

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
May 19, 2016**

Members Present: David M. Nicolau, Robert Littlefield (left at 8:00 P.M.), Joe Vasta, Jeffrey Haley, Rob Anderson and Jeffrey Gould.

Members Absent: Bryan Armstrong (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 6:00 P.M.

PENDING DECISIONS:

- FY16-32** **176 Race Point Road (*Seashore District*), Provincetown Airport Commission –**
David M. Nicolau, Jeffrey Haley, Robert Anderson and Jeffrey Gould sat on the case. The decision was not ready.
- FY16-33** **183-185 Commercial Street (*Town Commercial Center Zone*), John Yingling, dba Bubala's –**
Robert Littlefield, Joe Vasta, Jeffrey Haley, Bryan Armstrong and Jeffrey Gould sat on the case. Robert Littlefield read the decision. *Jeffrey Haley moved to approve the language as written, Joe Vasta seconded and it was so voted, 4-0.*
- FY16-36** **134 Bradford Street (*Town Commercial Center Zone*), Michael Riley –**
Joe Vasta, Jeffrey Haley, Bryan Armstrong and Jeffrey Gould sat on the case. Jeffrey Haley read the decision. *Joe Vasta moved to approve the language as written, Jeffrey Gould seconded and it was so voted, 3-0.*
- FY16-38** **166 Bradford Street Extension (*Residential 3 Zone*), John R.A. Pears –**
Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case. Joe Vasta read the decision. *Robert Littlefield moved to approve the language as amended, Jeffrey Gould seconded and it was so voted, 4-0.*
- FY16-40** **338 Commercial Street (*Town Commercial Center Zone*), Tarrnum K. Williams, d/b/a Kabob-E-Licious –**
Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case. Jeffrey Gould read the decision. *Joe Vasta moved to approve the language as written, Robert Littlefield seconded and it was so voted, 4-0.*

- FY16-42** **509 Commercial Street (*Residential 3 Zone*), Lyn Plummer, on behalf of 509 Commercial Street, LLC –**
Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case. Robert Littlefield read the decision.
- FY 16-43** **31 Bradford Street (*Residential 3 Zone*), Kevin Bazarian, on behalf of Devon Ruesch –**
Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case. Jeffrey Gould read the decision. *Joe Vasta moved to approve the language as amended, Robert Littlefield seconded and it was so voted, 3-0.*
- FY16-44** **386 Commercial Street (*Town Commercial Center Zone*), James DeRosier, on behalf of Waterford Property, LLC –**
Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case. Joe Vasta read the decision. *Jeffrey Gould moved to approve the language as written, Robert Littlefield seconded and it was so voted, 3-0.*
- FY16-45** **389 Commercial Street (*Town Commercial Center Zone*), Tom Thompson, on behalf of Clyde Mellert –**
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Jeffrey Gould sat on the case. David M. Nicolau read the decision. *Jeffrey Gould moved to approve the language as amended, Jeffrey Haley seconded and it was so voted, 4-0.*
- FY16-46** **295 Bradford Street (*Residential 2 Zone*), Jonathan Sinaiko –**
Robert Littlefield, Joe Vasta, Jeffrey Haley, Bryan Armstrong and Jeffrey Gould sat on the case. Robert Littlefield read the decision. *Jeffrey Haley moved to approve the language as written, Jeffrey Gould seconded and it was so voted, 4-0.*
- FY16-47** **164 Bradford Street Extension (*Residential 1 Zone*), Robin B. Reid, Esq., on behalf of Marcus Builders, LLC –**
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Jeffrey Gould sat on the case. The decision was not read.

Chair David M. Nicolau adjourned the Work Session at 7:03 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:03 P.M. There were six members of the Zoning Board present and one absent.

Mr. Nicolau asked for a motion to take Case #FY16-51 out of order. **Robert Littlefield moved to take Case #FY16-51 out of order, Jeffrey Haley seconded and it was so voted, 5-0.** The applicant of Case #FY16-51 was not ready to proceed.

