

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
December 4, 2014**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong.

**Members Absent:** David M. Nicolau (excused), Amy Germain (excused) and Joe Vasta (excused).

**Others Present:** Gloria McPherson (Town Planner) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Acting Chair Robert Littlefield called the Work Session to order at 5:49 P.M.

**PENDING DECISIONS:**

- FY15-11**      **457 Commercial Street (*Residential 3 Zone*), Ezra Block –**  
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. A correction needs to be made on the written decision.
- FY15-24**      **10 Telegraph Hill Road (*Residential 1 Zone*), B+C Construction on behalf of Evelyann Gentemann –**  
Robert Littlefield, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case. The decision is missing a signature.
- FY15-18**      **474 Commercial Street (*Residential 3, Zone*), Deborah Sanders & James Rosenfield –**  
David M. Nicolau, Amy Germain, Robert Littlefield, Joe Vasta and Jeffrey Haley sat on the case. The applicant has not submitted a revised plan or a corrected non-conformancy checklist as requested by the Board.
- FY15-27**      **237-241 Commercial Street (*Town Commercial Center Zone*), Robin B. Reid on behalf of Ross' Grill, LLC –**  
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley, and Peter Page sat on the case. The decision was not available to be read.
- FY15-28**      **101 Commercial Street (*Residential 3 Zone*), Hammer Architects on behalf of David A. Deckelbaum –**  
Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case. Robert Littlefield read the decision. *Jeffrey Haley moved to approve*

*the language as written, Rob Anderson seconded and it was so voted, 4-0.*

- FY15-29**     **101 Commercial Street (Residential 3 Zone), Hammer Architects on behalf of David A. Deckelbaum –**  
Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case. The Board signed the Goldhirsh form.
- FY15-30**     **29 Alden Street (Residential 3 Zone), George Van Dereck Haunstrup & Sandra L. Haunstrup –**  
Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Rob Anderson sat on the case. Jeffrey Haley read the decision. *Peter Page moved to approve the language as amended, Rob Anderson seconded and it was so voted, 4-0.*
- FY15-31**     **344-346 Commercial Street (Town Commercial Center Zone), Trevor's Tide, LLC –**  
Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case. Robert Littlefield read the decision. *Jeffrey Haley moved to approve the language as written, Bryan Armstrong seconded and it was so voted, 4-0.*
- FY15-32**     **67 Harry Kemp Way (Residential B Zone), William N. Rogers on behalf of Demetrios Daphnis –**  
Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Rob Anderson sat on the case. Peter Page read the decision. *Jeffrey Haley moved to approve the language as amended, Rob Anderson seconded and it was so voted, 4-0.*
- FY15-33**     **12 Prince Street (Residential 3 Zone), William Z. Bayba –**  
Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case. Robert Littlefield read the decision. *Jeffrey Haley moved to approve the language as amended, Rob Anderson seconded and it was so voted, 4-0.*

The Board has not yet received an answer from Town Counsel regarding Sections 3110 and 5330.

Building Commissioner Geoffrey Larsen was introduced to the Board. The Board questioned Mr. Larsen and discussed Zoning issues.

Acting Chair Robert Littlefield adjourned the Work Session at 7:00 P.M.

## **PUBLIC HEARING**

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

## **PUBLIC HEARINGS:**

**FY15-16      4 West Vine Street (*Residential 2 Zone*), Ted Smith, Architect, LLC on behalf of Jim McGuire –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2560, Permitted Accessory Uses, of the Zoning By-Laws to construct an 8' by 12' shed. This matter has been continued to the December 18, 2014 Public Hearing.

**FY15-23      4 West Vine Street (*Residential 2 Zone*), Ted Smith, Architect, LLC on behalf of Jim McGuire –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to redesign and raise the roof by 4' 10" within the front yard setback resulting in an overall increase in building volume. This matter has been postponed until the December 18, 2014 Public Hearing.

**FY15-25      39 Pearl Street (*Residential 3 Zone*), Cape Associates on behalf of Peter Portney –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, and Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to renovate an existing sunroom and add a roof deck, resulting in an increase of height within a front yard setback. Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case.

