

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
February 4, 2016**

**Members Present:** David M. Nicolau, Robert Littlefield, Joe Vasta, Rob Anderson and Jeffrey Gould.

**Members Absent:** Amy Germain (excused), Jeffrey Haley (excused) and Bryan Armstrong (excused).

**Others Present:** Gloria McPherson (Town Planner).

**WORK SESSION**

Chair David M. Nicolau called the Work Session to order at 6:32 P.M.

**PENDING DECISIONS:**

- FY16-20**     **8 Young's Court, Unit 5 (*Residential 3 Zone*), Richard Flores on behalf of John Krajovic –**  
David M. Nicolau, Jeffrey Haley, Bryan Armstrong, Rob Anderson and Jeffrey Gould sat on the case. The decision was not ready.
- FY16-17**     **34 Commercial Street (*Residential 2 Zone*), Don Di Rocco of Hammer Associates on behalf of Kevin Huvane –**  
David M. Nicolau, Robert Littlefield, Joe Vasta, Rob Anderson and Jeffrey Gould sat on the case. Jeffrey Gould read the decision. *Robert Littlefield moved to approve the language as amended, Rob Anderson seconded and it was so voted, 5-0.*
- FY16-10**     **52 Creek Road (*Residential 3 Zone*), Lester J. Murphy, Esq. on behalf of 3 Cottages, LLC –**  
Robert Littlefield, Joe Vasta, Rob Anderson and Jeffrey Gould sat on the case. Robert Littlefield read the decision. *Joe Vasta moved to approve the language as written, Rob Anderson seconded and it was so voted, 4-0.*
- FY16-25**     **401½ Commercial Street (*Town Commercial Center Zone*), Steve and B Company –**  
David M. Nicolau, Robert Littlefield, Joe Vasta, Rob Anderson and Jeffrey Gould 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, 5-0.*

The Board stamped and signed plans.

Robert Littlefield suggested that the Board have a discussion about writing Special Permit decisions pursuant to Article 2, Section 2460 of the Zoning By-Laws.

**MINUTES: January 21, 2016– Rob Anderson moved to approve the language as written, Robert Littlefield seconded and it was so voted, 5-0.**

Chair David M. Nicolau adjourned the Work Session at 7:00 P.M.

## PUBLIC HEARING

Chair David M. Nicolau 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:

**FY16-23**     **20 Pleasant Street (Residential 3 Zone), 20 Pleasant Street, LLC** (*postponed from January 21*) –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct roof dormers on the north and south roof planes. Only 4 members were available to sit on the case. The Board discussed how to proceed, as the applicant was not present. It was decided that Ted Smith, who represents the applicant, would be contacted and asked if he would like to present the case later in the evening.

**FY16-24**     **18 West Vine Street (Residential 1 Zone), John DeSouza on behalf of Beverly Serabian** (*postponed from January 21*) –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to extend a structure up and along pre-existing, non-conforming setbacks to create a half story on the rear ell, as a second story to an existing garage and connect the existing principle structure to the garage with a breezeway. David M. Nicolau, Robert Littlefield, Joe Vasta and Jeffrey Gould sat on the case.

**Presentation:** John DeSouza appeared to present the application. He said that new plans, dated January 23<sup>rd</sup>, have been submitted due to requests for reductions and modifications from the Historic District Commission and by neighbors. The request is to place two dormers on an existing, single-story garage and to connect the garage to a main house via a breezeway in order to improve safety and reduce a pre-existing hazard. The proposal constitutes an extension of a pre-existing, non-conformancy. Mr. DeSouza requested that the application be heard under the *Goldhirsh v. McNear* decision, as it was a single-family structure.

The non-conformancies on the lot include lot size, distance between structures, the east front yard setback, the north and south side yard setbacks and the rear

yard setback. The existing area of the principal structure is 1181 sq. ft. and the proposed area will be 1230 sq. ft. The plans are 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. The proposed renovations will not be disruptive and will be harmonious with the character of the neighborhood, and of limited visibility. He argued that the change would not be substantially more detrimental to the neighborhood than the existing non-conformancies. There will be no adverse effects such as hazard, congestion or environmental degradation as a result of the project. The benefits include increasing the local tax base, increasing safety on the property by connecting the two existing structures and eliminating a hazard and allowing the owner to age in place and continue to contribute to the community and the economy of the Town.

**Public Comment:** None. There were 3 letters from abutters in support of the application.

**Robert Littlefield moved to hear the matter under the Goldhirsh v. McNear ruling, Joe Vasta seconded and it was so voted, 5-0.**

**Board Discussion:** The Board briefly questioned Mr. Souza.

**Robert Littlefield moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to extend a structure up and along pre-existing, non-conforming setbacks to create a half story on the rear ell, as a second story to an existing garage and connect the existing principle structure to the garage with a breezeway at the property located at 18 West Vine Street (Res 1), Jeffrey Gould seconded and it was so voted, 5-0.**

Chair David M. Nicolau called for a motion to take Case #FY16-27 out of order.

