

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
December 6, 2012**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** Anne Howard, Amy Germain (left at 8:24 P.M.), Robert Littlefield, David Nicolau, Tom Roberts, Harriet Gordon and Joe Vasta.

**Members Absent:** Leif Hamnquist (excused).

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

**PUBLIC HEARING**

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

**CONTINUED CASES:**

**FY13-09      71 Commercial Street (*Residential 3 Zone*), Mark Kinnane of Cape Associates, Inc. on behalf of Eleanor Pannesi –**  
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a covered entry up and along a pre-existing, non-conforming front and side setback. David Nicolau, Tom Roberts and Harriet Gordon recused themselves because of conflicts of interest. Anne Howard, Robert Littlefield, Amy Germain and Joe Vasta sat on the case. Mark Kinnane appeared and submitted a letter requesting to withdraw the case without prejudice. ***Robert Littlefield moved to grant the request to withdraw Case #FY13-09 without prejudice, Joe Vasta seconded and it was so voted, 4-0.***

**FY13-12      148 Commercial Street, Unit #1 (*Town Commercial Center Zone*), Debbie Nadolney of AMP/Art Market Provincetown –**  
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to have occasional poetry readings, conceptual performances pieces, some video/film and some live acoustic music at gallery openings. Amy Germain and David Nicolau recused themselves because of conflicts of interest. Anne Howard, Robert Littlefield, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.  
**Presentation:** Debbie Nadolney appeared to discuss the application. At a previous Public Hearing, the Board requested that she reach out to her neighbors to further explain what her intentions were for the gallery. She wrote her neighbors a letter stating her intentions in a more detailed way than she had on her application, a copy of which she submitted to the Board. Chair Anne Howard

opened the public portion of the hearing. The letter Ms. Nadolney sent to her neighbors was read aloud, pursuant to a request from a member of the audience. **Public Comment:** Jack Yandrisovitz, Evelyn Gaudiano, Mary Beth Caschetta and Meryl Cohn, all abutters, and Deborah Martin spoke against the application. Susan Goldberg, Lisa Hull, Susan Livingston, Nina West and Lisa Marie Nowakowski, all non-abutters, spoke in support of the application. Mary DeAngelis asked if a compromise could be found. There were 8 letters, 6 from abutters, in support of the application and 9 letters in opposition to the application.

**Board Discussion:** Robert Littlefield pointed out that this was not a change in use, as several members of the public had contended, and that the gallery is located in the Town Commercial Center Zone, which is a mix of residential and commercial properties. He added that the vote of the Board does not depend upon how many abutters are in support or in opposition. He supports the concept of the application and is of the opinion that it supports the goals and objectives of the Local Comprehensive Plan. He suggested that the Board consider granting a Special Permit for only a year and impose conditions similar to those suggested at the previous Public Hearing. Joe Vasta was in favor of granting a Special Permit with conditions. Tom Roberts ask for clarification of the events that would be held and stated that the Board must determine whether the social, economic or other benefits of the proposal to the Town or neighborhood outweigh any adverse effects such as hazard, congestion or environmental degradation. Harriet Gordon thought that what the applicant is seeking is beyond the scope of the definition of an art gallery in the by-laws and that seeking an entertainment license is not the appropriate action, however she supports the events held at the gallery. Chair Anne Howard mentioned the narrow definition of a gallery in the by-laws, the potential difficulty in enforcing conditions and the requirement that the social, economic or other benefits to the Town or neighborhood must outweigh any adverse effects. She inquired whether the applicant would like her to take a poll of the Board before proceeding. The applicant agreed. There were at least two Board members who would vote not to grant the Special Permit. The applicant requested to withdraw the case without prejudice.

*Harriet Gordon moved to grant the request to withdraw Case #FY13-12 without prejudice, Robert Littlefield seconded and it was so voted, 5-0.*

## **NEW CASE:**

### **FY13-16 7 Conant Street (Residential 3 Zone), Conant West End, LLC –**

The applicant seeks a Special Permit under Article 2, Section 2550 and Article 3, Section 3110 of the Zoning By-Laws to renovate two pre-existing, non-conforming cottages. The non-conformity consists of the maximum number of principle buildings on the lot. Amy Germain recused herself because of a conflict of interest. Anne Howard, Robert Littlefield, David Nicolau, Tom Roberts and Harriet Gordon sat on the case.

