

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
October 20, 2016**

Members Present: Robert Littlefield, Joe Vasta, Jeffrey Gould, Rob Anderson and Daniel Wagner.

Members Absent: David M. Nicolau (excused), Jeffrey Haley (excused), Brian Armstrong (excused), Marianne Clements (unexcused) 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:

- FY17-08** **31 Conant Street (Residential 3 Zone), Glenn A. Enos –**
Robert Littlefield, Joe Vasta, Jeffrey Haley, Rob Anderson and Jeffrey Gould sat on the case. Rob Anderson read the decision. *Joe Vasta moved to approve the language as amended, Jeffrey Gould seconded and it was so voted, 4-0.*
- FY17-13** **11 Tremont Street (Residential 3 Zone), Michael J. Buzel –**
Jeffrey Gould, Joe Vasta, Jeffrey Haley, Marianne Clements and Jeremy Callahan sat on the case. Robert Littlefield read the decision. *Jeffrey Gould moved to approve the language as amended, Joe Vasta seconded and it was so voted, 3-0.*
- FY17-15** **226B Bradford Street (Residential 3 Zone), Coastal Custom Builders, on behalf of Diana Prideaux-Brune & Annie Mahoney –**
David M. Nicolau, Robert Littlefield, Jeffrey Haley, Joe Vasta and Jeffrey Gould sat on the case. Jeffrey Gould read the decision. *Joe Vasta moved to approve the language as written, Robert Littlefield seconded and it was so voted, 3-0.*
- FY17-16** **22 Commercial Street (Residential 1 Zone), Stan Sikorski –**
Robert Littlefield, Joe Vasta, Jeffrey Haley, Jeffrey Gould and Daniel Wagner sat on the case. Joe Vasta read the decision. *Jeffrey Gould moved to approve the language as written, Daniel Wagner seconded and it was so voted, 4-0.*
- FY17-17** **174 Bradford Street (Residential 3 Zone), Ted Smith, Architect, LLC on behalf of Mitchell Baker –**
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Gould and Daniel Wagner sat on the case. Robert Littlefield read the decision. *Rob Anderson*

moved to approve the language as written, Joe Vasta seconded and it was so voted, 4-0.

- FY17-18** **595 Commercial Street (Residential 3 Zone), Ted Smith, Architect, LLC on behalf of Paul Carter –**
David M. Nicolau, Robert Littlefield, Jeffrey Haley, Jeffrey Gould and Daniel Wagner sat on the case. Jeffrey Gould read the decision. *Joe Vasta moved to approve the language as written, Rob Anderson seconded and it was so voted, 3-0.*

Vice Chair Robert Littlefield postponed the Work Session at 7:00 P.M.

PUBLIC HEARING

Vice Chair Robert Littlefield called the Public Hearing to order at 7:00 P.M. There were five members of the Zoning Board present and five absent.

- FY16-56** **6 Dyer Street (Residential 3 Zone), John DeSouza, on behalf of Daniel Judas and Daniel Luethi (continued from October 6th) –**
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. There was a request from the applicants to withdraw the case without prejudice. The Board briefly discussed the request. *Rob Anderson moved to grant the request to withdraw Case #FY16-56 without prejudice, Joe Vasta seconded and it was so voted, 5-0.*
- FY17-19** **12 Cudworth Street (Residential 3 Zone), Ted Smith, Architect, LLC on behalf of Tom Tannariello (postponed from October 6th) –**
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 the case until the November 3, 2016 Public Hearing. *Joe Vasta moved to grant the request to postpone Case #FY17-19 until the November 3, 2016 Public Hearing., Jeffrey Gould seconded and it was so voted, 5-0.*
- FY17-22** **23 Winthrop Street, #E5 (Residential 3 Zone), William N. Rogers, II, on behalf of Russell C. Davies (postponed from October 6th) –**
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 November 3, 2016 Public Hearing. *Robert Littlefield moved to grant the request*

to postpone Case #FY17-22 until the November 3, 2016 Public Hearing, Jeffrey Gould seconded and it was so voted, 5-0.

