented business and culture (especially arts-related), and tourist activities that highlight and enhance Provincetown's natural and cultural qualities. The Pier venues and events support a wide variety of local individuals, artists, community groups, businesses and charities and will increase foot traffic to the Pavilion and draw attention to the artists' trap sheds, which will increase economic activity for all businesses on the Pier and in Lopes Square. The Pier Corp. seeks to highlight the natural beauty of Provincetown Harbor as a scenic and important resource while supporting the local economy. The Special Permit will also allow the Pier Corp. to facilitate the application process for individual and groups enabling them to bypass the lengthy process of scheduling and attending regulatory board meetings in order to obtain permits.

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

Board Discussion: The Board questioned Ms. Battaglini.

Bryan Armstrong moved to grant a Special Permit pursuant to Article 2, Sections 2450 (G11), Permitted Accessory Uses, and 2460, Special Permit Requirements, of the Zoning By-Laws to allow the service of food and alcohol and public entertainment in an existing trap shed area and in the pavilion at the property located at 1 MacMillan Wharf (TCC and Harbor Overlay), Rob Anderson seconded and it was so voted, 5-0. Joe Vasta will write the decision.

FY16-20 8 Young's Court, Unit 5 (Residential 3 Zone), Richard Flores on behalf of John Krajovic –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a one-story addition along a pre-existing, nonconforming line within a side yard setback on the east elevation. David M. Nicolau, Jeffrey Haley, Bryan Armstrong, Rob Anderson and Jeffrey Gould sat on the case.

Presentation: Richard Flores appeared to discuss the application. The applicant seeks to put an addition on the west, rear of the structure, which is the side facing Dyer Street. The proposal is for a 3'7" by 4'4" extension, which will serve as a storage area, will not increase the non-conformancy and will be built on a rear bump-out.

Public Comment: None. There was 1 letter in the file from an abutter supporting the application.

Board Discussion: The Board questioned Mr. Flores.

Jeffrey Haley moved to make a finding that the addition will not be substantially more detrimental to the neighborhood than the existing non-conformancy, Jeffrey Gould seconded and it was so voted, 5-0.

Rob Anderson moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a one-story addition along a pre-existing, nonconforming line within a side yard setback on the east elevation at the property located at 8 Young's Court (Res 3), Jeffrey Haley seconded and it was so voted, 5-0. Bryan Armstrong will write the decision.

Chair David M. Nicolau adjourned the Public Hearing at 8:10 P.M.

WORK SESSION

Chair David M. Nicolau reconvened the Work Session at 8:10 P.M.

The Board signed plans. It discussed the anticipated Town Counsel opinion regarding the definition of a principal structure and scheduled the Work Session on January 7, 2016 at 6:00 P.M. to discuss it and for re-organization purposes.

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

ADJOURNMENT: *Jeffrey Haley moved to adjourn at 8:30 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2016
David M. Nicolau, Chair