

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
January 7, 2016**

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

Members Absent: Amy Germain (excused).

Others Present: Gloria McPherson (Town Planner), Anne Howard (Acting Building Commissioner) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair David M. Nicolau called the Work Session to order at 6:03 P.M.

PENDING DECISIONS:

FY16-15 **85-87 Shank Painter Road (GC Zone), Bay Ocean Properties, LLC, dba Mac's Provincetown –**
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. David M. Nicolau read the decision. *Jeffrey Haley moved to approve the language as written, Rob Anderson seconded and it was so voted, 5-0.*

FY16-18 **6 Dyer Street (Residential 3 Zone), John DeSouza on behalf of Daniel Judas and Daniel Luethi –**
David M. Nicolau, Joe Vasta, Jeffrey Haley, Rob Anderson and Jeffrey Gould sat on the case. Rob Anderson read the decision. *Joe Vasta moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 5-0.*

Anne Howard informed the Board that she would be meeting with Thom Thompson, the designer of the project, to discuss the measurements of the proposed dormer in order to determine whether it was in compliance with Article 2, Section 2630C (1). She will report back to the Board about the meeting.

FY16-19 **1 MacMillan Wharf (Town Commercial Center Zone and Harbor Overlay District), Provincetown Public Pier Corporation –**
David M. Nicolau, Joe Vasta, Bryan Armstrong, Rob Anderson and Jeffrey Gould sat on the case. Joe Vasta read the decision. *Bryan Armstrong moved to accept the language as written, Rob Anderson seconded and it was so voted, 5-0.*

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.

MINUTES: December 2, 2015 – Joe Vasta moved to approve the language as written, Robert Littlefield seconded and it was so voted, 5-0.

December 17, 2015 – Bryan Armstrong moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 5-0.

Discussion regarding the definition of a principal structure: The Board briefly discussed whether it was appropriate to consider an email from Town Counsel regarding the definition of a principle and an accessory structure as it applied to the property located at 52 Creek Road outside of a Public Hearing on the case, especially in view of the fact that a Public Hearing has already commenced. If it were discussed during a Work Session, Chair Nicolau pointed out, it would preclude his participation because he had a conflict of interest in the case. He thought it important enough that the whole Board participate in a general discussion of the topic. Board members were encouraged to read the Town Counsel's email in anticipation of the continued Public Hearing of the case.

Board reorganization: Election of Chair, Vice Chair, and Clerk:

Jeffrey Hale moved to elect David M. Nicolau as the Chair of the Zoning Board of Appeals, Robert Littlefield seconded and it was so voted unanimously.

David M. Nicolau moved to elect Robert Littlefield as Vice Chair of the Zoning Board of Appeals, Jeffrey Haley seconded and it was so voted unanimously.

David M. Nicolau moved to elect Jeffrey Gould as Clerk of the Zoning Board of Appeals, Jeffrey Haley seconded and it was so voted unanimously.

Anne Howard said that it was brought to the attention of the Department of Community Development that on the application for a Special Permit where it references the requirements for applicants pursuant to Article 2, Section 2460 of the Zoning By-Laws, it was not stated that the seating floor plans are to be stamped by a registered professional or construction supervisor. She added that it has been the policy of the Board to require that. Chair David M. Nicolau suggested placing the issue on the agenda for the next Work Session. He also wanted to discuss a revision to the Non-Conforming Situation Checklist that would include the history of the property's zoning relief.

Chair David M. Nicolau postponed the Work Session at 6:55 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:00 P.M. 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. Attorney Lester J. Murphy, Alan Cabral and Mike Miller appeared to discuss the application. Attorney Murphy had read Town Counsel's email and suggested that the issues raised were applicable to other structures in the Town and thus should be discussed amongst the entire Board to avoid only certain members making policy affecting other properties. David M. Nicolau, before recusing himself because of a conflict of interest, said that he would consult with Town Counsel about handling the discussion of her email.

Joe Vasta had submitted an affidavit attesting to the fact that he had watched a video recording of the previous hearing of the case on October 15, 2015, and invoked the Mullin Rule in order to sit on the case. Robert Littlefield, Joe Vasta, Jeffrey Haley, Rob Anderson and Bryan Armstrong sat on the case. The Board discussed with Attorney Murphy whether to continue the case taking into consideration its previous decision that Town Counsel's email would not be discussed. Vice Chair Robert Littlefield explained that if the case was continued, a discussion regarding principal and accessory structures in general by the entire Board could be held during a Work Session followed by the continued Public Hearing of 52 Creek Road, wherein Town Counsel's email regarding those issues at the property would be discussed. The Board decided to continue Case #FY16-10 to the Public Hearing on January 21, 2016 at 7:00 P.M., before which the Board will hold a Work Session to discuss and make a finding as to whether seasonal cottages are considered principal structures.

Rob Anderson moved to continue Case #FY16-10 until the January 21, 2016 Public Hearing at 7:00 P.M., before which the Board will hold a Work Session to discuss and make a finding as to whether seasonal cottages are considered principal structures, Joe Vasta seconded and it was so voted, 3-2. (Jeffrey Haley and Bryan Armstrong opposed). The Board decided to discuss the issue at the Work Session following this Public Hearing.

