

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
September 1, 2016**

Members Present: Robert Littlefield, Joe Vasta (left at 8:00 P.M.), Jeffrey Haley, Rob Anderson, Bryan Armstrong, Jeffrey Gould and Marianne Clements.

Members Absent: David M. Nicolau (excused) and Jeremy Callahan (excused).

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 6:30 P.M.

PENDING DECISIONS:

FY#16-55 **31 Conwell Street (*Residential 3 Zone*), William N. Rogers, II, P.E., P.L.S., on behalf of Jason Truluck-Williams et ux –**
Robert Littlefield, Joe Vasta, Jeffrey Haley and Jeffrey Gould signed revised plans.

FY#16-60 **193 Commercial Street, #6 (*Town Center Commercial Zone*), Ralph Santora, of Beach, LLC –**
Robert Littlefield, Joe Vasta, Jeffrey Haley, Jeffrey Gould and Jeremy Callahan sat on the case. The decision was not ready.

FY#17-01 **600 Commercial Street (*Residential 2 Zone*), Ted Smith, Architect, LLC, on behalf of Thomas Tannariello –**
Robert Littlefield, Jeffrey Haley, Jeffrey Gould, Jeremy Callahan and Marianne Clements 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: August 4, 2016– *Jeffrey Haley moved to approve the language as written, Marianne Clements seconded and it was so voted, 6-0.*

The Board briefly discussed a request from the Charter Commission to review and revise its description in the Town Charter. Mr. Littlefield will work on the issue.

Vice Chair Robert Littlefield adjourned the Work Session at 6:43 P.M.

PUBLIC HEARING

Vice Chair Robert Littlefield called the Public Hearing to order at 7:04 P.M. There were seven members of the Zoning Board present and two absent.

PUBLIC HEARINGS:

FY#16-56 6 Dyer Street (*Residential 3 Zone*), John DeSouza, on behalf of Daniel Judas and Daniel Luethi –

The applicant seeks a Special Permit pursuant to Article 2, Section 2630C, Roofs, of the Zoning By-Laws to deviate from the roof configuration standards by exceeding 50% of the floor area coverage below a dormer. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Jeffrey Gould sat on the case. The applicant requested a continuation to the September 15, 2016 Public Hearing. *Jeffrey Haley moved to grant the request to continue Case #FY16-56 to the September 15, 2016 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 5-0.*

FY#17-03 291 Commercial Street (*Town Center Commercial Zone*), Regina Cassidy, on behalf of Cuffy's, seeking a Special permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place one sandwich board each at the front and rear entrance of a retail store. Robert Littlefield, Joe Vasta, Jeffrey Haley, Rob Anderson and Jeffrey Gould sat on the case.

Presentation: Regina Cassidy appeared to present the application. She explained that Cuffy's, a retail clothing store, seeks to put a sandwich board at each of the front and the rear doors of the store. The signs were previously placed in the front window of the store, however this year there are sand sculptures there.

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

Board Discussion: The Board briefly questioned Ms. Cassidy and discussed whether to impose conditions.

Jeffrey Haley moved to grant a Special permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to place one sandwich board each at the front and rear entrance of a retail store at the property located at 291 Commercial St. (TCC) with the condition that the sandwich board in the front (Commercial St. side) of the store be placed in front of the display window to the right of entrance, Joe Vasta seconded and it was so voted, 5-0.

FY#17-06 25 Tremont Street, #F2 (*Residential 3 Zone*), Roger E. Secours, Jr. and Kenneth Houk –

The applicants are seeking a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to increase building scale by re-configuring a deck and porch. Marianne Clements recused herself because of a conflict of interest. Robert Littlefield, Joe Vasta, Jeffrey Gould, Rob Anderson and Bryan Armstrong sat on the case.

Presentation: Barry Pike appeared on behalf of the applicants to discuss the

application. He explained that the applicants are seeking to expand the footprint of the structure in order to improve upon a ship's ladder that goes from a second floor landing to a stairway that continues up to a roof deck. The second floor landing is 5.5' wide and 12' long and the applicants would like to expand that by 4' in the direction of the ship's ladder, in order to install a conforming staircase. There is a stairway down from the second floor landing to the ground that will be removed in order to improve the condition of the building and to eliminate access. The width of the second floor landing will be expanded in order to accommodate the new staircase, from the current 5.5' to 9.5', and then expanded 2' in the direction of the existing staircase on the outside of the porch that will be removed. Mr. Pike said that the first floor deck will also be expanded to match the footprint of the second floor and removable screens will be installed. He said that these improvements would make the area safer and more functional for the applicants' use. The existing scale is 26,043 cu. ft., the neighborhood average scale is 20,953 cu. ft., the allowable scale is 24,096 cu. ft., the project will add 730 cu. ft. for a total proposed scale of 26,773 cu. ft.

