

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
May 5, 2016**

**Members Present:** David M. Nicolau (left at 7:16 P.M.), Robert Littlefield, Joe Vasta, Jeffrey Haley, Bryan Armstrong (arrived at 6:52 P.M.) and Jeffrey Gould.

**Members Absent:** Amy Germain (excused) and Rob Anderson (unexcused).

**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 6:30 P.M.

**PENDING DECISIONS:**

**FY16-32**     **176 Race Point Road (*Seashore Zone*), Provincetown Airport Commission –**  
David M. Nicolau, Jeffrey Haley, Robert Anderson and Jeffrey Gould sat on the case. The decision was not ready.

**FY 16-41**     **29 Tremont Street (*Residential 1 Zone*), Peter Epstein –**  
David M. Nicolau, Robert Littlefield, Jeffrey Haley and Jeffrey Gould sat on the case. Robert Littlefield read the decision. *Jeffrey Gould moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 3-0-2 (David M. Nicolau and Joe Vasta abstaining).*

**FY16-29**     **338 Commercial Street (*Town Commercial Center Zone*), BHC, LLC -**  
Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case. Robert Littlefield read the decision. *Joe Vasta moved to approve the language as written, Jeffrey Gould seconded and it was so voted, 3-0-2 (David M. Nicolau and Jeffrey Haley abstaining).*

The Board signed decisions. Mr. Nicolau announced that Amy Germain would be resigning from the Board. *Robert Littlefield moved to recommend to the Board of Selectmen that Jeffrey Gould be appointed a regular member of the Zoning Board of Appeals, Jeffrey Haley seconded and it was so voted, 5-0.*

Chair David M. Nicolau adjourned the Work Session at 6:44 P.M.

## PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:00 P.M. There were six members of the Zoning Board present and two absent.

Mr. Nicolau called for a motion to take Cases #FY16-45 and FY16-47 out of order. ***Robert Littlefield moved to take Cases #FY16-45 and FY16-47 out of order, Jeffrey Haley seconded and it was so voted, 5-0.***

### PUBLIC HEARINGS:

**FY16-45      389 Commercial Street (Town Commercial Center Zone), Tom Thompson, on behalf of Clyde Mellert –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to increase building scale for a dormer. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Jeffrey Gould sat on the case.

**Presentation:** John DeSouza appeared to present the application. The applicant seeks to add an 11' dormer, equal to 88 sq. ft., on the west side of the mixed-use structure on the property, necessitating a minor increase in scale. The neighborhood average scale is 23,707 cu. ft., the allowable scale is 27,263 cu. ft., the existing structure has a scale of 51,410 cu. ft., the proposed dormer will add 550 cu. ft., for a total proposed scale of 51,960 cu. ft. This is an increase of 1.07%. The dormer will be located in conforming areas of the setback lines on the property and within the existing footprint of the structure. Mr. DeSouza argued that the scale of the structure is large because the structure is actually two buildings that were combined and that is why the applicant needs zoning relief. In regard to sub-paragraph 1 of Article 2, Section 2640, the project is in keeping with the goals and objectives of the Local Comprehensive Plan, Chapter 1, Goal 1, Policy B, Goal 2, Policy A and Chapter 4, Goal 2, Policy A. The proposed change will create no disruption in the character of the neighborhood and will be harmonious with other buildings in the neighborhood. In addition, the project conforms to the requirement of sub-paragraph 5 of Section 2640 in that the increase in scale the proposed change will successfully integrate into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures. Mr. DeSouza said that there would be no adverse effects such as hazard, congestion or environmental degradation. The benefits will include increasing the local tax base, providing better accommodations for the owners and allowing their economic contribution to the Town to continue.

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

**Board Discussion:** The Board questioned Mr. DeSouza.

***Robert Littlefield moved to find that the proposal met test # 1 and #5 of Article 2, Section 2640 of the Zoning By-Laws, Jeffrey Gould seconded and it was so***

voted, 5-0.

*Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to increase building scale for a dormer at the property located at 389 Commercial Street (TCC), Joe Vasta seconded and it was so voted, 5-0. David M. Nicolau will write the decision.*

**FY16-47      164 Bradford Street Extension (Residential 1 Zone), Robin B. Reid, Esq., on behalf of Marcus Builders, LLC –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, of the Zoning By-Laws to install a swimming pool. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Jeffrey Gould sat on the case.

**Presentation:** Attorney Robin B. Reid and Victor DePaolo appeared to present the application. According to Attorney Reid, the pool mechanicals are state of the art and virtually silent and will be tucked in next to the building on the lot. The pool will be fenced in, it will have an ozone system for sanitation purposes and its cover will be electrified.

**Public Comment:** None. There was 1 letter in support of the application.

**Board Discussion:** The Board questioned Attorney Reid and Mr. DePaolo. There will be no outdoor speakers around the pool, the lighting will be of low wattage, only 3 small lights in the pool, and the water will be trucked in from out of town. *Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2450, Permitted Accessory Uses, of the Zoning By-Laws to install a swimming pool at the property located at 164 Bradford Street Extension (Res 1), Robert Littlefield seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.*

**FY16-33      183-185 Commercial Street (Town Commercial Center Zone), John Yingling, dba Bubala's –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, to increase the scale of the building by constructing a second floor on the rear portion of the existing structure and the installation of an outdoor stair with no change to the existing footprint. Robert Littlefield, Joe Vasta, Jeffrey Haley, Bryan Armstrong and Jeffrey Gould sat on the case.

**Presentation:** Guillermo Yingling appeared to present the application. The applicant seeks to add office space in the rear of the building above existing office space and bathrooms. The increase is 8%. The scale of the existing structure is 48,950 cu. ft., the allowable scale is 37,867 cu. ft., the neighborhood average scale is 32,928 cu. ft. The proposed addition is 4,200 cu. ft. for a total proposed scale of 53,150 cu. ft.

**Public Comment:** None. There was 1 letter from an abutter in opposition to the project.

**Board Discussion:** The Board questioned Mr. Yingling about the project and asked him to justify the increase in scale pursuant to Article 2, Section 2640E of

the Zoning By-Laws.

*Joe Vasta moved to find that the project met Criteria #5 of Article 2, Section 2640E of the Zoning By-Laws, Bryan Armstrong seconded and it was so voted, 5-0.*

*Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, to increase the scale of the building by constructing a second floor on the rear portion of the existing structure and the installation of an outdoor stair with no change to the existing footprint at the property located at 183-185 Commercial Street (TCC), Jeffrey Gould seconded and it was so voted, 5-0. Robert Littlefield will write the decision.*

- FY16-35**      **132 Bradford Street (Town Commercial Center Zone), Michael Riley –**  
The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display bicycles along the Bradford Street side of the building. Robert Littlefield, Joe Vasta, Jeffrey Haley, Bryan Armstrong and Jeffrey Gould sat on the case.  
**Presentation:** Mike and Steve Riley appeared to present the application. Mr. Riley explained that he would like to display bicycles and place a sandwich board outside the structure on the property.  
**Public Comment:** None. There were no letters in the file.  
**Board Discussion:** There was no Board discussion.  
*Jeffrey Haley moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display bicycles along the Bradford Street side of the building at the property located at 132 Bradford Street (TCC), Joe Vasta seconded and it was so voted, 5-0.*

The Board decided to take Case #FY16-39 out of order.

