

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
January 5, 2017**

**Members Present:** Robert Littlefield, Jeffrey Haley, Jeffrey Gould (left at 8:08 P.M.), Marianne Clements, Jeremy Callahan and Daniel Wagner.

**Members Absent:** David M. Nicolau (excused), Joe Vasta (excused) and Rob Anderson (unexcused).

**Others Present:** Gloria McPherson (Town Planner) and Ellen C. Battaglini (Permit Coordinator).

**WORK SESSION**

Vice Chair Robert Littlefield called the Work Session to order at 6:45 P.M.

**PENDING DECISIONS:**

**FY17-36**      **237 Commercial Street, #37 (Town Center Commercial Zone), Provincetown Film Society –**  
Robert Littlefield, Jeffrey Haley, Jeffrey Gould and Jeremy Callahan sat on the case. Jeffrey Gould read the decision. *Jeffrey Haley moved to approve the language as written, Marianne Clements seconded and it was so voted, 4-0.*

**FY17-40**      **51 Commercial Street, Front (Residential 2 Zone), Don DiRocco, of Hammer Architects, on behalf of Jay Anderson -**  
Robert Littlefield, Jeffrey Haley, Jeffrey Gould and Jeremy Callahan sat on the case. The decision is not ready.

**FY17-44**      **334 Commercial Street (Town Center Commercial Zone), Broken Wheel Farm, LLC, on behalf of Purple Point, LLC –**  
Robert Littlefield, Jeffrey Haley, Jeffrey Gould and Jeremy Callahan sat on the case. Robert Littlefield read the decision. *Jeffrey Haley moved to approve the language as amended, Marianne Clements seconded and it was so voted, 4-0.*

**MINUTES: December 15, 2016– Jeffrey Gould moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 6-0.**

Vice Chair Robert Littlefield adjourned the Work Session at 7:00 P.M.

## PUBLIC HEARING

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

**FY17-41      51 Commercial Street, Rear (*Residential 2 Zone*), Don DiRocco, of Hammer Architects, on behalf of Jay Anderson -**  
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to re-locate a structure 18' to the north and to construct an 11' by 14' 10" addition up and along a pre-existing, non-conforming west side yard dimension. This case is postponed until the January 19, 2017 Public Hearing.

**FY17-43      404 Commercial Street (*Town Center Commercial Zone*), Steven Latasa-Nicks, 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 service of alcohol and to revise an existing flex-seating plan. Robert Littlefield, Jeffrey Haley, Jeffrey Gould, Marianne Clements and Daniel Wagner sat on the case.  
**Presentation:** Steven Latasa-Nicks appeared to present the application. He said that he and his husband, the owners of the restaurant on the property, have lived in the neighborhood for 12 years. The restaurant employs 35 people and provides housing for 5 of them. The restaurant's ability to employ this number of people is dependent upon the maintenance of the outdoor seating plan that is being requested. He said that the Board had approved the flex-seating plan last year for a trial period of 1 year. One configuration included 12 seats in the rear and 12 seats in the front of the restaurant; the other included 24 seats in the front and none in the rear. Mr. Latasa-Nicks is requesting that the Board approve the same flex-seating plan with one change. The first concerns the seating in the rear being placed closer to the building because it was a more natural use of the property and provided more privacy for the neighbors. He is also requesting that the Board grant the Special Permit with no expiration date and to run with their business. He explained the two noise complaints made to the Police Department this year in regard to the property.

After having spoken to neighbors about their concerns, such as early morning noise emanating from the restaurant as a result of trash pick-up and late night noise coming from patrons talking on cell phones, talking or smoking outside. He explained to the Board how he would mitigate these concerns, such as using a different trash hauler to pick up at a later hour in the morning, placing signage on the property to remind patrons that there are neighbors living close by, training employees to raise the awareness of patrons about neighbors, giving them skills to address situations when they arise. He also proposes to shut off the outside music at 10:00 P.M. He said that he and his husband are hands-on managers and are readily available by cell phone to address problems that may arise on the property.

**Public Comment:** Regina Cassidy and John Treeful, Brandon Quesnell, Russ Porter and Steve Katsurinis, all abutters, spoke in support of the application. There were 13 letters in support of the application.