PUBLIC HEARINGS:

- FY16-37** **132 Bradford Street (Town Commercial Center Zone), Steve Riley –**
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. This case has been postponed to the June 16, 2016 Public Hearing at 7:00 P.M.
- FY16-48** **227 Commercial Street (Town Commercial Center Zone), Happy Camper, LLC on behalf of Scott Ravelson –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outside Display, of the Zoning By-Laws to place a sandwich board at the property. Rob Anderson recused himself because of a conflict of interest. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Jeffrey Gould sat on the case.
Presentation: Loic Rossignon appeared to present the application. He said that the sandwich board is being used to advertise food specials or for messages.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board briefly questioned Mr. Rossignon.
Robert Littlefield moved to grant a Special Permit pursuant to Article 3, Section 3420, Outside Display, to place a sandwich board at the property at the property located at 227 Commercial Street (TCC), Joe Vasta seconded and it was so voted, 5-0.
- FY16-49** **5 Tiny's Way (Residential 3 Zone), William N. Rogers on behalf of Sean Burke –**
The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a covered porch. David M. Nicolau, Joe Vasta, Jeffrey Haley, Jeffrey Gould and Rob Anderson sat on the case.
Presentation: Gary Locke and Sean Burke appeared to present the application. Mr. Locke said that the applicant proposed to build a 24' x 6' 6" porch to replace an existing 8' by 8' deck with a railing. The new porch will create an increase of 2.7% in the scale of the structure. The existing scale is 28,800 cu. ft., the allowable neighborhood scale is 21,491 cu. ft., the neighborhood average scale is 17,193 cu. ft., the proposed addition is 800 cu. ft., for a total proposed scale of 29,600 cu. ft. He argued that the project met the requirement of Article 2, Section 2640E, sub-paragraph 5 of the Zoning By-Laws, as he said that the porch would integrate harmoniously with its surroundings and is sited in such a manner to minimize mass from the streetscape and will not have a significant negative impact on the views from or natural light to neighboring structures.
Public Comment: None. There were 2 letters in support of the application.
Board Discussion: The Board questioned Mr. Locke. Mr. Nicolau noted that

there were deficiencies in the application, notably that a page showing the abutters' circle was missing from the scale information and the plans were not adequate as they lacked elevations and dimensions, and the Board would not be able to deliberate the matter at this time. The Board decide to continue the hearing of the application to the June 2, 2016 Public Hearing at 7:00 P.M.

Jeffrey Haley moved to continue Case #FY16-49 to the June 2, 2016 Public Hearing at 7:00 P.M., Jeffrey Gould seconded and it was so voted, 5-0.

Chair David M. Nicolau called for a motion to take Case #FY15-51 out of order. *Jeffrey Haley moved to take Case #FY16-51 out of order, Joe Vasta seconded and it was so voted, 5-0.*

FY16-51 9 Ryder Street Extension (Town Commercial Center Zone), Kurt Raber, of Brown Lindquist Fenuccio & Raber Architects, Inc. on behalf of Provincetown Marina, LLC –

The applicant seeks a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extension or Alterations, of the Zoning By-Laws to renovate three buildings and add a second dwelling unit. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Jeffrey Gould sat on the case.

Presentation: Kurt Raber, Tom Swenson and Chuck LaGasse appeared to present the application. The applicant seeks to add employee housing, which he said is considered a customary use on the Fisherman's Pier, in Building #3. He stated that Building #3 historically has contained refrigeration and storage on the first floor and a one-bedroom dwelling on the second floor. The applicant seeks to construct a new three-bedroom dwelling unit for employee housing on the first floor and to increase the size of the existing dwelling unit on the second floor by making improvements, resulting in an increase in the scale of the structure.