**Presentation:** Derik Burgess appeared to present the application. The applicant seeks to renovate an existing sunroom and add a roof deck. The sunroom is in a state of deterioration, has non-working windows, and is not energy efficient. The proposal is that it is taken down and replaced in the existing footprint with a roof deck added above it. The increase in height is due to the new railings on the roof deck.

**Public Comment: None.** There were 10 letters, 4 from abutters, in support of the application.

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

***Jeffrey Haley moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, and Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to renovate an existing sunroom and add a roof deck, resulting in an increase of height within a front yard setback at the property located at 39 Pearl Street (Res 3), Rob Anderson seconded and it was so voted, 5-0. Robert Littlefield will write the decision.***

**FY15-26      17 Montello Street (*Residential 3 Zone*), William N. Rogers on behalf of Frank Gaynor –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct an outdoor stair as a second means of egress. There was a request by the applicant to withdraw the application without

prejudice.

**FY15-34 17 Montello Street (Residential 3 Zone), William N. Rogers on behalf of Frank Gaynor –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a roof deck, resulting in an increase in height within a front yard setback. There was a request by the applicant to withdraw the application without prejudice. *Jeffrey Haley moved to grant the request to withdraw Cases #FY15-26 and FY15-34 without prejudice, Bryan Armstrong seconded and it was so voted, 3-0-2 (Peter Page and Rob Anderson abstaining).*

**FY15-1 87 Shank Painter Road (General Commercial Zone), Wellfleet Harbor Seafood Company, dba Mac's Provincetown –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display two sandwich boards. Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case.

**Presentation:** Mac Hay appeared to present the application. He stated that the sandwich boards will be located right outside the restaurant and market in the parking area. He explained that this case was extended from July because it was not known where the setback line was located. He had the property surveyed to determine the location. This resulted in the fence in front of the restaurant having to be moved back farther from the road.

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

**Board Discussion:** The Board questioned Mr. Hay and discussed the proposed locations of the sandwich boards. The Board was concerned about site lines for parked vehicles and the heights of the sandwich boards.

*Peter Page moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display two sandwich boards at the property located at 87 Shank Painter Road (GC) with the condition that the signs must not exceed a height so as to obscure a driver's sight lines to Shank Painter Road, Jeffrey Haley seconded and it was so voted, 5-0.*

**FY 15-35 29 Conant Street (Res 3 Zone), DKR Developers –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct an addition on the rear of the structure and new egress stairs. Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case.

**Presentation:** Roxane Pratten and Kaye McFadden appeared to present the application. The applicant seeks to add a small addition and egress stairs off the rear of the structure on the east elevation of the property. The stairs are for proper egress to the third level unit in the structure. There are three units located at the premises. One unit will be re-located to the addition, the construction of which will only increase the lot coverage by 2%. There is an existing portion of the building located in the side yard setback. This will be moved over to become part

of the new addition, which will make that building conforming as to the side yard setback. The existing structure is 17,740 cu ft., the addition will add 1,958 cu. ft., for a total of 29,698 cu. ft. The neighborhood average is 12,003 cu. ft. and the maximum allowable scale is 15,004 cu. ft.

**Public Comment:** None. There were 4 letters in the file in support of the application.

**Board Discussion:** The Board questioned Ms. Pratten and Ms. McFadden. The Board noted that the proposed and existing plans were not drawn to the same scale. The Board also noted that the addition will satisfy the requirement of Article 2, Section 2640E, subparagraph 5.

**Robert Littlefield moved to make a finding that the proposal met test # 5 of Article 2, Section 2640E, Jeffrey Haley 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 construct an addition on the rear of the structure and new egress stairs at the property located at 29 Alden Street (Res 3), Jeffrey Haley seconded and it was so voted, 5-0.** Bryan Armstrong will write the decision.