- FY17-23** **258 Commercial Street (Town Center Commercial Zone), Brian Dennis Hart –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outside Display, of the Zoning By-Laws for the outdoor display of a sandwich board. Robert Littlefield, Joe Vasta, Rob Anderson, Jeffrey Gould and Daniel Wagner sat on the case.
Presentation: Brian Dennis Hart appeared to present the application. Mr. Hart explained that his business was set back from Commercial Street and customers do not always know it is there, so he is requesting permission to place a sandwich board on the sidewalk.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board briefly discussed the proposal and questioned Mr. Hart.
Rob Anderson moved to grant a Special Permit pursuant to Article 3, Section 3420, Outside Display, of the Zoning By-Laws for the outdoor display of a sandwich board at the property located at 258 Commercial Street (TCC), Jeffrey Gould seconded and it was so voted, 5-0.

- FY17-25** **698 Commercial Street (Residential 1 Zone), Christopher J. Snow, Esq., on behalf of 698 Commercial Street Realty, LLC –**
The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to provide entertainment. Robert Littlefield, Joe Vasta, Rob Anderson, Jeffrey Gould and Daniel Wagner sat on the case.
Presentation: Attorney Christopher J. Snow and Sean Archer, manager of the Harbor Hotel, appeared to present the application. Attorney Snow stated that the application was a proforma review of a pre-existing Special Permit that was granted four years ago for entertainment purposes with conditions that expired after one year. After the conclusion of that year, it was extended for three more years. That three-year period is set to expire on December 31, 2016, and the applicant seeks to renew the Special Permit for another three years. Attorney Snow claimed that there had been no reports made to the Provincetown Police Dept. regarding the site in 2016. He reminded the Board that four years ago, many abutters appeared at the Public Hearing to voice their objections, and this year, there is just a single letter in opposition. He said that the complaints to the PPD registered in 2015 were not related to the entertainment aspect of the business. He argued that the social, economic and other benefits to the neighborhood and Town outweighed any detrimental effects such as hazard, congestion or environmental degradation. The benefits include an increase in the tax base in the area, employment for residents, contributions to the Town in the form of meals and room taxes and entertainment for tourists and residents in the east end of Town.
Public Comment: None. There was 1 letter from an abutter in opposition to the application.

Board Discussion: The Board questioned Attorney Snow, who said that the applicant would agree to the same conditions that were placed on the previous Special Permit if the Board so ruled.

Jeffrey Gould moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to provide entertainment at the property located at 698 Commercial Street (Res 1), with the same conditions imposed on the Special Permit granted in Case #FY14-25 with the exception that the Special Permit shall expire on January 2, 2020, Joe Vasta seconded and it was so voted, 5-0. Robert Littlefield will write the decision. Ms. McPherson reminded Mr. Littlefield to reference the correct plan sheet in his decision, as it had changed from the previous Special Permit.

FY17-27

3A Jerome Smith Road, (Residential 3 Zone), Town of Provincetown –

The applicant seeks a Special Permit pursuant to Article 2, Section 2440, Permitted Principle Uses, C3b, of the Zoning By-Laws for off-season boat storage of three or more boats. Robert Littlefield, Joe Vasta, Rob Anderson, Jeffrey Gould and Daniel Wagner sat on the case.

Presentation: Dominic Rosati, Parking Administrator for the Town of Provincetown, appeared to present the application. He stated that the Town seeks to allow boat and trailer owners who have no other place to store boats and or trailers in the off-season, from October 1st through May 1st, on the site for a fee. A permit will be issued by the Harbormaster's Office. He said that winter boat storage had been discontinued at the Coastal Acres campground when it was recently purchased, leaving boat owners with no options for storage of their boats and trailers. Only storage of boats up to 30' would be allowed.

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

Board Discussion: The Board questioned Mr. Rosati. The Board discussed an expiration date if a Special Permit were granted.

