

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

Members Present: Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould.
Members Absent: David M. Nicolau (excused), Amy Germain (excused), Jeffrey Haley (excused) and Rob Anderson (unexcused).
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 6:30 P.M.

PENDING DECISIONS:

FY16-32 **176 Race Point Road (*Seashore Zone*), Provincetown Airport Commission –**
David M. Nicolau, Jeffrey Haley, Robert Anderson and Jeffrey Gould sat on the case. The decision was not ready.

FY 16-41 **29 Tremont Street (*Residential 1 Zone*), Peter Epstein –**
David M. Nicolau, Robert Littlefield, Jeffrey Haley and Jeffrey Gould sat on the case. Robert Littlefield read the decision. A quorum was not available to approve the decision.

MINUTES: April 21, 2016– *Joe Vasta moved to approve the language as written, Jeffrey Gould seconded and it was so voted, 3-0-1 (Bryan Armstrong abstaining).*

Vice Chair Robert Littlefield adjourned the Work Session at 6:44 P.M.

PUBLIC HEARING

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

PUBLIC HEARINGS:

FY16-29 **338 Commercial Street (*Town Commercial Center Zone*), BHC, LLC**
(postponed from April 21st) -
The applicant seeks a Special Permit pursuant to Article 2, Sections 2470, Parking Requirements, and 2460, Building Scale, and Article 3, Section 3110, Change,

Extensions or Alterations, of the Zoning By-Laws to construct a dormer and outdoor stair on the east side of the structure and seeking relief from the parking requirement for a newly-established residential unit. Vice Chair Robert Littlefield explained to Attorney Murphy, who was representing the applicant, that there were only four members available to hear the case and, since a unanimous vote of the Board would be required in order to grant a Special Permit, he could proceed or continue until five Board members could be seated. Attorney Murphy chose to proceed. Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case.

Presentation: Attorney Lester J. Murphy and Joel Harms appeared to present the application. Attorney Murphy explained that the project involves the re-establishment of a two-bedroom dwelling unit on the second and third floors of the front part of the structure and making minimal changes to the exterior facade. The building is mixed-use and has historically been such, however the residential use was discontinued some years ago. In order to re-establish it, zoning relief is sought from the parking requirement to provide 2 parking spaces on the site, from building scale in order to add 500 cu. ft. to the structure in the form of an 8' wide dormer to allow for the addition of a bathroom and to add an exterior staircase to provide a second means of egress in a side yard setback.

Attorney Murphy argued that the economic and other benefits of the project outweigh any detrimental effects, such as hazard, congestion or environmental degradation, as a new residential unit will be made available, if the parking waiver is granted, the septic flow from the property will not be increased and the significant upgrades and renovations to the building will be an enhancement to the neighborhood. The parking waiver is essential in this circumstance, as there is no space on the site to provide any parking, however there are several suitable public parking lots available in the area for resident parking.

Attorney Murphy maintained that the project meets the criteria of Article 2, Section 2640, sub-paragraphs 1, 5 and 6 of the Zoning By-Laws. The neighborhood average scale is 26,384 cu. ft., the allowable neighborhood scale is 30,341 cu. ft., the existing structure is 35,860 cu. ft., the proposed addition is 500 cu. ft. and the total proposed scale is 36,360 cu. ft., an increase of 1.4%. In regard to sub-paragraph 1, the project is in keeping with the goals and objectives of the Local Comprehensive Plan, Chapter 1, Section 1.2, Goal 2, Policy A. As to sub-paragraph 5, the increase in scale the proposed change will successfully integrate into its surroundings and is 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. Finally, in regard to sub-paragraph 6, the project is in keeping with the guidelines of the Historic District Commission.

Attorney Murphy explained that relief under Article 3, Section 3110 is required because the proposed exterior staircase and the dormer will encroach into a side

yard setback. He said that the proposed changes would not be substantially more detrimental to the neighborhood or Town than the existing non-conforming structure. The exterior staircase is an important safety element and the slight increase in lot coverage and the decrease in green space on the lot as a result of its addition is more than offset by its value as a second means of egress.