- FY16-39**      **136 Bradford Street (Town Commercial Center Zone), Michael Riley –**  
The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display bicycles along the Bradford Street side of the building. Robert Littlefield, Joe Vasta, Jeffrey Haley, Bryan Armstrong and Jeffrey Gould sat on the case.  
**Presentation:** Mike and Steve Riley appeared to present the application. Mr. Riley explained that he would like to display bicycles and place a sandwich board outside the structure on the property.  
**Public Comment:** None. There were no letters in the file.  
**Board Discussion:** There was no Board discussion.  
*Jeffrey Haley moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display bicycles along the Bradford Street side of the building at the property located at 136 Bradford Street (TCC), Joe Vasta seconded and it was so voted, 5-0.*

- FY16-36**      **134 Bradford Street (Town Commercial Center Zone), Michael Riley –**  
The applicant seeks a Special Permit pursuant to Article 2, Section 2440,

Permitted Principal Uses, of the Zoning By-Laws to operate a 405-space parking lot. Robert Littlefield recused himself because of a conflict of interest. Acting Chair Jeffrey Haley explained to the applicant that there were only four members available to hear the case and, since a unanimous vote of the Board 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. Joe Vasta, Jeffrey Haley, Bryan Armstrong and Jeffrey Gould sat on the case.

**Presentation:** Mike and Steve Riley appeared to present the application. Mr. Riley explained that there have been some changes made at the parking lot, including an increase in parking spaces, the installation of a fence abutting Standish Street, the opening up of the area abutting Conwell Street and the installation of a fence to prevent vehicular access or egress.

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

**Board Discussion:** The Board briefly questioned Mr. Riley.

**Joe Vasta moved to grant a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, of the Zoning By-Laws to operate a 405-space parking lot at the property located at 134 Bradford Street (TCC), Bryan Armstrong seconded and it was so voted, 4-0.** Jeffrey Haley will write the decision.

**FY16-37**      **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. This case has been postponed to the June 16, 2016 Public Hearing.

**FY16-46**      **295 Bradford Street (Residential 2 Zone), Jonathan Sinaiko –**  
The applicant seeks a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, and Article 5, Section 5300, Special Permits, of the Zoning By-Laws to authorize two single-family dwellings on one lot. Robert Littlefield, Joe Vasta, Jeffrey Haley, Bryan Armstrong and Jeffrey Gould sat on the case.  
**Presentation:** Attorney Brian Wall and Jonathan Sinaiko appeared to present the application. Attorney Wall stated that the applicant seeks to change the use of one of the existing structures on the lot from a garage to a cottage. Two detached single-family dwellings are allowed on the lot with a Special Permit in the Res 2 Zoning District. In order to be granted a Special Permit, the applicant must show that the social, economic or other benefits of the proposal for the neighborhood or Town outweigh any adverse effects, such as hazard, congestion or environmental degradation. According to Attorney Wall, the benefits of the change would include the provision of living accommodations for one or two people and the fact that the property is connected to the Town sewer system. The property has an existing driveway that will serve the cottage and is large enough to provide off-street parking and an outdoor yard for its occupants. The conversion will benefit

the Town through higher property tax assessment as well as by providing additional housing. He addressed some issues that have been raised in letters from abutters including the complaints regarding the use by Mr. Sinaiko's tenants of an easement at 611 Commercial Street, abutting a property owned by his brother, a use, he explained, that is entirely legal and in keeping with the Chapter 91 license for the property.

**Public Comment:** There were 3 letters in support of the project and 2 letters in opposition and 2 letters of no objection to the project.

**Board Discussion:** The Board questioned Attorney Wall and Mr. Sinaiko.

***Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, and Article 5, Section 5300, Special Permits, of the Zoning By-Laws to authorize two single-family dwellings on one lot at the property located at 295 Bradford Street (Res 2), Joe Vasta seconded and it was so voted, 5-0. Robert Littlefield will write the decision.***

**NEXT MEETING:** The next meeting will take place on Thursday, May 19, 2016. It will consist of a Work Session at 6:00 P.M. followed by a Public Meeting at 7:00 P.M.

**ADJOURNMENT:** *Joe Vasta moved to adjourn at 8:30 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

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