**FY 15-37**

**31 Bradford Street (Res 3 Zone), Ruesch, dba Devon's Deep Sea Dive -**

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to install a new bar, resulting in a reconfigured seating plan with no seats being added. Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case.

**Presentation:** Attorney Lester J. Murphy and Devon Ruesch appeared to present the application. According to Attorney Murphy, the applicant seeks to install a bar shaped like a boat, which will provide a space for customers who are waiting to be seated to have a drink and also an additional area for patrons to eat. There will be no increase in seating. The existing seating is comprised of 12 4-top and 4 2-top tables for a total of 56 seats. There will be 10 proposed seats at the bar, resulting in 2 4-tops and 1 2-top being removed. He argued that the social and economic benefits of the change in the seating configuration would outweigh any adverse effects. There will be no change in the hours of operation. Mr. Ruesch has operated eating establishments with alcohol service for 12 years in Town with no issues. The premises will be a restaurant with a small bar and not a bar operation, and the focus will be on the service of food. It is important for the Town to provide not only good accommodations for tourists, but also quality restaurants for both visitors and residents.

**Public Comment:** Scott Haag, an employee of Devon's, spoke in favor of the application. There were 23 letters in favor and 2 letters in opposition to the application.

**Board Discussion:** The Board questioned Mr. Ruesch and Attorney Murphy. **Peter Page moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to install a new bar, resulting in a reconfigured seating plan with no seats being added at the**

*property located at 31 Bradford Street (Res 3), Bryan Armstrong seconded and it was so voted, 5-0. Peter Page will write the decision.*

**FY 15-38**

**11 Bradford Acres Road (Res 3 Zone), James Turner -**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to enlarge a second floor deck. Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case.

**Presentation:** James Turner appeared to present the application. He seeks to extend a second floor deck by 2' to match a first floor deck. This will enable the presently cantilevered first and second floor decks to be strengthened by adding support posts for safety's sake and will mitigate a runoff problem from one deck to the other. The footprint of the structure will remain the same.

**Public Comment:** Joe Joyce spoke in favor of the application. There was 1 letter of 'no objection' to, and 1 letter in support of, the application.

**Board Discussion:** The Board questioned Mr. Turner. The Board noted that the proposal met the criteria of subparagraph #5 of Article 2, Section 2640.

*Jeffrey Haley moved to make a finding that the proposal met test # 5 of Article 2, Section 2640E, 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, of the Zoning By-Laws to enlarge a second floor deck at the property located at 4 Bradford Acres Road (Res 3), Bryan Armstrong seconded and it was so voted, 5-0. Rob Anderson will write the decision.*

**FY 15-39**

**2 Conway Street (Res 2 Zoning District). Application by Regina Binder on behalf of Guy Busa –**

The applicant is seeking a Special Permit pursuant to Article 2, Section 2640E, Building Scale, and Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a second story on an existing single-story house. Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case.

**Presentation:** Regina Binder, Guy Busa and Scott Gasparello appeared to present the application. Ms. Binder requested that the applicant be heard under the *Goldhirsh v. McNear* ruling for the Special Permit under Article 3, Section 3110. The west setback is non-conforming. The structure is a ranch house and its style is non-conforming in terms of the Historic District within which it is located. The applicant seeks to create a structure more in keeping with the Historic District guidelines and with the other structures in the neighborhood. The proposed change involves a modest second floor addition which will not encroach further into the west side setback. She stated that after appearing before the Historic District Commission the previous evening, the plans for the project were revised in that a dormer previously proposed to be a gable end will now be a shed dormer. She submitted a revised drawing and an aerial computer-generated picture of the change. The proposed changes to the structure will not be disruptive to the character of the neighborhood, but will successfully integrate into its

surroundings. The structure will not encroach further into the non-conforming rear yard setback and the footprint will remain the same. The proposal is to go up and along that non-conforming dimension. The changes to the structure will not be substantially more detrimental than the existing non-conformancy. According to the neighbors' letters, the social and economic benefits of the proposal outweigh any adverse effects.

