

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
September 15, 2016**

Members Present: David M. Nicolau (left at 8:24 P.M.), Robert Littlefield (left at 8:24 P.M.), Joe Vasta, Jeffrey Haley, Jeffrey Gould, Jeremy Callahan, Marianne Clements (arrived at 7:17 P.M.) and Daniel Wagner.

Members Absent: Rob Anderson (excused) and Bryan Armstrong (excused).

Others Present: Gloria McPherson (Town Planner) and Ellen C. Battaglini (Permit Coordinator).

WORK SESSION

Chair David M. Nicolau called the Work Session to order at 6:30 P.M.

PENDING DECISIONS:

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. Jeremy Callahan read the decision. *Robert Littlefield moved to approve the language as written, Jeffrey Haley 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 –**
Robert Littlefield, Joe Vasta, Jeffrey Gould, Rob Anderson and Bryan Armstrong 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, 5-0.*

FY#17-07 **129 Commercial Street (Town Center Commercial Zone), One Hundred Twenty-Nine Commercial Street Corp. –**
Robert Littlefield, Joe Vasta, Rob Anderson, Jeffrey Gould and Marianne Clements sat on the case. Jeffrey Gould read the decision. *Jeffrey Haley moved to approve the language as written, Joe Vasta seconded and it was so voted, 3-0.*

FY#17-08 **31 Conant Street (Residential 3 Zone), Glenn A. Enos –**
Robert Littlefield, Joe Vasta, Jeffrey Haley, Rob Anderson and Jeffrey Gould sat on the case. The decision was not ready.

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 eight 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. Chair David M. Nicolau said that the public portion of the hearing was still open and asked if any member of the public had a comment in support or opposition to the application or any new information related to the case. No one responded. He closed the public portion of the hearing.

Presentation: Attorney Ed Patten, representing the owners of the property, Daniel Luethi and John DeSouza appeared to discuss the application. Attorney Patten reviewed the facts of the case and his clients' position. He said that the applicants are seeking relief under Article 2, Section 2630 because the project as proposed would apparently exceed the 50% limitation of that by-law. At the time of the submission, there was a question as to whether a variance relief would be necessary. Attorney Patten said that in his opinion, and based upon a conversation with Town Counsel and his analysis of the situation and controlling law, no variance relief of any kind was needed. The issue arose initially because variance relief had been granted to the existing north side dormer in 1996, under a previous by-law that Section 2630 has superseded. That Variance was necessary, as there was no provision to seek relief via a Special Permit. As a structural component, the north side dormer could be built as a matter of right, putting aside exceptions for other non-conformancies of the structure that would be subject to Article 3, Section 3110. The by-law does not prohibit the construction of the dormer and there is no requirement for a Variance. Other than the fact that the project is exceeding the 50% limitation by 5%, there would be no need for any zoning relief under Section 2630. Attorney Patten read the letter of Town Counsel of July 20th, advising the Board to reclassify the application as a Variance and not to re-hear the project unless a Variance was requested. His clients would be prepared to do that, but with the caveat that they could reserve their rights to argue, in the event that the application is denied, that there was no need for a Variance at all. He requested that the application be approved and relief granted following a ruling that no Variance is necessary and that the matter proceed through the process. If a Variance were required, he requested that the Variance be granted along with the Special Permit and that the matter be concluded to the benefit of his clients. Chair David M. Nicolau said that the Board would question the applicants after which the Board would deliberate.

Board Discussion: The Board questioned Attorney Patten, Mr. DeSouza and Mr. Luethi about the project. The Board discussed whether the construction of the new dormer would create a third story, which is not allowed according to the Zoning By-Laws, and the issue of creating headroom in a guest bathroom to bring it into compliance with the State Building Code. Also discussed was the definition of ‘story’ in the By-Laws, the requirements for granting a Variance, the previous Special Permit that was granted in January of 2016 and the Building Commissioner’s opinion about the floor area coverage. Ms. McPherson reviewed the 1996 Variance decision, which references a ‘story’, indicating that the applicant was applying for relief from the dimensional schedule for a ‘story’ and to construct a dormer and a third ‘story’. She reviewed the Zoning By-Law regarding roofs, Section 2630, reading the subparagraphs aloud.