**Presentation:** Attorney Lester J. Murphy, Kaye McFadden and Roxanne Pratten appeared to present the application. The applicant seeks to alter and extend two pre-existing, non-conforming rear structures on the premises. There are a total of

three structures on the property; a main residential structure, a cottage and a shed that was formerly a cottage. The proposal includes the reconstruction, alteration and enlargement of the two-family cottage and the shed structure into two single-family residential structures, in addition to adding a deck and stairs to the rear of the main structure. The two rear structures are non-conforming as to both side and rear setbacks. The lot size is 6,060 sq. ft., non-conforming as to the number of existing dwelling units on the property. The applicant originally wanted to combine the two rear structures into a single building, however the Historic District Commission requested that the applicant revise the plans to keep the two structures separate. The two structures will also be relocated on the lot so that they will exceed the side and rear yard setbacks and will conform to the required distance between two buildings. According to Attorney Murphy, the proposed changes will not be substantially more detrimental to the neighborhood than what now exists. The changes will eliminate all the setback non-conformancies and the building to building setback non-conformancy. The number of units will not change, however there will now be three principle structures as opposed to the existing two. This plan has support from the neighborhood. The buildings will be upgraded and historically enhanced and become assets to the neighborhood.

**Public Comment:** Evelyn Gaudiano, Jack Yandrusovitz, Sam Janoplis, Meryl Cohn and Mary Beth Caschetta spoke in favor of the application. There were 15 letters in support and none in opposition to the application.

**Board Discussion:** David Nicolau is of the opinion that when the dimensional schedule is increased, it is more detrimental to the neighborhood and he will not vote to grant a Special Permit for the project as presented. The proposal is to increase the number of principal structures from two to three on a lot measuring 6,060 sq. ft., thereby increasing the density. He thinks it is not necessary and would prefer to see the two rear structures combined. Tom Roberts agreed. Chair Anne Howard asked Attorney Murphy if he would like to proceed given two Board members were in opposition to the proposal. He requested that the case be continued to give the applicant an opportunity to go back to the HDC to ask it to reconsider the original design to combine the two rear structures now that the applicant has a sense of the Board's opinion. The Board would be willing to continue to the January 17, 2013 Public Hearing.

***Robert Littlefield moved to grant the request to continue Case #FY13-16 to the January 17, 2013 Public Hearing, Harriet Gordon seconded and it was so voted, 5-0.***

Chair Anne Howard adjourned the Public Hearing at 9:05 P.M.

## **WORK SESSION**

Chair Anne Howard called the Work Session to order at 9:05 P.M.

**MINUTES: November 29, 2012 – David Nicolau moved to postpone the approval of the**

*minutes to the next Public Hearing on December 20, 2012, Tom Roberts seconded and it was so voted, 6-0.*

The Board reviewed the ZBA 2013 schedule.

The Board discussed its procedure related to the public portion of public hearings. The Board's custom is to hear the applicant's presentation, take public comments and read letters from the public, close the public portion of the hearing and then proceed to a question and answer period with the applicant. Town Counsel stated at a previous meeting that once the public portion is closed, the Board can no longer engage with the applicant. After discussion, the Board decided to continue to conduct hearings as has been its custom as long as the public is informed of the procedure and the procedure is consistent.

The Board discussed the issue of its disagreement with the HDC's decision regarding the property located at 7 Conant Street.

The Board briefly discussed Article 5, Section 5330 and how it is applied to requests for zoning relief.

**NEXT MEETING:** The next meeting will take place on December 20, 2012. It will consist of a Work Session at 6:45 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Robert Littlefield moved to adjourn at 9:30 P.M. and it was so voted unanimously.*

These minutes were approved by a vote of the Zoning Board of Appeals at its meeting on December 20, 2012.

Respectfully submitted,  
Ellen C. Battaglini

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