Public Comment: None. There were two letters of support in the file.

Board Discussion: The Board questioned Mr. Pike. The Board noted that the increase in scale is only 2.8%.

Robert Littlefield moved to make a finding that the project meets the requirements of subparagraph 5 in regard to the appearance of mass from the streetscape of Article 2, Section 2640, Rob Anderson seconded and it was so voted, 5-0.

Rob Anderson moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to increase building scale by re-configuring a deck and porch at the property located at 25 Tremont Street, #F2, Bryan Armstrong seconded and it was so vote, 5-0. Robert Littlefield will write the decision.

FY#17-08 129 Commercial Street (Town Center Commercial Zone), One Hundred Twenty-Nine Commercial Street Corp. –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to alter and extend a pre-existing, non-conforming two-family structure and add exterior egress stairs pursuant to FEMA regulations. Jeffrey Haley recused himself because of a conflict of interest. Robert Littlefield, Joe Vasta, Rob Anderson, Jeffrey Gould and Marianne Clements sat on the case.

Presentation: Attorney Lester J. Murphy and Gary Locke, of William N. Rogers, II, Engineers & Land Surveyors, appeared to present the application. Attorney Murphy explained that the project involves the redevelopment and reconstruction of a two-family cottage that is actually situated on Good Templar Place. The building is non-conforming in regard to the side yard setbacks and the front yard setback and in the number of dwelling units on the lot. The cottage is in very poor condition, especially the southeast side that abuts Taves Boatyard where there is a very small opening between structures in which to access the side of the cottage.

The cottage will be removed and a new structure will be built in its place. Attorney Murphy explained that the building is located in the AO Flood Zone and the reconstructed building will have to be raised above the plain elevation about 3' to take it out of the flood zone, necessitating a larger footprint and the requests for building scale relief and for authorization to build along a pre-existing, non-conforming dimension from the Board. Attorney Murphy argued that the new structure will not be more detrimental to the neighborhood than the existing one. He believes that the Board can make a finding that the economic, social and other benefits of the project outweigh any detrimental effects. He also reminded the Board that the new amendment to Article 3, Section 3110 allows the Board to grant a Special Permit to allow the creation of new setback non-conformancies occasioned by the need to provide access to structures that need to be raised pursuant to FEMA regulations. The building will be pulled back from each of the side yard setbacks, to a minimum of 2.35' from 1.35' on the northwest side and to 2.5-3' from the current .14', on the southeast side. In addition, the front yard setback will be pulled back to 8.8' at its closest, from the current 7.8'. The northeast and southeast side yard setbacks will be conforming. An egress stairway is proposed for the southeast side of the new structure. That will be 2.5' off the southeast side yard setback, more than the existing .14'. The egress stairway will encroach into the front yard setback by about 3.5'. The building will increase in height by about 6.84' above the existing structure; 2.93' of which is due to the FEMA requirements. The Historic District Commission has approved the project. The proposed scale is 12,478 cu. ft., about half of the maximum allowed without relief. The benefits of the project will be safer and more usable residential units, less non-conforming side setbacks and compliance with the flood zone regulations. He argued that there will be no detrimental effects.

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

Board Discussion: The Board questioned Attorney Murphy and Mr. Locke.

Joe Vasta moved to find that the project will not be substantially more detrimental to the neighborhood than the existing situation, Rob Anderson seconded and it was so voted, 5-0.

Rob Anderson moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to alter and extend a pre-existing, non-conforming two-family structure and add exterior egress stairs pursuant to FEMA regulations at the property located at 129 Commercial Street (TCC), Marianne Clements seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.

FY#17-08

31 Conant Street (Residential 3 Zone), Glenn A. Enos –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to raze and replace an existing shed. Robert Littlefield, Joe Vasta, Jeffrey Haley, Rob Anderson and Jeffrey Gould sat on the case.

Presentation: Glenn Enos appeared to present the application. He explained that the old shed, which is in poor condition, measures 10' by 15', and the new shed

will measure 8' by 12'.