Mr. Raber asked to be allowed to add another Section of the Zoning By-Laws to the applicant's request for relief, that being Article 2, Section 2315, Waterfront Special Permit Uses, G11, other customary accessory uses. He stated that in order to grant relief, the Board would have to find that a residential use is allowed as a customary accessory use to the marina in the Harborfront Overlay District. He reviewed the other requests for relief, including Article 2, Section 2450, G17, which would allow for an accessory dwelling unit in the TCC Zone by Special Permit and Article 2, Section 2640 for an increase in building scale in order to add a shed dormer, for State Building Code-required headroom, on the north side of Building #3, resulting in a 12.23% increase in scale. The existing scale of the structure is 15,050 cu. ft., the neighborhood average scale is 5,040 cu. ft., the allowable neighborhood scale is 5,796 cu. ft., the proposed addition is 1,840 cu. ft., for a total proposed scale of 16,890 cu. ft. In addition, Mr. Raber said that the applicant seeks an alteration of a pre-existing, non-conforming use under Article 3, Section 3110, which could be granted if the Board finds that the new use would not be substantially more detrimental to the Town or neighborhood than the existing non-conformancy. He said he believed that the existing dwelling unit on

the second floor was built without a permit or pre-dated the implementation of the Zoning By-Law. He said that the applicant seeks to have the existing non-conforming use recognized and approved.

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

Board Discussion: The Board questioned Mr. Raber and Mr. LaGasse, who clarified that there was a dwelling unit in the building at the end of the pier and that it was going to be removed. The number of dwelling units would remain the same, except both would be in one structure. The Board discussed the project, the relief sought under Article 3, Section 2315, G11, and whether a dwelling unit constitutes an customary accessory use in the waterfront overlay district.

Article 2, Section 2640: *Robert Littlefield moved to find that the project meets test #5 of Article 2, Section 2640E of the Zoning By-Laws, Jeffrey Haley seconded and it was so voted, 5-0.*

Article 3, Section 3110: *Robert Littlefield moved to find that the proposed alteration of use would not be substantially more detrimental to the neighborhood, Jeffrey Haley seconded and it was so voted, 5-0.*

Robert Littlefield moved to find that the proposed alteration to the structure would not be substantially more detrimental to the neighborhood than the existing non-conforming structure, Jeffrey Haley seconded and it was so voted, 5-0.

The Board discussed reclassifying the relief sought by the applicant under Article 2, Section 2450, G17, to Article 2, Section 2315, G11. It also discussed whether to continue the matter and subsequently clarify the issues under debate with Town Counsel or proceed to a vote.

Robert Littlefield moved to reclassify the relief sought under Article 2, Section 2450, G17 to Article 2315, Section G11, Jeffrey Haley seconded and it was so voted, 4-1 (David M. Nicolau opposed).

Article 2, Section 2315, G11: *Robert Littlefield moved to find that the use of the dwelling unit falls into the criteria of G11, customary accessory uses, of Article 2, Section 2315, Joe Vasta seconded and it was so voted, 4-1 (David M. Nicolau opposed).*

Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2315, Permitted Accessory Uses, Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extension or Alterations, of the Zoning By-Laws to renovate three buildings and add a second dwelling unit at the property located at 5 Ryder Street Extension (TCC), Joe Vasta seconded and it was so voted, 4-1 (David M. Nicolau opposed). Robert Littlefield will write the decision.

FY16-50 457 Commercial Street (Residential 3 Zone), Seth Kaplowitz and Elena Ende –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to enlarge a previously approved shed dormer. David M. Nicolau, Joe Vasta, Jeffrey Haley, Rob Anderson and Jeffrey Gould sat on the case.

Presentation: Jackson Dutra appeared to present the application. The applicants seek to increase the size of a dormer from 10’ to 13’ on the water side of the structure.

Public Comment: None. There were 2 letters in favor of the application.

Board Discussion: The Board questioned Mr. Dutra. The Board noted that the project was in keeping with sub-paragraph 5 of Article 2, Section 2640E of the Zoning By-Laws.

Rob Anderson moved to find that the increase would not be substantially more detrimental to the Town or neighborhood than what exists, Joe Vasta seconded and it was so voted, 5-0.

Rob Anderson moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to enlarge a previously approved shed dormer at the property located at 457 Commercial Street (Res 3), Joe Vasta seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.

NEXT MEETING: The next meeting will take place on Thursday, June 2, 2016. It will consist of a Work Session at 6:30 P.M. followed by a Public Meeting at 7:00 P.M.

ADJOURNMENT: *Joe Vasta 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