Jeffrey Gould moved to grant a Special Permit pursuant to Article 2, Section 2440, Permitted Principle Uses, C3b, of the Zoning By-Laws for off-season boat storage of three or more boats at the property located at 3A Jerome Smith Road (Res 3) with the condition that the expiration date will be June 30, 2019, Joe Vasta seconded and it was so voted, 5-0. Rob Anderson will write the decision.

FY17-28

225 Commercial Street (Town Center Commercial Zone), Loic Rossignon –

The applicant seeks a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, E3e, of the Zoning By-Laws, to hold a temporary festival that will include a holiday market, vendors and entertainment for 5 weekends in December. Rob Anderson recused himself because of a conflict of interest. Vice Chair Robert Littlefield explained to the applicant that since only four members were present to sit on the case, necessitating a unanimous vote to grant a Special Permit, he had the option of continuing until five members could be seated or he could proceed with four members. He chose to proceed. Robert Littlefield, Joe Vasta, Jeffrey Gould and Daniel Wagner sat on the case.

Presentation: Loic Rossignon appeared to present the application. He explained the proposal, called a holiday market, would include erecting tents and temporary wooden structures for vendors to sell products or food on the site of The Canteen. A wooden platform upon which a plastic surface will be placed for skating purposes will also be built. The market will operate for the 5 weekends in December, from Friday through Sunday between the hours of 11:00 A.M. and 7:00 or 8:00 P.M. He asked if permission for temporary signage on the site would be included in the Special Permit.

Public Comment: Jeff Larsen spoke in favor of the application. There were 15 letters from non-abutters, 1 from someone who lives out-of-town and 2 from abutters in support of the application.

Board Discussion: The Board questioned Mr. Rossignon. The Board discussed the request for signage and sandwich boards. It was decided that appropriate temporary signage and outside display would be granted, provided that the public right of way and access to and egress from the site were not blocked. The Board also discussed the expiration date of the Special Permit. Ms. McPherson reviewed a letter from the Building Commissioner expressing her concerns for potential issues that might during the events. The Board discussed her concerns regarding the enforcement and monitoring of the occupant load in the back courtyard, controls for alcohol leaving the premises and enforcement for appropriate measures for egressing the property. The Board questioned Mr. Rossignon about this issue.

Ms. McPherson pointed out an issue raised by the Conservation Commission if the Board were to grant permission for the entire area to be used, namely people accessing and exiting on the beach, a resource area that containing beach grass. In addition, she said, from a licensing perspective, there would be a concern about patrons leaving the premises with alcohol, which would be a violation of the liquor license for the establishment. The Board expressed a hope that the owners of The Canteen would be responsible and monitor the posted occupancy during the activities.

Jeffrey Gould moved to grant a Special Permit pursuant to Article 2, Section 2440, Permitted Principal Uses, E3e, of the Zoning By-Laws, to hold a temporary festival that will include a holiday market, vendors and entertainment for 5 weekends in December at the property located at 225 Commercial Street (TCC), with the conditions that appropriate controls are in place to insure that no alcohol leaves the site, that appropriate measures are in place to prevent the public from exiting the premises via the beach in order to protect beach grass, that the owners of The Canteen be responsible and monitor the posted occupancy load during the activities, that the applicant is allowed flexibility in the layout of the site and that the schematic drawing submitted is a conceptual design only, that the Special Permit will expire on January 10, 2019 and that outdoor display is permitted provided it doesn't interfere with public access or egress or block the public right of way, Joe Vasta seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

FY17-29 29 Point Street (Residential 1 Zone), Jeffrey R. Larsen –

The applicant seeks a Variance pursuant to Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws for the construction of a single-family residence on a vacant lot. Robert Littlefield, Joe Vasta, Rob Anderson, Jeffrey Gould and Daniel Wagner sat on the case.

Presentation: Attorney Lester J. Murphy, Jeff Larsen, the property owner, and Mark Kinnane, of Cape Associates, appeared to present the application. Attorney Murphy said that the applicant was seeking a Variance under Section 5222 and M.G.L. c. 40A, s. 10 to construct a single-family residence. He explained that the Board had considered applications for a Special Permit for scale relief and a Variance pursuant to the dimensional schedule regarding the setbacks in 2014. At that time, the Board was not convinced that there was sufficient justification to grant either, so the applications were withdrawn without prejudice. The applicant redesigned the plans for the structure to comply with both building scale and the dimensional schedule regarding setbacks and moved forward with the project. A building permit was issued and when the engineering for the project was done for the retaining walls on the site, the quoted prices for the work were very high.

