

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
October 6, 2016**

Members Present: David M. Nicolau (arrived at 6:55 P.M.), Robert Littlefield, Joe Vasta, Jeffrey Haley (left at 8:36 P.M.), Jeffrey Gould and Daniel Wagner.

Members Absent: Rob Anderson (unexcused) and Bryan Armstrong (excused), Marianne Clements (excused) and Jeremy Callahan (unexcused)

Others Present: Ellen C. Battaglini (Permit Coordinator).

WORK SESSION

Vice Chair Robert Littlefield called the Work Session to order at 6:31 P.M.

PENDING DECISIONS:

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.

FY#17-13 11 Tremont Street (*Residential 3 Zone*), Michael J. Buzel –
Jeffrey Gould, Joe Vasta, Jeffrey Haley, Marianne Clements and Jeremy Callahan sat on the case. The decision was not ready

MINUTES: September 15, 2016– *Jeffrey Haley moved to approve the language as written, Joe Vasta seconded and it was so voted, 5-0.*

Charter update: Mr. Littlefield said he made some updates to the ZBA section of the Charter. He will email them to Gloria McPherson, the Town Planner.

Vice Chair Robert Littlefield adjourned the Work Session at 6:35 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 four absent.

FY#16-56 **6 Dyer Street (Residential 3 Zone), John DeSouza, on behalf of Daniel Judas and Daniel Luethi (continued from September 15th) –**

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 had been closed at the last public hearing. He said that the Board had received an opinion letter from the Building Commissioner regarding the case.

Presentation: Daniel Luethi and Daniel Judas appeared to discuss the case. Mr. Nicolau told the applicants that, before Board deliberation, he would poll members to get a sense of the likelihood of a Special Permit being granted for the project. If the applicants did not have the requisite votes for a Special Permit, they would be allowed to request a withdrawal without prejudice. He asked if they wanted to revise their application to request a Variance instead of a Special Permit before the Board started its deliberations.

Mr. Luethi said that after the last public hearing, his understanding was that the Board would allow the applicants to build the dormer at a size up to 50% of the area of the floor beneath it and Mr. Nicolau agreed. Mr. Luethi reviewed his understanding of the floor area issue since the applicants' first meeting with the Building Commissioner. He said that she had changed her opinion about the floor area several times and he is confused by that and believes that her calculations are incorrect. Mr. Nicolau explained that the Building Commissioner is allowed to make revisions to any of her opinions. He said that the Board is in possession of an opinion letter from her that the present calculations of the area of the dormer exceeds 50% of the floor area directly below the contiguous roof in which it will be located and that the Board will be relying on that opinion when deliberating the matter.

Board Discussion: The Board discussed the facts of the case and the Building Commissioner's opinion letter. Mr. Nicolau said that the applicants, as recommended in that letter, could obtain a professional engineer's stamped plan of the floor area to refute the calculations of the Building Commissioner. They could then meet with the Building Commissioner and present her with the new information and, if she changed her opinion about the proposal and agreed that the dormer did not exceed 50% of the floor area, the Board could proceed with issuing a Special Permit. The applicant requested a continuance to the October 20, 2016 Public Hearing at 7:00 P.M. to explore their options.

Jeffrey Haley moved to grant the request to continue Case #FY16-56 to the October 20, 2016 Public Hearing at 7:00 P.M., Joe Vasta seconded and it was so voted, 5-0.

FY#17-15 **226B Bradford Street (Residential 3 Zone), Coastal Custom Builders, on behalf of Diana Prideaux-Brune & Annie Mahoney –**

The applicants seek a Special Permit pursuant to Article 2450, Permitted Accessory Uses, G12, Swimming Pools, of the Zoning By-Laws for the installation of a new swimming pool. David M. Nicolau, Robert Littlefield, Jeffrey Haley, Joe Vasta and Jeffrey Gould sat on the case.

Presentation: Tim Klink, of Coastal Custom Builders, appeared to present the application. The proposed saltwater pool will measure 20' by 40', is constructed of fiberglass and will have a deck built around it. It will be protected with a vinyl cover in the winter. The mechanicals will be located under a deck on the north side of the pool, out of view and at the farthest distance from abutting properties. There will be no lights in the pool, but there will be lighting on the deck surface around the pool and it will be pointed downward. There will be no sound amplification around the pool and the water will be trucked in from out of Town.

