

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
March 3, 2016**

**Members Present:** David M. Nicolau, Robert Littlefield, Jeffrey Haley and Jeffrey Gould.

**Members Absent:** Amy Germain (excused), Joe Vasta (excused), Rob Anderson (excused) and Bryan Armstrong (excused).

**Others Present:** Gloria McPherson (Town Planner) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Chair David M. Nicolau called the Work Session to order at 6:29 P.M.

**PENDING DECISIONS:**

- FY16-17**      **34 Commercial Street (*Residential 2 Zone*), Don Di Rocco of Hammer Associates on behalf of Kevin Huvane –**  
The Board signed revised drawings.
- FY16-25**      **401½ Commercial Street (*Town Commercial Center Zone*), Steve and B Company –**  
The Board signed a revised drawing.
- FY 16-27**      **17 Montello Street (*Residential 3 Zone*), William N. Rogers on behalf of Todd C. Blais –**  
David M. Nicolau, Robert Littlefield, Joe Vasta and Jeffrey Gould sat on the case. David M. Nicolau read the decision, but the Board did not take a vote, as the decision will be revised.
- FY16-24**      **18 West Vine Street (*Residential 1 Zone*), John DeSouza on behalf of Beverly Serabian –**  
The Board signed drawings.
- FY16-23**      **20 Pleasant Street (*Residential 3 Zone*), 20 Pleasant Street, LLC –**  
Robert Littlefield, Joe Vasta, Rob Anderson and Jeffrey Gould sat on the case. Robert Littlefield read the decision. *Jeffrey Haley moved to approve the language as written, Jeffrey Gould seconded and it was so voted, 4-0.*
- MINUTES: February 4, 2016– Robert Littlefield moved to approve the language as written, Jeffrey Gould seconded and it was so voted, 4-0.**

Chair David M. Nicolau postponed the Work Session at 7:00 P.M.

## PUBLIC HEARING

Chair David M. Nicolau 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:

- FY16-26**     **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. There was a request from the applicant to withdraw the case without prejudice. *Jeffrey Gould moved to approve the request to withdraw Case #FY16-26 without prejudice, Jeffrey Haley seconded and it was so voted, 4-0.*
- FY16-29**     **338 Commercial Street (Town Commercial Center Zone), BHC, LLC -**  
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. A quorum was not available to hear the case and it was postponed to the March 17, 2016 Public Hearing. *Robert Littlefield moved to postpone Case #16-29 to the March 17, 2016 Public Hearing, Jeffrey Gould seconded and it was so voted, 4-0.*
- FY16-30**     **34 Commercial Street (Residential 2 Zone), LeBlanc Jones Landscape Architects on behalf of 34 Commercial Street Trust –**  
The applicant seeks a Special Permit pursuant to Article 2, section 2450 (G12), Permitted Accessory Uses, of the Zoning By-Laws to install a 12.5' x 30.5' swimming pool. Chair David M. Nicolau explained to the applicant that there were only four members available to hear the case and, since a unanimous vote would be required in order to grant a Special Permit, he could proceed or continue until five Board members could be seated. The applicant chose to proceed. David M. Nicolau, Robert Littlefield, Jeffrey Haley and Jeffrey Gould sat on the case. **Presentation:** Keith LeBlanc and John Huvane appeared to present the application. The applicant proposes to build a 12.5' by 30.5' swimming pool on the property. The pool will be located at the rear of the residence and conforms to all required setbacks. The pool equipment will be located on the north side of the residence and will be surrounded by an existing gated fence and the residence for screening purposes. For pool fencing, the applicants proposed to extend an existing fence that runs along the north property line and add a new section

between the pool and the parking area. At the south end of the property, the proposal is to close off the fence at the corner of the building.

**Public Comment:** Bruce Deely, Lauren Richmond and Jose Pimentel, abutters, and Polly Burnell, a non-abutter, spoke in opposition to the application. There were 10 letters, 9 from abutters, in opposition to the application and 1 letter from a non-abutter in support of the application.