He argued that the criteria for the granting of a Variance, that is, if the Board finds that owing to circumstances relating to the soil conditions, shape or topography of the land and, especially affecting the land, but not affecting generally the zoning district in which it is located, and literal enforcement of the by-law would involve substantial hardship, financial or otherwise, to the petitioner and desirable relief could be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law, was present in the circumstances involved in the project. He argued that the Board could find that a Variance was appropriate for this property, as conforming to the by-law would create a substantial financial hardship to the applicant and that it is owing to the sandy soil conditions, steep topography and the shape of this lot, which generally do not affect the other lots in the zoning district.

Attorney Murphy stated that the lot is in excess of that required for a structure, however when you look at the rear portion of the lot that is buildable and conforms to the setback, it is very steep and would need excessive shoring with steel plates and retaining walls. The front of the lot is more level and conducive for building a structure. The revised plans show that a much less intrusive retaining wall, more for the septic system than the structure, could be installed for the structure in sharp contrast to what would need to be built if the structure were to conform to the setbacks. The hardship for a Variance is created by the need to attempt to excavate a foundation and retaining walls. In addition, engineers who have studied the site and conditions have expressed serious concerns about the effects of constructing retaining walls and a foundation on the site in sandy soil, as well as the expense involved, considering that there is a retaining wall and structure on an abutting lot. He said that there could be a major impact on not

only this property, but on abutting properties, including a structure that sits at the top of the slope above this lot. He noted that the construction of a single-family structure on an abutting site, 31 Point Street, has had difficulties, including stoppages in work and holding the slope on the property in place. The nature of the lot, the soil conditions and the topography of the lot create a financial hardship for the applicant.

Attorney Murphy stated that the proposed structure will be built on the area that is fairly level, 6'8" to 10' off the lot line in the side yard, and only a small foundation and footings will be needed. Excavation will be reduced and much less of the slope would be disturbed. The structure would be 10' off of Point Street. He noted that installing the sheeting needed for the requisite retaining walls would create concerns about the stability of the slope and other structures abutting the lot. He said that the proposed structure was not a large one. He argued that the Board could grant a Variance due to the hardships, financial and otherwise, without substantial detriment to the public good or without nullifying or substantially derogating from the intent or purpose of the by-law. The height of the structure will be reduced from previous proposals, as it will be built on the more level area of the lot. Impacts on other structures in the neighborhood, which are located closer to the street than this proposed structure, will be significantly reduced and the structure will be in keeping with the character of the neighborhood.

Public Comment: None. There were 5 form letters, one from an abutter, in support of, and 1 letter from an abutter in opposition to, the application.

Board Discussion: Mr. Littlefield reviewed the criteria for a Variance. The Board questioned Attorney Murphy, Mr. Larsen and Mr. Kinnane. The Board discussed the Variance criteria and whether the lot was in compliance with those criteria. Mr. Kinnane explained how the retaining wall would be installed.

Rob Anderson moved to find that pursuant to Article 5, Section 5222 of the Zoning By-Laws, paragraph a., a literal enforcement of the provisions of this By-Law would involve a substantial hardship, financial and otherwise, to the applicant, Joe Vasta seconded and it was so voted, 5-0.

Jeffrey Gould moved to find that pursuant to Article 5, Section 5222 of the Zoning By-Laws, paragraph b., that the hardship is owing to the circumstances relating to the soil conditions, shape or topography of such land or structures and, especially affecting such land or structures, but not affecting generally the zoning district in which it is located, Rob Anderson seconded and it was so voted, 5-0.

Rob Anderson moved to find that pursuant to Article 5, Section 5222 of the Zoning By-Laws, paragraph c., that desirable relief may be granted without either substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this By-Law, Jeffrey Gould seconded and it was so voted, 5-0.