**Board Discussion:** The Board questioned Mr. Latasa-Nicks about the hours of operation and discussed conditions.

**Jeffrey Gould moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the service of alcohol and to revise an existing flex-seating plan at the property located at 404 Commercial Street (TCC) with the conditions that the last outdoor seating in the rear is 9:00 P.M. and with no expiration date, Marianne Clements seconded and it was so voted, 5-0.** Jeffrey Gould will write the decision.

**FY17-45**

**300A Commercial Street (Town Center Commercial Zone), SGI 300A, LLC –** The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to construct a second floor addition up and along a pre-existing, non-conforming side yard elevation. Robert Littlefield, Jeffrey Haley, Jeffrey Gould, Jeremy Callahan and Marianne Clements sat on the case.

**Presentation:** Attorney Lester J. Murphy, Alan Cabral, Trip Holtz and David Fico appeared to present the application. Attorney Murphy said that the structure was a 7-room guesthouse. There are 5 guestrooms on the second floor, all of which share only 1 bathroom. The applicant seeks to renovate the second floor to provide separate bathrooms for those 5 rooms. The project involves constructing additions along the northeasterly side of the building by raising the second floor over an existing first floor basement access and by expanding a dormer on the second floor towards the rear of the building. A small addition will be constructed along a pre-existing, non-conforming side yard setback, measuring 3.62' to 4.62', and not encroach any further into the setback. The dormer and the addition have been architecturally designed to blend into the existing structure and both will be lower than the existing house and have no negative impact on the views from adjoining properties. The total building scale of the proposed structure, with the addition and the dormer, is less than the neighborhood average building scale. He argued that the proposed project will not be substantially more detrimental to the neighborhood than the existing structure. The additions are modest and will allow the owners of the guesthouse to provide improved and enhanced accommodations to their patrons. Attorney Murphy said that the proposal is consistent with what has been envisioned under the Local Comprehensive Plan in that it seeks to upgrade amenities and services for tourists. The Historic District Commission has approved the designs.

**Public Comment:** Steve Katsurinis spoke in favor of the application. Lisa Molodec, an abutter, said that the plans for the project had been misrepresented. There was 1 letter in support of the application and 2 letters that have concerns that do not fall under the purview of the Board.

**Board Discussion:** The Board briefly questioned Attorney Murphy and Mr. Cabral.

*Jeffrey Haley moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to construct a second floor addition up and along a pre-existing, non-conforming side yard elevation at the property located at 300A Commercial Street (TCC), Jeremy Callahan seconded and it was so voted, 5-0. Jeremy Callahan will write the decision.*

**FY17-46      307 Bradford Street (Residential 2 Zone), Tom Thompson, on behalf of Hal Z. Katzen –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to increase building scale for the construction of a 4' addition and a shed dormer up and along pre-existing, non-conforming south and west elevations. Robert Littlefield, Jeffrey Gould, Jeremy Callahan, Marianne Clements and Daniel Wagner sat on the case.

**Presentation:** Tom Thompson and John DeSouza appeared to present the application. Mr. DeSouza explained that the project involves a multi-family residential structure. The irregular, astylistic structure, consisting of three sections, appears as two cottages attached by a workshop in the center. The applicant seeks to expand the dwelling unit on the southwest corner for an increase in living space. The southern gable end will be bumped out by 4' and accommodate extra living space, but not add to the size of the building. An existing corner of the structure will be filled in. Two small dormers will be added on the east side to provide ceiling height in a bathroom. These dormers will be within pre-existing, non-conforming front yard setbacks and along with the addition on the rear will add 6545 cu. ft. of building scale and a minimal increase in the footprint, 1785 sq. ft. The current footprint is 1717 sq. ft. and the proposed is 1785 sq. ft., an increase of 68 sq. ft. The neighborhood average scale is 13,833 cu. ft., the allowable neighborhood scale is 15,908 cu. ft., the existing structure is 25,560 cu. ft. and the total proposed scale is 32,105 cu. ft. This is a 25.6% increase. He said that the project was consistent with the goals and policies of the LCP, specifically, Goal 1, Policy B, Goal 2, Policy A and Chapter 4, Goal 2, Policy A. There will be no disruption to the character of the neighborhood and the changes are harmonious with the surrounding area and are of limited visibility. The project conforms to the criteria of Article 2, s. 2460, subparagraphs 1 and 5. As to Article 3, s. 3110, Mr. DeSouza said that the changes to the structure are not substantially more detrimental to the neighborhood than the existing structure. The benefits will include an increase in the local tax base and an improvement in accommodations for residents who contribute to the local economy and there will be no adverse effects as a result of the project.

