

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
March 1, 2012**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** Anne Howard, Robert Littlefield, David Nicolau (left at 7:30 P.M.), Tom Roberts and Joe Vasta.

**Members Absent:** Amy Germain, Harriet Gordon and Elisabeth Verde (all excused).

**Others Present:** Russ Braun (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Chair Anne Howard called the Work Session to order at 6:30 P.M.

**MINUTES: February 16, 2012 –** *Tom Roberts moved to approve the language as written, Robert Littlefield seconded and it was so voted, 3-0.*

**PENDING DECISIONS:**

**FY12-46**      **206 Commercial Street (Town Commercial Center Zone), Vida Hamnquist –**  
Anne Howard, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the case. Anne Howard read the decision. *Robert Littlefield moved to accept the language as written, Tom Roberts seconded and it was so voted, 3-0.*

**FY12-47**      **404 Commercial Street (Town Commercial Center Zone), Bernabe Orpilla –**  
Anne Howard, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the case. Robert Littlefield read the decision. *Tom Roberts moved to accept the language as written, Anne Howard seconded and it was so voted, 3-0.*

**FY12-48**      **21 Tremont Street (Residential 3 Zone), Harry Brock –**  
Anne Howard, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the case. Tom Roberts read the decision. *Robert Littlefield moved to accept the language as written, Anne Howard seconded and it was so voted, 3-0.*

Chair Anne Howard reported the Board is on revising its decision templates. A draft will be sent around to members and then to Town Counsel for review.

Chair Anne Howard adjourned the Work Session at 7:00 P.M.

## PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 7:00 P.M. There were five members of the Zoning Board of Appeals present and three absent.

### CONTINUED CASES:

**FY12-49**     **21 Bradford Street Extension (*Residential 1 Zone*), WK Red Clay, LLC –**  
The applicant seeks to modify a Special Permit, under Article 3, Section 3110 of the Zoning By-Laws, granted in Case #2007-018, with revisions under Case #2007-57, FY11-035 and FY11-43 (under Article 4, Section 4170) for minor adjustments to re-orient approved unit numbers 12, 13, 14 & 15 and to adjust parking/road alignment with minor grade changes. This case is continued to a March 8, 2012 Public Hearing.

### NEW CASES:

Chair Anne Howard asked the Board if they would agree to hear Case #FY12-53 first as it is the only case on which David Nicolau can be seated. ***Tom Roberts moved to take Case #FY12-53 out of order, David Nicolau seconded and it was so voted, 5-0.***

**FY12-53**     **8 Heather's Way (*Residential 3 Zone*), William N. Rogers, II, P.E. & P.L.S. on behalf of Off Cemetery Road Realty Trust –**  
The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for an increase in building scale for a house design which had previously conformed to building scale requirements. Anne Howard, Robert Littlefield, David Nicolau, Tom Roberts and Joe Vasta sat on the case.  
**Presentation:** Attorney Lester J. Murphy and Gary Locke appeared to present the application. Attorney Murphy explained that a Building Permit was issued in 2006 for the construction of the house whose plans the Board is reviewing. At that time the building complied with the building scale by-law and no deviation was required. Due to changes in the market condition, the structure was not built. The Building Permit was returned to the Town along with the septic gallons associated with the structure. In 2011, an application for a Building Permit for the exact same structure was filed, however due to changes in the building scale by-law, the structure now requires relief. According to the preliminary Assessor's Office calculations, the neighborhood average is 19,100 cu. ft. The maximum allowable scale without a Special Permit is 26,875 cu. ft. The existing scale of the proposed structure is 30,536 cu. ft., 6,661 cu. ft. above the maximum allowable scale. The Assessor had not changed the neighborhood calculations based on the formula in the new building scale by-law. After revising the neighborhood scale calculations, the neighborhood average was 21,103 cu. ft., up about 2,000 cu. ft. and the maximum allowed is 26,378 cu. ft. Now the proposed structure is only 4,158 cu. ft. over the neighborhood average. He argued that the social, economic, or other benefits to the neighborhood or Town of this project outweigh any adverse effects, such as hazard, congestion or environmental degradation. The proposed single-family residence will conform to all other Zoning By-Laws and in