Joe Vasta moved to grant a Variance pursuant to Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws for the construction of a single-family residence on a vacant lot with a 10' front yard setback at the property located at 29 Point Street (Res 1), Jeffrey Gould seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY17-30 6 Conwell Street (Residential 3 Zone), Bowd Hotels, LLC, dba Salt House Inn –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the sale of alcoholic beverages for the private consumption of registered guests and guests of registered guests at an inn.

FY17-31 90 Bradford Street (Residential 3 Zone), EH OP CO, LLC, dba Eben House –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the sale of alcoholic beverages for the private consumption of registered guests and guests of registered guests at a guesthouse. The Board heard the two cases together. Robert Littlefield, Joe Vasta, Rob Anderson, Jeffrey Gould and Daniel Wagner sat on the cases.

Presentation: Attorney Chris Fiset and Kevin O'Shea and David Bowd, managers of the two LLCs, appeared to present the applications. As to the Salt House Inn, Attorney Fiset stated that alcohol would be served strictly within the confines of the building. No outdoor service or consumption or public consumption would be allowed. The hours of service will be from Monday through Saturday from 9:00 A.M. to 11:00 P.M. and on Sunday from 10:00 A.M. to 11:00 P.M. Attorney Fiset argued that the social, economic and other benefits of the proposal would outweigh any detrimental effects. The two managers have started the TIPS training process and have alcoholic licenses in other states and are familiar with the regulations regarding its service.

With respect to the Eben House, Attorney Fiset stated that there was a plan submitted indicating the areas of usage, which are fenced in. Signage will be installed to indicate that no alcohol would be allowed outside the fenced-in areas. He added that the alcohol would be stored in a secured location on the premises.

Public Comment: Mark Westman, an abutter to the Eben House, spoke in support of the application. There was 1 letter, from an abutter, in support of the application for the Eben House. There were 2 letters in support of the application for the Salt House Inn.

Board Discussion: The Board questioned Attorney Fiset and discussed conditions.

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 sale of alcoholic beverages for the private consumption of registered guests and guests of registered guests at an inn at the property located at 6 Conwell Street (Res 3) with the conditions that signage shall be installed to indicate that alcohol

cannot be taken off the site, that the alcohol shall be stored in a secured place, that the hours of service and a single point of service shall be established, that the alcohol shall be served by TIPS-certified employees and that the Special Permit shall expire on January 4, 2018, Jeffrey Gould seconded and it was so voted, 5-0.

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 sale of alcoholic beverages for the private consumption of registered guests and guests of registered guests at an inn at the property located at 90 Bradford Street (Res 3) with the conditions that signage shall be installed to indicate that alcohol cannot be taken off the site, that the alcohol shall be stored in a secured place, that the hours of service and a single point of service shall be established, that the alcohol shall be served by TIPS-certified employees and that the Special Permit shall expire on January 4, 2018, Jeffrey Gould seconded and it was so voted, 5-0. Joe Vasta will write both decisions.

WORK SESSION

Vice Chair Robert Littlefield reconvened the Work Session to order at 9:45 P.M.

PENDING DECISIONS:

- FY17-20** **394 Commercial Street (Town Center Commercial Zone), Ted Smith, Architect, LLC on behalf of Mitchell Klein –**
Robert Littlefield, Joe Vasta, Jeffrey Haley, Jeffrey Gould and Daniel Wagner 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, 4-0.*
- FY17-21** **149A Commercial Street, #C3 (Town Center Commercial Zone), W. Scott Grady on behalf of Michael McCabe –**
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Gould and Daniel Wagner sat on the case. Robert Littlefield read the decision. *Rob Anderson moved to approve the language as written, Jeffrey Gould seconded and it was so voted, 4-0.*

MINUTES: October 6, 2016– Rob Anderson moved to approve the language as written, Joe Vasta seconded and it was so voted, 5-0.

NEXT MEETING: The next meeting will take place on Thursday, November 3, 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 10:30 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

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