The Board continued to discuss the project with Mr. DeSouza and reviewed an email sent by Town Counsel as to whether the structure was currently three stories or two and a half stories. The email recommended that if the Board determined that the structure was three stories in height, a situation which was granted via a Variance in 1996, then any relief would need a Variance, as three stories wasn’t allowed. If the Board determined that the structure has two and a half stories, then the Board can issue a Special Permit to get the dormer to 50% of the floor area, but would need to issue a Variance to go beyond 50%. The Board discussed the email. The Board decided that if the applicants revised their plans to reduce the size of the dormer to less than 50% of the floor area that they would not need relief from Section 2630. The Board deliberated the issues further. The Board decided that if the applicants returned with revised plans showing the dormer has been reduced to less than 50% of the floor area, it would grant a Special Permit for the construction of the dormer.

Robert Littlefield moved to continue Case #FY16-56 to the October 6, 2016 Public Hearing at 7:00 P.M., Joe Vasta seconded and it was so voted, 5-0.

FY#17-11 220 Commercial Street (Town Center Commercial Zone), Thierry Tournier, dba French Feelings –

The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outside Display, of the Zoning By-Laws for the outside display of outdoor furniture and miscellaneous items. Jeffrey Gould, Joe Vasta, Jeffrey Haley, Marianne Clements and Jeremy Callahan sat on the case.

Presentation: Tom Rogers, on behalf of Thierry Tournier, appeared to present the application. The applicant seeks to display wares for sale in his store in a 6’ by 3’ area in front of the store.

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

Board Discussion: The Board questioned Mr. Rogers. It was requested that no items be placed in front of exits or entrances to the retail store.

Jeffrey Haley moved to a Special Permit pursuant to Article 3, Section 3420, Outside Display, of the Zoning By-Laws for the outside display of outdoor furniture and miscellaneous items at the property located at 220 Commercial

Street (TCC), Marianne Clements seconded and it was so voted, 5-0.

FY#17-12 **12 Howland Street, #12A (Residential 3 Zone), KA Bazarian –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to add a 22' dormer on the west elevation of a structure. There was a request from the applicant to withdraw the application without prejudice. ***Jeffrey Haley moved to grant the request to withdraw Case #FY17-12 without prejudice, Marianne Clements seconded and it was so voted, 5-0.***

FY# 17-13 **11 Tremont Street (Residential 3 Zone), Michael J. Buzel –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to replace a pre-existing, non-conforming shed with a new shed in the same location. Jeffrey Gould, Joe Vasta, Jeffrey Haley, Marianne Clements and Jeremy Callahan sat on the case.
Presentation: Michael J. Buzel appeared to present the application. Mr. Buzel said that the existing shed is dilapidated and ready to collapse and he would like to replace it with a new shed. The new shed has been approved by the Historic District Commission.
Public Comment: Tony Brackett, an abutter, spoke in favor of the application. There were no letters in the file.
Board Discussion: The Board questioned Mr. Buzel.
Joe Vasta moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to replace a pre-existing, non-conforming shed with a new shed in the same location at the property located at 11 Tremont Street (Res 3), Jeremy Callahan seconded and it was so voted, 5-0. Jeremy Callahan will write the decision.

Acting Chair Jeffrey Gould adjourned the Public Hearing at 8:34 P.M.

WORK SESSION

Acting Chair Jeffrey Gould reconvened the Work Session at 8:34 P.M.

MINUTES: September 1, 2016– *Jeffrey Haley moved to approve the language as written, Marianne Clements seconded and it was so voted, 6-0.*

PENDING DECISION:

FY#17-09 **225 Commercial Street (Town Center Commercial Zone), Attorney Robin B. Reid, on behalf of Topknot Properties, Inc. –**
Robert Littlefield, Joe Vasta, Jeffrey Gould, Bryan Armstrong and Marianne Clements sat on the case. Jeffrey Gould read the decision. ***Marianne Clements moved to approve the language as written, Joe Vasta seconded and it was so***

voted, 3-0.

NEXT MEETING: The next meeting will take place on Thursday, October 6, 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 Haley moved to adjourn at 9:00 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2016
David M. Nicolau, Chair