**Robert Littlefield moved to take Case #FY16-27 out of order, Jeffrey Gould seconded and it was so voted, 5-0.**

**FY 16-27      17 Montello Street (Residential 3 Zone), William N. Rogers on behalf of Todd C. Blais –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct two doghouse dormers on front of the structure and one shed dormer on rear of the structure. Rob Anderson recused himself because of a conflict of interest. Chair David M. Nicolau explained to the applicant's representative, Gary Locke, that there would only be 4 members available to be seated on the case and given that a unanimous vote would be required in order to be granted a Special Permit, he could proceed or continue until 5 Board members could be seated. Mr. Lock chose to proceed as long as the Board could be polled before a vote, to which it agreed. David M. Nicolau, Robert Littlefield, Joe Vasta and Jeffrey Gould sat on the case.

**Presentation:** Gary Locke appeared to present the application. He said that there would be a proposed 9.3 % increase in scale of the structure due to the proposed dormer additions. The size of the proposed rear dormer will constitute 50% of the

floor area directly below the contiguous roof in which the dormer will be located. The existing structure has a scale of 17,660 cu. ft., the neighborhood average is 12,540 cu. ft., the allowable neighborhood scale is 15,675 cu. ft. The proposed addition will add 1,650 cu. ft., for a total of 19,310 cu. ft. Mr. Locke argued that the project will meet the test of Article 2, Section 2640E, subparagraph 5 in that with the addition of the rear dormer, the structure will successfully integrate into its surroundings and will be sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures. He added that the two doghouse dormers in the front will enhance the look and historical nature of the building.

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

**Board Discussion:** The Board questioned Mr. Locke. The Board requested that Mr. Locke verify the measurements of the rear dormer with the Building Commissioner.

*Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct two doghouse dormers on front of the structure and one shed dormer on rear of the structure at the property located at 17 Montello Street (Res 3) with the condition that the Building Commissioner verify the measurements for the rear dormer coverage for compliance with Article 3, Section 2630 C 1), Joe Vasta seconded and it was so voted, 4-0. David M. Nicolau will write the decision.*

**FY16-23**      **20 Pleasant Street (Residential 3 Zone), 20 Pleasant Street, LLC** (*postponed from January 21*) –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640. Building Scale, of the Zoning By-Laws to construct roof dormers on the north and south roof planes. David M. Nicolau recused himself because of a conflict of interest. Vice Chair Robert Littlefield explained to the applicant's representative, Ted Smith, that there were only 4 members available to sit on the case and given that a unanimous vote would be need in order to be granted a Special Permit, he could proceed or continue until 5 Board members could be seated. Mr. Smith chose to proceed. Robert Littlefield, Joe Vasta, Rob Anderson and Jeffrey Gould sat on the case.

**Presentation:** Ted Smith and Lyn Plummer appeared to present the application. Mr. Smith said that the applicant seeks to add two dormers, one on the north and one on the south, to an attic space and redistribute the location of the bedrooms in the structure. The living, dining and kitchen areas will be in one dormer and the second dormer will provide for headroom from a stairwell and will be no bigger than to provide that space. The smaller dormer will be on the north side of the structure and the larger will be on the south side in order to minimize the size of the proposed structure from Pleasant Street. The existing scale is 21,432 cu. ft.,

the neighborhood average is 12,845 cu. ft. and the allowable neighborhood scale is 16,057 cu. ft. The proposed addition will add 2,443 cu. ft. for a total of 23,875 cu. ft. This will be an 11.3% increase in scale. He argued that the project will meet the requirement of Article 2, Section 2640E, subparagraph 5, in that the new structure will successfully integrate into its surroundings and will be sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures.

**Public Comment:** David Reilly, an abutter, had a concern about the addition of 6 parking spaces on Carnes Lane. There were 6 letters of concern from abutters concerning the impact of the project on Carnes Lane.

**Board Discussion:** The Board questioned Mr. Smith and Ms. Plummer.

**Rob Anderson moved to grant a Special Permit pursuant to Article 2, Section 2640. Building Scale, of the Zoning By-Laws to construct roof dormers on the north and south roof planes at the property located at 20 Pleasant Street (Res 3), Jeffrey Gould seconded and it was so voted, 4-0.** Robert Littlefield will write the decision.