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

Board Discussion: The Board questioned Mr. Enos.

Jeffrey Gould moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to raze and replace an existing shed at the property located at 31 Conant Street (Res 3), Jeffrey Haley seconded and it was so voted, 5-0. Rob Anderson will write the decision.

FY#17-09 225 Commercial Street (Town Center Commercial Zone), Attorney Robin B. Reid, on behalf of Topknot Properties, Inc. –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to alter a restaurant service area. Rob Anderson recused himself because of a conflict of interest. Robert Littlefield, Joe Vasta, Jeffrey Gould, Bryan Armstrong and Marianne Clements sat on the case.

Presentation: Attorney Robin B. Reid and Loic Rossignon, representing Topknot Properties, LLC and Galley Catering, LLC, the operating entity, appeared to present the application. The area of service for the restaurant on the property was previously approved by the Board in 2014 and issued Special Permit #FY14-56, which was subsequently and inadvertently allowed to lapse. The area of service has not changed, however some of the seat locations have changed. There are currently no plans for flex-seating at the property. The benefits of approving the area of service is that the business, which is thriving, will be more viable to operate year-round, providing significant employment for locals and a food venue for offseason tourists. The area also provides tourists with access to the beach and Harbor. Attorney Reid said that there will be no detrimental effects as a result of granting this Special Permit.

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

Board Discussion: The Board questioned Attorney Reid. The Board reviewed the conditions of the previous Special Permit.

Bryan Armstrong moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to alter a restaurant service area at the property located at 225 Commercial Street (TCC) with the conditions that the Special Permit run with the applicant only, that outdoor lighting shall adhere to dark sky protocols, that signage indicating no alcohol shall be removed from the premises be placed at outside exits, Jeffrey Gould seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY#17-10 41 Commercial Street (Residential 2 Zone), Ted Smith, Architect, on behalf of Matthew Perlman –

The applicant seeks a Special Permit pursuant to Article 2, Section 2630, Roofs, and 2640, Building Scale and Article 3, Section 3110, Change, Extensions and Alterations, to add a new dormer that is greater than 50% of the floor area below

the contiguous roof on the east elevation, increase building scale and extend up and along a pre-existing, non-conforming dimension. Robert Littlefield, Jeffrey Haley, Rob Anderson, Jeffrey Gould and Marianne Clements sat on the case.

Presentation: Ted Smith and Matthew Perlman appeared to present the application. Mr. Smith explained that the building is very long and has been added onto many times. There is a half-story area of unfinished attic space above the applicant's unit on the second floor. He said that the proposed dormers will add character and a 'cape feel' to the structure. He argued that the proposed dormer met the requirement of Article 2, Section 2630E, 2) in that other features of the proposed design are such that the deviation of the roof configuration is not disruptive to the character of the area. There is a similar dormer on the east side of an abutting structure and the larger proposed east dormer is the least visible on the structure. The west dormer has been minimized to make it 'picturesque'. The dormers are set back from the north, street side of the structure. The building is 100' long and the area in question is 30', a relatively small percentage of the length of the entire structure.

As to building scale, only 7% is being added, and it will result in the structure being in character with other structures in the neighborhood. He argued that the dormers will be in keeping with the requirement of subparagraph 5 of Article 2, Section 2640E, in that it minimizes the appearance of mass from the streetscape. Mr. Smith said that the new dormers will not be substantially more detrimental to the neighborhood than the existing situation.

Public Comment: John Golden and Scott Whittier spoke in opposition to the application. There were 5 letters, all from abutters, in opposition to the application.

Board Discussion: The Board questioned Mr. Smith and Mr. Perlman. The Board asked if the project would be in keeping with the Local Comprehensive Plan as that was a requirement of granting a SP under Article 2, Section 2630. The Board was concerned about the size of the dormer on the east side and felt that it was substantially more detrimental to the neighborhood than the existing situation. Mr. Littlefield took a straw poll of Board members and no Board member supported the project. Mr. Smith requested that the applicant be allowed to withdraw the application without prejudice.

Jeffrey Haley moved to grant the request to withdraw Case #FY17-10 without prejudice, Rob Anderson seconded and it was so voted, 5-0.

NEXT MEETING: The next meeting will take place on Thursday, September 15, 2016. It will consist of a Work Session at 6:30 P.M. followed by a Public Meeting at 7:00 P.M.

ADJOURNMENT: *Jeffrey Gould 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