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

Board Discussion: The Board briefly questioned Attorney Murphy and Mr. Harms.

Joe Vasta moved to make a finding that the project met the requirements of Article 2, Section 2470 of the Zoning By-Laws to waive the parking requirements, Bryan Armstrong seconded and it was so voted, 4-0.

Bryan Armstrong moved to make a finding that the project met test 1, 5 and 6 of Article 2, Section 2640 of the Zoning By-Laws, Jeffrey Gould seconded and it was so voted, 4-0.

Jeffrey Gould moved to make a finding that the proposed changes to the structure would not be substantially more detrimental to the neighborhood or Town than what existed, Joe Vasta seconded and it was so voted, 4-0.

Jeffrey Gould moved to grant a Special Permit pursuant to Article 2, Sections 2470, Parking Requirements, and 2460, Building Scale, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a dormer and outdoor stair on the east side of the structure and seeking relief from the parking requirement for a newly-established residential unit at the property located at 338 Commercial Street (TCC), Bryan Armstrong seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

Acting Chair Robert Littlefield asked for a motion to take Case #FY16-38 out of order. *Joe Vasta moved to take Case #FY16-38 out of order, Jeffrey Gould seconded and it was so voted, 4-0.*

FY16-38 166 Bradford Street Extension (Residential 3 Zone), John R.A. Pears

(postponed from April 21st) –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a two-family home exceeding the allowable maximum scale. Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case.

Presentation: Attorney Lester J. Murphy and John R.A. Pears appeared to present the application. Attorney Murphy indicated that he was aware that since only 4 members were seated on the Board and a unanimous decision was needed for the granting of a Special Permit, he was prepared to proceed with the presentation of the application. The neighborhood average scale is 16,800 cu. ft., the maximum allowed scale is 21,088 cu. ft. The scale of the proposed structure is 25,060 cu. ft., which is 3972 cu. ft. above the maximum allowable scale. He said

that sub-paragraph 5 of Article 2, Section 2640 of the Zoning By-Laws has been met, as the proposed building will successfully integrate into its surroundings and is 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 argued that the location of the proposed home is in a kind of depression behind a hill on the property and only slightly visible from Bradford Street Extension. The grade of the lot is 15' below the grade of the street.

Attorney Murphy argued that the social, economic and other benefits of the proposed building would outweigh any detrimental effects. The proposed two-family duplex meets all other zoning requirements except building scale. The scale of the new structure will not be disruptive to the character of the neighborhood, as several structures on the west side of it have similar or larger scales. In addition, he explained that the scale numbers do not necessarily reflect the true character of its neighborhood because included in the scale calculation for the area, a number of smaller buildings on Nickerson Street were included. However this structure is not in that neighborhood of smaller structures. He said that a large portion of the building scale increase over the allowable scale is a result of the inclusion of an enclosed porch, which comprises 2500 cu. ft. of the total building scale increase of 3972 cu. ft. over the maximum allowable scale.

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

Board Discussion: The Board questioned Attorney Murphy and Mr. Pears.

Jeffrey Gould moved to make a finding that the project met the requirement of criteria #5 of Article 2, Section 2640 of the Zoning By-Laws, Joe Vasta seconded and it was so voted, 4-0.

Joe Vasta moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a two-family home exceeding the allowable maximum scale at the property located at 166 Bradford Street Extension (Res 3), Bryan Armstrong seconded and it was so voted, 4-0. Joe Vasta will write the decision.

FY16-33 183-185 Commercial Street (Town Commercial Center Zone), John Yingling, dba Bubala's –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, to increase the scale of the building by constructing a second floor on the rear portion of the existing structure and the installation of an outdoor stair with no change to the existing footprint. The applicant did not appear and the case is postponed to the May 5, 2016 Public Hearing.

FY16-35 132 Bradford Street (Town Commercial Center Zone), Michael Riley –

The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display bicycles along the Bradford Street side of the building. The applicant did not appear and the case is postponed to the May

5, 2016 Public Hearing.