**Public Comment:** No. There were no letters in the file.

**Board Discussion:** The Board questioned Mr. Thompson and Mr. DeSouza. *Jeremy Callahan moved to find that the proposed changes would not be substantially more detrimental to the neighborhood than the existing situation, Jeffrey Gould seconded and it was so voted, 5-0.*

*Jeremy Callahan moved to find that the project meets test 5 of Article 2, s. 2640 of the Zoning By-Laws regarding building scale, Jeffrey Gould seconded and it was so voted, 5-0.*

*Jeremy Callahan moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to increase building scale for the construction of a 4' addition and a shed dormer up and along pre-existing, non-conforming south and west elevations at the property located at 307 Bradford Street (Res 2), Jeffrey Gould seconded and it was so voted, 5-0. Robert Littlefield will write the decision.*

**FY17-47**      **12 Cudworth Street (Residential 3 Zone), KA Bazarian Construction, on behalf of Jennifer Realty Trust –**  
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to add a farmer's porch on a north elevation, to construct two 18' dormers up and along east and west elevations and to extend a gable up and along east and south elevations. There was a request to postpone the matter until the February 2, 2017 Public Hearing. *Jeffrey Haley moved to grant the request to postpone Case #FY17-47 until the February 2, 2017 Public Hearing, Marianne Clements seconded and it was so voted, 5-0.*

**FY17-48**      **63 Shank Painter Road (General Commercial Zone), William N. Rogers, II, on behalf of Elizabeth Athineos –**  
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to replace an existing retaining wall with a retaining wall greater than 4' in height.

**FY17-49**      **63 Shank Painter Road (General Commercial Zone), William N. Rogers, II, on behalf of Elizabeth Athineos –**  
The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to increase building scale for the construction of a second floor addition up and along a pre-existing, non-conforming elevation. The Board heard the cases together. Robert Littlefield, Jeffrey Haley, Jeremy Callahan, Marianne Clements and Daniel Wagner sat on the case. Robert Littlefield, Jeffrey Haley, Jeremy Callahan, Marianne Clements and Daniel Wagner sat on the case.

**Presentation:** Gary Locke and Elizabeth Athineos appeared to present the applications. Mr. Locke explained that the applicant seeks to renovate the existing bike shop on the property by adding a second story to create 2 residential units. This will require a second means of egress for the 3 residential units in the building, which is why the project includes a second floor exterior stairway. A proposed pervious patio area will be supported by the installation of an improved retaining wall and create an egress area next to the bike shop. The existing, timber retaining wall needs repair. A retail unit will also be added on the first floor. The

retaining wall will be extended because of the grading on the site to provide parking and create the patio area at the stairway.

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

**Board Discussion:** The Board questioned Mr. Locke and discussed the increase in building scale. Mr. Locke said that the proposal would double the building scale. The Board asked Mr. Locke to justify the increase in regard to Article 2, s. 2640 of the Zoning By-Laws. He stated that the project was consistent with the goals and policies of the LCP in that it will increase services, with an additional retail space, and will add a dwelling unit and increase the local tax base. In regard to FY17-48, the Board found that the project would not be substantially more detrimental to the neighborhood than what exists.

In regard to FY17-49, the Board agreed that the changes would not be substantially more detrimental to the neighborhood than what exists.

*Jeremy Callahan moved to find that the project meets test #1 of Article 2, s. 2640 of the Zoning By-Laws, Jeffrey Haley seconded and it was so voted, 5-0.*

**FY17-48** *Jeremy Callahan moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to replace an existing retaining wall with a retaining wall greater than 4' in height at the property located at 63 Shank Painter Road (GC), Jeffrey Haley seconded and it was so voted, 5-0. Robert Littlefield will write the decision.*

**FY17-49** *Jeremy Callahan moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to increase building scale for the construction of a second floor addition up and along a pre-existing, non-conforming elevation at the property located at 63 Shank Painter Road (GC), Jeffrey Haley seconded and it was so voted, 5-0. Robert Littlefield will write the decision.*

**NEXT MEETING:** The next meeting will take place on Thursday, January 19, 2017. It will consist of a Work Session at 6:30 P.M.

**ADJOURNMENT:** *Jeffrey Haley moved to adjourn at 9:00 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2017  
David M. Nicolau, Chair