**Board Discussion:** The Board questioned Mr. LeBlanc and Mr. Huvane about lighting at the property, which according to Mr. LeBlanc will conform to Dark Sky protocols, and potential noise from the pool mechanicals. The Board mentioned likely conditions for the project, including the requirement that the water to fill the pool be trucked in, that no exterior speakers be placed around the pool and that the mechanicals be located in an area where any noise generated will create the least amount of disturbance to the neighbors, such as inside the garage. The Board requested more information from the applicant addressing the issues of the water, the lighting and potential noise from the mechanicals.

**Robert Littlefield moved to continue Case #FY16-30 to the March 17, 2016 Public Hearing, Jeffrey Gould seconded and it was so voted, 4-0.**

#### **FY16-31**

#### **8 Kiley Court (Residential 3 Zone), Susan Pollack on behalf of Grace Rizk –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, and Article 3, Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish the remaining portions of a structure destroyed by fire and reconstruct the structure with a change in footprint and an increase in scale. Chair David M. Nicolau explained to the applicant's representative that there were only four members available to hear the case and since a unanimous vote would be required in order to grant a Special Permit, she could proceed or continue until five Board members could be seated. The applicant chose to proceed. David M. Nicolau, Robert Littlefield, Jeffrey Haley and Jeffrey Gould sat on the case.

**Presentation:** Attorney Lester J. Murphy, Susan Pollack, Paul Fiore and Grace Risk appeared to present the application. Attorney Murphy requested that the Special Permit pursuant to Article 3, Section 3110 be heard under the *Goldhirsh v. McNear* ruling.

**Robert Littlefield moved to hear the Article 3, Section 3110 portion of the Special Permit under the Goldhirsh v. McNear ruling, Jeffrey Gould seconded and it was so voted, 4-0.**

Attorney Murphy stated that a fire had destroyed the structure on the lot and the applicant seeks to rebuild. The structure is non-conforming as to frontage, lot area, the front, side and rear yard setbacks and lot coverage. The architect sought to reduce some of the non-conformancies in designing the new structure. The proposed structure will be pulled back to 2.2' from the rear lot line, as its former location was 4' over the rear lot line. It will be set back farther from the front yard lot line, the side yard setbacks will remain the same and the lot coverage will be reduced to conforming. Only slight alterations will be made to the footprint. The building as proposed includes a 535 cu. ft. addition. The current building scale is

18,960 cu. ft. and the proposed scale is 19,495 cu. ft., an increase of 2.8%, but still below the neighborhood average scale and the maximum allowable scale. Given that an encroachment will be remedied and non-conformancies reduced to create a more attractive building and remove a dangerous fire-damaged structure, Attorney Murphy argued that the changes are not substantially more detrimental to the neighborhood than the previously existing non-conformancies. The Historic District Commission requested a slight modification of the proposed porch.

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

**Board Discussion:** The Board questioned Attorney Murphy, Mr. Fiore, Ms. Pollack and Ms. Rizk. The Board requested that since the HDC requested a modification, the applicant submit new plans and re-calculate the lot coverage.

**Robert Littlefield moved to make a finding that the project was not substantially more detrimental to the neighborhood, Jeffrey Haley seconded and it was so voted, 4-0.** David M. Nicolau will write the decision.

- FY16-32**      **176 Race Point Road (Seashore Zone), Provincetown Airport Commission –**  
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations of the Zoning By-Laws to make improvements to a pre-existing, non-conforming aircraft landing area and facilities with the scope of work to include; improvements to an access road to the taxiways with improved lighting and an electric vault; repairs to a sightseeing shack; improvements to an access road to the approach light system; construction of a new service access road to a weather station and equipment shelter; the installation of a perimeter fence; and the expansion of a parking lot and an existing turf apron. The applicant was not present. **Jeffrey Haley moved to postpone Case #FY16-32 until the March 178, 2016 Public Hearing, Robert Littlefield seconded and it was so voted, 4-0.**

Chair David M. Nicolau adjourned the Public Hearing at 8:30 P.M.

## WORK SESSION

Chair David M. Nicolau reconvened the Work Session at 8:30 P.M.

- 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. Robert Littlefield read the decision. **Jeffrey Haley moved to approve the language as written, Jeffrey Gould seconded and it was so voted, 3-0.**

**NEXT MEETING:** The next meeting will take place on Thursday, March 17, 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 8:40 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2016  
David M. Nicolau, Chair