accordance with the most recent edition of the State Building Code. There is support from the neighborhood for the project and enhance the value of the other homes in the subdivision in which it is located. Short term employment opportunities will be created as well as long-term living facilities in the Town. Tax revenues will be enhanced. The house is attractive and well-designed and will fit in with the other structures in the neighborhood. Attorney Murphy argued that no adverse effects will be created as a result of the project. The project also satisfies sub-paragraph #5 of Section 2640E.

**Public Comment:** Billy Rogers spoke in support of the application. There were 4 letters in the file in favor of the application.

**Board Discussion:** The Board questioned Attorney Murphy and Mr. Locke. *Robert Littlefield moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for an increase in building scale for a house design which had previously conformed to building scale requirements at the property located at 8 Heather's Way (Res 3), David Nicolau seconded and it was so voted, 5-0.* Tom Roberts will write the decision.

**FY12-50      542 Commercial Street (Residential 3 Zone), Provincetown Hospitality, LLC–**

The applicant seeks a Special Permit under Article 2 Section 2460 of the Zoning By-Laws to allow outdoor service of food and alcoholic beverages on the patio/courtyard outside the existing restaurant/lounge areas and to extend the hours of operation on the patio only to 11:00 P.M., and to request an increase in the outdoor seating capacity in the courtyard from 12 seats to 30 seats (an additional 18 seats requested).

Anne Howard explained that since there were only four Board members seated, necessitating a unanimous decision in order to grant a Special Permit, the applicant had the choice of proceeding now or continuing the case until five Board members could be seated. The applicant chose to proceed. Anne Howard, Robert Littlefield, Tom Roberts and Joe Vasta sat on the case.

**Presentation:** Attorney Lester J. Murphy and Elaine Quigley appeared to present the application. The applicant seeks to extend the hours of outdoor service from 7:00 P.M. to 11:00 P.M. In 2002, a Special Permit was approved for the service of food between 7:00 A.M. and 1:00 P.M. and the service of alcohol between 12:00 P.M and 1:00 A.M. in a 15-seat lounge with several conditions related to signage and entertainment. In 2003, a Special Permit was granted for the outdoor service of food and beverages both poolside and on the patio. That seating plan included 12 flex seats for the interior lounge and the exterior, with 3 permanent seats in the lounge. That Special Permit expired on 12/31/04. The service has continued and it is the expiration issue that the applicant would like remedy. This issue arose when the applicant was seeking to increase the level of service at the premises. The applicant seeks to continue authorization of the service that has been on-going, but to expand the service both in regard to the number of seats on the property and the hours of that service. The proposal is for 18 additional seats to be located in the courtyard only, to be used in conjunction with the 12 flex seats, so the maximum seats in the courtyard would be 30 and 3 seats would remain in the lounge. The extra seats would necessitate an Economic Development Permit for

an increase in septic flow. There will be no food service or entertainment in the courtyard, however the proposal includes alcohol service in that area until 11:00 P.M. The area of outdoor seating is being reduced since there will be no more service to the pool area. Attorney Murphy theorized that since the closest structure to the courtyard area is the hotel, any noise complaint would first come from guests. The only complaints from the premises have been from Ms. Quigley in regard to noisy guests in the hotel. None have come from abutters, according to Attorney Murphy. The courtyard is located next to Bradford Street and measures 30' by 56'. Landscaping is proposed on the two corners abutting the street and a fire pit will be located in the center of the area. The proposal would allow the establishment to offer enhanced amenities to its guests and additional employment opportunities for its workers. It is also in keeping with Section 5 Economic Development, 5.2 Goals and Policies, Goal 1 of the Local Comprehensive Plan and will be of benefit to the Town. Attorney Murphy alleged that there would be no adverse effects due to the proposal.