**FY16-26**      **132 Bradford Street (Town Commercial Center Zone), Steve Riley (continued from January 21) –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow public entertainment in a newly created theater space and the installation of a bar for the service of alcohol to patrons of the theater. Robert Littlefield recused himself because of a conflict of interest. David M. Nicolau, Joe Vasta, Rob Anderson and Jeffrey Gould sat on the case.

**Presentation:** Rob Santora, Michael Riley and Mike Riley, Jr., appeared to discuss the application. The applicant had submitted new plans that addressed several concerns of the neighbors and the Town, specifically regarding safety and congestion during the times when patrons would be exiting the building. Mr. Santora reviewed the new site plan how and where patrons would be exiting the building and the property.

He said that the Rileys have agreed to construct a fence at the back of the property, from the building where the theater will be located and another structure on the premises, to prevent patrons from walking towards Standish Street if they were exiting the back of the building. He said that all efforts would be made to direct patrons to exit out the front of the building after a performance, including making announcements to the audience and opening the front doors of the structure.

An additional concern of the neighbors and the Town, said Mr. Santora, was the potential for an increase in pedestrian congestion that could occur before and after a show at the intersection of Bradford and Standish Streets. He said that the

applicant was considering installing a sign, and possibly an employee with a red vest and flashlight stationed outside the building, to direct patrons to use the crosswalk on the other side of Standish Street and not to use the one directly in front of it. The purpose of this would be to lessen the interruption of traffic on Bradford Street by large numbers of patrons crossing at that point. Additionally, although he anticipated that most of the theater customers would be on foot, if it so happened that were a large number of vehicles exiting the lot after a performance, the Rileys would install an employee, or a detail officer if required, to direct traffic out of the lot and onto Bradford Street to lessen congestion.

He pointed out on the site plan the location of the exterior trash and recycling bins and light fixtures. In response to the Board's concern about the noise generated by bar bottle disposal, the applicant plans to take large wheeled trash bins inside after performances, and with doors closed, fill them with empty liquor bottles and then roll them back outside to be picked up by a trash hauler during the day.

Mr. Santora then reviewed the interior plan for the theater, which includes a large holding area for patrons to congregate, if necessary, before performances. People will not be lining up for tickets outside of the building, as app-based ticket sales, which will involve scanning tickets at the door, will be implemented and patrons will be moved into the building more quickly. There will be a ticket booth inside the retail space and the doors to the theater will open a half hour before performances, lessening the need for patrons to gather either inside the front door or outside the structure.

He reviewed the literature that had been submitted regarding the sound-reduction curtains that will be used. The curtains have a triple layer; the outer layer, which is fabric and the inner layers, which are comprised of sound-reduction foam-based material. He said that the in-kind window replacement project planned by the Rileys would most likely not happen before the summer, so Mr. Santora proposed that they would install the curtains and then perform sound tests to gauge their effectiveness in deadening the sound and that they would also install foam board over the windows to help reduce the noise.

He concluded by stating that the owners are very committed to installing a quiet community theater space on the property, where diverse entertainment and a wide variety of performances can be presented, while accommodating and adapting to the concerns of the neighborhood and the Town.

**Public Comment:** Chair David M. Nicolau said that only new information would be taken from the public. Scott Caldwell, who owns an abutting business, spoke in support of the application. Fred Long recommended that the Board require the applicant to submit a developmental impact statement, given the history of the property as a car dealership and gas station. Pat Bruno, Gary Wenc, Mary Ellen Spingler, Rowan Wielblad, Laurence Fontana, Nancy Swanson, Dotty Feld and Bruce Mason spoke in opposition to the application. Jackie Kelly spoke in

opposition to the application and submitted petitions in opposition to the project. There was 1 new letter in opposition, 1 new letter in support, 1 new letter of concern and a petition signed by 135 neighbors in opposition to the project.

**Board Discussion:** The Board questioned Mr. Santora and Messrs. Riley. There was a sense amongst several Board members that a developmental impact statement was needed. The Board inquired about environmental testing of the property. Mr. Riley said that testing was a contingency of the purchase of the property, and that the results of the test did not reveal any environmental issues. Mr. Santora responded to questions about the noise level of the show and he said that he and the applicant were working with a technical team connected with the “Briefs” show and a sound person to keep the volume down and that they would have control over the volume of the speakers. The Board discussed whether the benefits of the project to the neighborhood and Town outweigh the detriments. The Board discussed its concerns and the requested that the applicant prepare and submit a developmental impact statement.

***Rob Anderson moved to continue CSE #FY16-26 to the April 21, 2016 Public Hearing, Jeffrey Gould seconded and it was so voted, 4-0.***

**NEXT MEETING:** The next meeting will take place on Thursday, March 3, 2016. It will consist of a Work Session at 6:30 P.M followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Joe Vasta moved to adjourn at 9:30 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2016  
David M. Nicolau, Chair