- FY16-36** **132 Bradford Street (Town Commercial Center Zone), Michael Riley –**
The applicant seeks a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, of the Zoning By-Laws to operate a 405-space parking lot. A quorum was not available to hear the case and it is postponed to the May 5, 2016 Public Hearing.
- 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.
- FY16-39** **136 Bradford Street (Town Commercial Center Zone), Michael Riley –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display bicycles along the Bradford Street side of the building. The applicant did not appear and the matter is postponed to the May 5, 2016 Public Hearing.
- FY16-42** **509 Commercial Street (Residential 3 Zone), Lyn Plummer, on behalf of 509 Commercial Street, LLC –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to continue the east gable roof line and enclose a deck. Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case.
Presentation: Kevin Bazarian and Lyn Plummer appeared to present the application. Ms. Plummer said that the applicant seeks to enclose a deck and extend a second floor gable on the east side of the structure, along a pre-existing, non-conforming line. She argued that the project would improve the building, as the property was somewhat rundown, and serve to limit hazards in the neighborhood, such as vagrancy and fire. She said that the changes were not substantially more detrimental to the neighborhood than the existing structure. The improvements will generate more tax dollars for the Town.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board questioned Ms. Plummer and Mr. Bazarian. *Joe Vasta moved to make a finding that the change would not be substantially more detrimental to the neighborhood than what exists, Bryan Armstrong seconded and it was so voted, 4-0.*
- Joe Vasta moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to continue the east gable roof line and enclose a deck at the property located at 509 Commercial Street (Res 3), Jeffrey Gould seconded and it was so voted, 4-0.* Robert

Littlefield will write the decision.

- FY16-40** **338 Commercial Street (Town Commercial Center Zone), Tarrnum K. Williams, d/b/a Kabob-E-Licious –**
The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase the seating of the existing 19-seat restaurant with a full liquor license by 5 seats, for a total of 24 seats. Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case.
Presentation: Joel Harms appeared to present the application. The applicant seeks to increase the seating by 5 seats for a total of 24 seats. Mr. Harms said that the applicant has sufficient gallons for the increase.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board questioned Mr. Harms.
Joe Vasta moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase the seating of the existing 19-seat restaurant with a full liquor license by 5 seats, for a total of 24 seats at the property located at 338 Commercial Street (TCC), Jeffrey Gould seconded and it was so voted, 4-0. Jeffrey Gould will write the decision.
- FY 16-43** **31 Bradford Street (Residential 3 Zone), Kevin Bazarian, on behalf of Devon Ruesch –**
The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to change a restaurant-seating layout. Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case.
Presentation: Devon Ruesch and Kevin Bazarian appeared to present the application. Mr. Ruesch explained that the number of seats would remain the same, however the seating configuration would change. He seeks to add a banquette, which would allow more flexibility in seating arrangements.
Public Comment: Joel Harms spoke in favor of the application. There were 2 letters of support of the application.
Board Discussion: The Board briefly questioned Mr. Ruesch.
Joe Vasta moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to change a restaurant-seating layout at the property located at 31 Bradford Street (Res 3), Jeffrey Gould seconded and it was so voted, 4-0. Jeffrey Gould will write the decision.
- FY16-44** **386 Commercial Street (Town Commercial Center Zone), James DeRosier, on behalf of Waterford Property, LLC –**
The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to reconfigure a bar and seating layout. Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case.

Presentation: James DeRosier and Ryan Campbell appeared to present the application. Mr. DeRosier explained that he was seeking to reconfigure the seating in the upstairs bar, reduce the seating by 2 and relocate the bar.

Public Comment: Joel Harms spoke in favor of the application. There was 1 letter in support of the application.

Board Discussion: The Board briefly questioned Mr. DeRosier and Mr. Campbell.

Jeffrey Gould moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to reconfigure a bar and seating layout at the property located at 386 Commercial Street (TCC), Bryan Armstrong seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

NEXT MEETING: The next meeting will take place on Thursday, May 5, 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 8:20 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

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