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

Board Discussion: The Board briefly questioned Mr. Klink.

Robert Littlefield moved to grant a Special Permit pursuant to Article 2450, Permitted Accessory Uses, G12, Swimming Pools, of the Zoning By-Laws for the installation of a new swimming pool at the property located at 226B Bradford Street (Res 3), Jeffrey Haley seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.

FY#17-16

22 Commercial Street (Residential 1 Zone), Stan Sikorski –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the service of alcoholic beverages to patrons of Land's End Inn on the premises. David M. Nicolau recused himself because of a conflict of interest. Robert Littlefield, Joe Vasta, Jeffrey Haley, Jeffrey Gould and Daniel Wagner sat on the case.

Presentation Stan Sikorski appeared to present the application. He said that the former Special Permit for the property had lapsed and he was asking the Board to grant another one to continue to allow the service of alcoholic beverages on the premises and the property of Land's End Inn.

Public Comment: None. There were 3 letters in support of the application, 1 of which the support was contingent upon the imposition of the same conditions, and 2 letters in opposition.

Board Discussion: The Board questioned Mr. Sikorski. The Board noted that there had been 4 noise complaints since 2014 reported to the Police Dept. by abutters. Mr. Sikorski said that he would not be holding any weddings at the property, which should take care of any noise complaints in the future.

Joe Vasta moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the service of alcoholic beverages to patrons of Land's End Inn on the premises located at 22 Commercial Street (Res 1) with the same conditions as the previous Special Permit pursuant to Article 2, Section 2460 of the Zoning By-Laws, except that it will expire on January 4, 2020, Jeffrey Haley seconded and it was so voted, 5-0. Joe Vasta will write the decision.

FY#17-17 174 Bradford Street (Residential 3 Zone), Ted Smith, Architect, LLC on behalf of Mitchell Baker –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to extend an existing structure up and along a pre-existing, non-conforming northwest rear dimension and construct a screened porch on a southeast elevation. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Gould and Daniel Wagner sat on the case.

Presentation: Ted Smith, an architect, and Mitchell Baker and Tom Egan, owners of the property, appeared to present the application. Mr. Baker explained that they are renovating the rear unit on the property. They are seeking an 8.6% increase in scale. The increase is due to constructing a screened porch on the southeast elevation and extending a section of the structure at the rear northwest elevation to create a mudroom. The 6' northwest elevation extension is within the front yard setback, will extend an existing gable and successfully integrate into its surroundings. The existing scale is 22,961 cu. ft., the neighborhood average scale is 16,609 cu. ft., the allowable scale is 19,100 cu. ft., the proposed additional scale is 1,990 cu. ft., for a total scale of 24,951 cu. ft. Mr. Smith said that the project meets the requirements of subparagraphs 5 and 6 of Article 2, Section 2640. The structure will be in keeping with other structures in the neighborhood and would not be more detrimental to the neighborhood than what exists.

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

Board Discussion: The Board questioned Mr. Smith and Mr. Mitchell.

Robert Littlefield moved to find that the proposal will not be more detrimental to the neighborhood than the existing situation, Joe Vasta seconded and it was so voted, 5-0.

Robert Littlefield moved to find that the proposed increase in scale met test 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, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to extend an existing structure up and along a pre-existing, non-conforming northwest rear dimension and construct a screened porch on a southeast elevation at the property located at 174 Bradford Street (Res 3), Joe Vasta seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY#17-18 595 Commercial Street (Residential 3 Zone), Ted Smith, Architect, LLC on behalf of Paul Carter –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to connect two existing dormers on the west elevation of a structure. David M. Nicolau, Robert Littlefield, Jeffrey Haley, Jeffrey Gould and Daniel Wagner sat on the case.

Presentation: Ted Smith appeared to present the application. He explained that the dormers are located on the second floor west elevation. The building is over scale as it exists and the proposed project will create a 10.5% increase. The new structure will integrate with other structures in the neighborhood and not be more detrimental to the neighborhood. The neighborhood average scale is 21,426 cu. ft., the allowable scale is 24,640 cu. ft., the existing scale is 34,490 cu. ft., the proposed addition is 1,892 cu. ft., for a total proposed scale of 36,382 cu. ft. The proposal was approved by the Historic District Commission.