Ms. Binder reviewed the change requested by the HDC. The proposed minor alteration will result in less of an increase in the building scale. The changes are in compliance with subparagraphs 5 and 6 of Article 2, Section 2640E, and the renovated structure will be in keeping with structures in the neighborhood and is warranted because it will not be disruptive at all to the character of the neighborhood. The applicant is interested in constructing a building that better fits into the streetscape. The neighbors are all in favor of the renovations and the large front yard and tree will remain as is. The changes are in keeping with the Local Comprehensive Plan regarding community character. The existing scale is 12,220 cu. ft., the neighborhood average scale is 19,651 cu. ft., the allowable neighborhood scale is 22,599 cu. ft. The proposed addition is about 12,020 cu. ft. and the total proposed scale will be approximately 24,240 cu. ft. Most of the buildings in the neighborhood are larger than the neighborhood average. The property is located in the Provincetown Historic District and the addition is consistent with the Historic District Guidelines and approval of the deviation would further the purpose and intent of the bylaw.

**Public Comment:** Lynn Hartness, an abutter, spoke in favor of the application. There were 14 letters in support of the application.

**Board Discussion:** The Board questioned Ms. Binder, Mr. Busa and Mr. Gasparello. The Board requested revised building plans and scale numbers from the applicant to reflect the changes requested by the HDC.

**Article 3, Section 3110:** *Robert Littlefield moved to hear the application for a Special Permit pursuant to Article 3, Section 3110 of the Zoning By-Laws to construct a second story on an existing single-story house at the property located at 2 Conway Street (Res 2) under the Goldhirsh v. McNear ruling, Jeffrey Haley seconded and it was so voted, 5-0.*

*Jeffrey Haley moved to make a finding that the proposed changes are not substantially more detrimental to the neighborhood, Rob Anderson seconded and it was so voted, 5-0.*

**Article 2, Section 2640E:** *Robert Littlefield moved to make a finding that the proposal met test # 5 of Article 2, Section 2640E, Jeffrey Haley seconded and it was so voted, 5-0.*

*Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2640E, Building Scale, of the Zoning By-Laws to construct a second story on*

*an existing single-story house at the property located at 2 Conway Street (Res 2), Rob Anderson seconded and it was so voted, 5-0.* Bryan Armstrong will write the decision. The applicant is required to submit revised plans and new scale numbers to the Zoning Board.

**FY 15-40      42 Pleasant Street (Residential 3 Zone), Tupper Construction Co., on behalf of Kathy Kacergis -**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, to construct a mudroom and breezeway. Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case.

**Presentation:** Kathy Kacergis, Gordon Barney and Richard Tupper appeared to present the application. The applicant seeks to add a mudroom, measuring 8' by 13', and a breezeway. The addition will not be visible from the street. There are two existing buildings on the property. By adding a mudroom, the two structures on the property would not have the required separation pursuant to the Zoning By-Laws, therefore the applicant had to connect them with a breezeway. The existing scale of the structure is 15,480 cu. ft., the neighborhood average scale is 13,719 cu. ft., the maximum allowable scale is 17,149 cu. ft., the proposed addition is 7,430 cu. ft. for a total of 22,910 cu. ft. This is a 48% increase in the scale.

**Public Comment:** None. There were 3 letters from abutters in support of the application.

**Board Discussion:** The Board questioned Ms. Kacergis, Mr. Barney and Mr. Tupper.

*Peter Page moved to make a finding that the proposal met the requirements of test # 5 of Article 2, Section 2640E, Rob Anderson seconded and it was so voted, 5-0.*

*Peter Page moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, to construct a mudroom and breezeway at the property located at 42 Pleasant Street (Res 3), Rob Anderson seconded and it was so voted, 5-0. Jeffrey Haley will write the decision.*

**MINUTES:** November 20, 2014 – *Rob Anderson moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 5-0.*

**NEXT MEETING:** The next meeting will take place on Thursday, December 18, 2014. It will consist of a Work Session at 6:00 P.M. followed by a Public Hearing 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 December 18, 2014  
David M. Nicolau, Chair