FY16-17 34 Commercial Street (*Residential 2 Zone*), Don Di Rocco of Hammer Associates on behalf of Kevin Huvane –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a roof dormer on the west elevation of a studio/garage structure within existing side and front yard setbacks. David M. Nicolau, Robert Littlefield, Joe Vasta, Rob Anderson and Jeffrey Gould sat on the case.

Presentation: Dan Di Rocco appeared to present the application. The applicant seeks to add a dormer to the west side of a garage. The non-conformancies on the property include the front and side yard setbacks. The proposed dormer would

have a front yard setback of 5'5" and a side yard setback of 2'11".

Public Comment: Lauren Richmond, a direct abutter, had a question about whether the case involved a change in use of the property. She was informed by the Chair that it did not. There were 5 letters, 3 from abutters, in support of the application.

Board Discussion: The Board questioned Mr. Di Rocco.

Robert Littlefield moved to make a finding that the proposed change would not be substantially more detrimental to the neighborhood than the existing non-conformancies, Rob Anderson seconded and it was so voted, 5-0.

Robert Littlefield moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a roof dormer on the west elevation of a studio/garage structure within existing side and front yard setbacks at the property located at 34 Commercial Street (Res 2), Rob Anderson seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.

FY16-21 359 Commercial Street, Unit H (Town Commercial Center Zone), 3 Old Dogs, LLC, dba Harbor Lounge –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the continued use of the 55-seat bar with a full alcohol license. David M. Nicolau, Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case.

Presentation: Cass Benson appeared to present the application. She seeks to continue the operation of the 55-seat bar, which she reminded the Board closed at 11:00 P.M., with the condition that the Special Permit run indefinitely and that there be no live music or entertainment allowed at the premise. She said that the business has been in operation for six years and during that time there have been no noise complaints made to the Provincetown Police Department in regard to the establishment.

Public Comment: None. There was a letter from the Trustees of the Mews Condominium, of which it is a part, in support of the application and 2 letters from abutters in support of the application. There was a letter from the PPD regarding the absence of noise complaints against the business.

Board Discussion: The Board questioned Ms. Benson. She clarified that she is also requesting that the condition requiring that all south- and west-facing windows and doors of the establishment be closed at 10:00 P.M., which was part of the previous Special Permit, be removed.

Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the continued use of the 55-seat bar with a full alcohol license at the property located at 359 Commercial Street, Unit H (TCC), with the condition that no live music or entertainment be allowed at the premises and that the Special Permit run with the applicant, Joe Vasta seconded and it was so voted, 5-0. Joe Vasta will write the decision.

FY16-22 404 Commercial Street (Town Commercial Center Zone), Ted Smith, Architect, LLC on behalf of Strangers and Saints, Inc. –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the continued use of an 80-seat restaurant with outdoor seating and a full liquor license. Bryan Armstrong disclosed that he sits on the Economic Development Committee with one of the owners of the applicant corporation. David M. Nicolau, Joe Vasta, Bryan Armstrong, Rob Anderson and Jeffrey Gould sat on the case.

Presentation: Ted Smith and Steven and Fred Latasa-Nicks appeared to present the application. Mr. Smith explained that the applicant is requesting that the seating plan for the property be renewed, however with the provision that it would be flexible under certain circumstances. This change involves moving the existing 12 seats from the terrace in the rear to the front of the property. The hours of operation will remain the same, 8:00 A.M. until 1:00 A.M.

Public Comment: None. There was a letter from an abutting condominium association in opposition to retaining the rear seating. There was 1 letter in support of the application. There were 2 letters of concern from abutters about noise generated by the rear seats and requesting that this seating not be increased and that the last seating in the area be at 9:00 P.M. There was a letter from the PPD that stated that there were no complaints regarding the property in the last two years.

Board Discussion: The Board questioned Mr. Smith and the Messrs. Latasa-Nicks.

Bryan Armstrong moved that the proposed changes would not be substantially more detrimental to the neighborhood or the Town than the existing use, Joe Vasta seconded and it was so voted, 5-0.

Bryan Armstrong moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the continued use of the 80-seat restaurant with the proposed outdoor flex-seating plan and a full liquor license at the property located at 404 Commercial Street (TCC) with the condition that the permit expire on 1/15/17, Joe Vasta seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.

Chair David M. Nicolau adjourned the Public Hearing at 8:00 P.M.

WORK SESSION

Chair David M. Nicolau reconvened the Work Session at 8:00 P.M.

The Board discussed with the Acting Building Commissioner the subject of accessory versus principal structures in the Zoning By-Laws.

David M. Nicolau moved that the Zoning Board of Appeals adopt a policy wherein a building

is considered a principal structure if it has a kitchen, bathroom and sleeping accommodations, Jeffrey Haley seconded and it was so voted unanimously.

NEXT MEETING: The next meeting will take place on Thursday, January 21, 2016. It will consist of a Work Session at 6:30 P.M followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Jeffrey Haley moved to adjourn at 8:24 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

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