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

Board Discussion: The Board questioned Mr. Smith. The Board found that the proposed project would not make the structure substantially more detrimental to the neighborhood than what existed and that there was not an increase in the appearance of mass from the streetscape.

Robert Littlefield moved to find that the project met test 5 of Article 2, Section 2640 of the Zoning By-Laws, Jeffrey Haley 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 connect two existing dormers on the west elevation of a structure at the property located at 595 Commercial Street (Res 3), Jeffrey Gould seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.

FY#17-19 12 Cudworth Street (Residential 3 Zone), Ted Smith, Architect, LLC on behalf of Tom Tannariello –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to change the roof pitch and height of a structure by adding a second story. There was a request from the applicant to postpone until the October 20, 2016 Public Hearing. *Jeffrey Haley moved to grant the request to postpone Case #FY17-19 until the October 20, 2016 Public Hearing, Robert Littlefield seconded and it was so voted, 5-0.*

FY#17-20 394 Commercial Street (Town Center Commercial Zone), Ted Smith, Architect, LLC on behalf of Mitchell Klein –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to add an exterior staircase on the rear of the structure without extending further into the rear yard setback. David M. Nicolau recused himself because of a conflict of interest. Robert Littlefield, Joe Vasta, Jeffrey Haley, Jeffrey Gould and Daniel Wagner sat on the case.

Presentation: Ted Smith appeared to present the application. He explained that the existing structure was already greater than the neighborhood average scale. The proposal includes constructing a new exterior stairway on the east rear of the structure for access to the unit that occupies the second and third floors. The landing on the second floor will cover the deck of the landing on the first floor and will therefore add scale to the structure. The landing of the stairway is 4' wide

by 12' long and putting it on the outside of the building was a design decision because of interior spatial limitations. The entire building will be equipped with a sprinkler system as the second floor has only one means of egress. The existing scale is 34,380 cu. ft., the neighborhood average scale is 21,475 cu. ft., the allowable scale is 24,696 cu. ft., the proposed additional scale is 600 cu. ft., for a total scale of 34,980 cu. ft. The stair will be extending along a pre-existing, non-conforming line on the east side, will not be more detrimental to the neighborhood and will meet the requirements of subparagraphs 5 and 6 of Article 2, Section 2640.

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

Board Discussion: The Board questioned Mr. Smith.

Jeffrey Haley moved to find that the proposed changes are not more detrimental to the neighborhood than the existing non-conformancies, Joe Vasta seconded and it was so voted, 5-0.

Jeffrey Haley moved that the proposed changes meets test #5 of Article 2, Section 2640 of the Zoning By-Laws, Jeffrey Gould seconded and it was so voted, 5-0.

Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to add an exterior staircase on the rear of the structure without extending further into the rear yard setback at the property located at 394 Commercial Street (TCC), Jeffrey Gould seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY#17-21 149A Commercial Street, #C3 (Town Center Commercial Zone), W. Scott Grady on behalf of Michael McCabe –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to expand dormers on the east side of a structure. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Gould and Daniel Wagner sat on the case.

Presentation: Scott Grady and Michael McCabe appeared to present the application. Mr. Grady stated that the property is non-conforming as to the front and side yard setbacks. The proposal is to expand two dormers within the existing footprint of the structure along pre-existing, non-conforming dimensions.

Public Comment: None. There was 1 letter in support of the application from a unit owner in the condominium.

Board Discussion: The Board questioned Mr. Grady.

Robert Littlefield moved to find that the proposed change was not substantially more detrimental than the existing situation, Joe Vasta seconded and it was so voted, 5-0

Robert Littlefield moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to expand

dormers on the east side of a structure, Joe Vasta seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY#17-22 23 Winthrop Street, #E5 (Residential 3 Zone), William N. Rogers, II, on behalf of Russell C. Davies –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations of the Zoning By-Laws to construct a second floor addition. There was a request from the applicant to postpone the case until the October 20, 2016 Public Hearing. ***Robert Littlefield moved to grant the request to postpone Case #17-22 until the October 20, 2016 Public Hearing, Jeffrey Gould seconded and it was so voted, 6-0.***

NEXT MEETING: The next meeting will take place on Thursday, October 20, 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 8:45 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

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