**Public Comment:** Wilsa Ryder, an abutter, spoke against the application. In the file, there were 3 letters in support, 1 letter of no objection and 8 letters in opposition to the request.

**Board Discussion:** The Board questioned Attorney Murphy and Ms. Quigley. *Anne Howard moved to grant a Special Permit under Article 2 Section 2460 of the Zoning By-Laws to allow outdoor service of food and alcoholic beverages on the patio/courtyard outside the existing restaurant/lounge areas and to extend the hours of operation on the patio only, and to request an increase in the outdoor seating capacity in the courtyard from 12 seats to 30 seats (an additional 18 seats requested) at the property located at 542 Commercial Street (Res 3) with the condition that the extended service of alcohol will cease at 10:00 P.M. and only be allowed in the courtyard, that there be no food service, entertainment or amplification of music in the courtyard, no public advertisement specific to the lounge and courtyard and no signs advertising same, with the Special Permit to expire on 12/31/13, Robert Littlefield seconded and it was so voted, 4-0.* Anne Howard will write the decision.

**FY12-51**      **186 Commercial Street (Town Commercial Center Zone), John Yingling –**  
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a covered porch up and along a pre-existing, non-conforming front yard setback.

**FY12-52**      **186 Commercial Street (Town Commercial Center Zone), John Yingling –**  
The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to construct a covered porch up and along a pre-existing, non-conforming front yard setback. The Board will hear these two cases together. Anne Howard explained that since there were only four Board members seated, necessitating a unanimous decision in order to grant a Special Permit, the applicant had the choice of proceeding now or continuing the case until five Board members could be seated. The applicant chose to proceed. Anne Howard, Robert Littlefield, Tom Roberts and Joe Vasta sat on both cases.  
**Presentation:** Gary Locke and Guillermo Yingling appeared to present the

application. The proposed deck will measure 30' 2" by 18' 8" and will replace an existing deck that measures 22' by 9'. This increase in area will allow an increase in seating. The covered porch will allow outdoor dining in inclement weather. Mr. Locke stated that this project is a benefit to the Town and the neighborhood because it will allow the restaurant to operate in inclement weather. The design of the covered porch is based on a design from a photo of the porch in the 1930s. This goes along with the LCP terms of the Town's economy and in terms with furthering the historical value of the Town. The structure is large and out of scale by 10,000 cu. ft. The existing scale is 35,696 cu. ft. The proposal is to add 7,680 cu. ft. for a total of 43,376 cu. ft. The neighborhood average is 25,796 cu. ft.

**Public Comment:** None. There were 2 letters in the file in support of the application, including 1 letter from John Yingling.

**Board Discussion:** The Board questioned Mr. Locke and Mr. Yingling. Mr. Littlefield pointed out that in his opinion, the project was consistent with Article 2, Section 2640E, sub-paragraphs 5 and 6 and met the test of Article 3, Section 3110.

**FY12-51** *Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a covered porch up and along a pre-existing, non-conforming front yard setback at the property located at 186 Commercial Street (TCC), Tom Roberts seconded and it was so voted, 4-0. Tom Roberts will write the decision.*

**FY12-52** *Robert Littlefield moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to construct a covered porch up and along a pre-existing, non-conforming front yard setback at the property located at 186 Commercial Street (TCC), Joe Vasta seconded and it was so voted, 4-0. Tom Roberts will write the decision.*

**NEXT MEETING:** The next meeting will take place on March 8, 2012. It will consist of a Public Hearing at 6:30 P.M.

**ADJOURNMENT:** *Tom Roberts moved to adjourn at 8:45 P.M. and it was so voted unanimously.*

These minutes were approved by a vote of the Zoning Board of Appeals at their meeting on March 15, 2012.

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2012  
Anne Howard, Chair