

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
December 15, 2011**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** Robert Littlefield, Amy Germain, David Nicolau, Tom Roberts, Harriet Gordon and Joe Vasta.

**Members Absent:** Anne Howard (excused) and Elisabeth Verde (excused).

**Others Present:** Russ Braun (Building Commissioner) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Vice Chair Robert Littlefield called the Work Session to order at 6:30 P.M.

**MINUTES: December 1, 2011** – *Tom Roberts moved to approve the language as written, Robert Littlefield seconded and it was so voted, 3-0.*

**PENDING DECISIONS:**

**FY12-26**      **135 Commercial Street (Town Commercial Center Zone), Ted Smith, Architect, LLC on behalf of Eduardo Zaidner** –  
Anne Howard, Robert Littlefield, Tom Roberts and Joe Vasta sat on the case. Robert Littlefield read the decision. *Tom Roberts moved to approve the language as written, Joe Vasta seconded and it was so voted, 3-0.*

**FY12-27**      **135 Commercial Street (Town Commercial Center Zone), Ted Smith, Architect, LLC on behalf of Eduardo Zaidner** –  
Anne Howard, Robert Littlefield, Tom Roberts and Joe Vasta sat on the case. Robert Littlefield read the decision. *Tom Roberts moved to approve the language as written, Joe Vasta seconded and it was so voted, 3-0.*

**FY12-28**      **656 Commercial Street (Residential 2 Zone), Joshua D. Rego** –  
Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case. Amy Germain read the decision. *Robert Littlefield moved to approve the language as amended, Joe Vasta seconded and it was so voted, 4-0.*

Vice Chair Robert Littlefield postponed the Work Session at 6:59 P.M.

## PUBLIC HEARING

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

### NEW CASES:

**FY12-29**     **225 Commercial Street (Town Commercial Center Zone), Robert Anderson** – The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct an addition and dormer up and along pre-existing, non-conforming setbacks. David Nicolau recused himself because of a conflict of interest. Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.

**Presentation:** Robert Anderson and Loic Rossignon appeared to present the application. The applicants propose to renovate a two-story, mixed residential and commercial use structure to bring it into conformity with the State Building Code. The renovation will include the installation of two ADA-compliant rest rooms and a sprinkler system in the commercial unit. In order to accommodate these improvements, the applicant seeks to expand the first floor area of the structure by adding a small addition to the front and the rear, and a bump-out along the west side of the building. The second and third floors will be renovated and expanded in order to improve the living space for the applicants, including adding a three-foot knee wall on the attic floor and dormers on the east and west sides. The pre-existing, non-conformancy on the west side will be eliminated as both a deck and an exterior stairway will be removed. All work on the north and south sides will remain within the setbacks. Mr. Anderson stated that the project was consistent with the following sections of the Local Comprehensive Plan: Chapter 1, Goal 1, Policy B; Goal 2, Policy A; Chapter 4, Goal 2; Goal 2, Policy A; and Goal 2, Policy B. The proposal will result in a structure that is harmonious with its surroundings and will not be more detrimental to the neighborhood than what currently exists. The project will result in economic benefits to the Town, including increasing the food service options for residents, increasing the Town's tax base and increasing local employment opportunities.

**Public Comment:** None. In the file, there was 1 letter of concern from an abutter and 2 letters from abutters and 3 letters from non-abutters in favor of the project.

**Board Discussion:** The Board questioned Mr. Anderson and Mr. Rossignon.

**Tom Roberts moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct an addition and dormer up and along pre-existing, non-conforming setbacks at the property located at 225 Commercial Street (TCC), Joe Vasta seconded and it was so voted, 5-0.** Tom Roberts will write the decision.

**FY12-30**     **225 Commercial Street (Town Commercial Center Zone), Robert Anderson** – The applicant seeks a Special Permit under Article 2, Sections 2314 B5 and 2460 of the Zoning By-Laws for an increase in seating capacity from 14 seats to 44 seats pending approval of an Economic Development Permit for the additional 30

seats. Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.

**Presentation:** Robert Anderson and Loic Rossignon appeared to present the application. The applicant seeks to expand the commercial area on the first floor and increase the number of seats. Mr. Anderson stated that this aspect of the proposal is consistent with the following sections of the LCP: Chapter 1, Goal 1, Policy B; Goal 2, Policy A; Chapter 5, Goal 1; Goal 1, Policy A; Goal 1, Policy B; and Goal 5. The proposal meets the requirements of Article 2, Section 2314 B5 as the business will interrelate productively with, and help promote, other waterfront activities, make efficient use of harbor frontage in relation to jobs supported or taxes contributed, improve opportunities for visual and pedestrian access to the waterfront and will not adversely impact harbor water quality. The proposal is also consistent with the requirements of Article 5, Section 5330 in that there will be no adverse effects created, such as hazard, congestion or environmental degradation. The benefits to the Town will be as previously stated.

**Public Comments:** None. There was 1 letter of concern from an abutter.

**Board Discussion:** The Board questioned Mr. Anderson and Mr. Rossignon.

***Robert Littlefield moved to grant a Special Permit under Article 2, Sections 2314 B5 and 2460 of the Zoning By-Laws for an increase in seating capacity from 14 seats to 44 seats pending approval of an Economic Development Permit for the additional 30 seats at the property located at 225 Commercial Street (TCC), Harriet Gordon seconded and it was so voted, 4-1 (Amy Germain opposed).*** Tom Roberts will write the decision.

**FY12-31      9 Ryder Street Extension, (Town Commercial Center Zone), Fred Hemley and Francis Iacono, on behalf of Cabral Enterprises –**

The applicants seek a Special Permit under Article 2, Sections 2314 B5, 2440 B5 ad 2460 of the Zoning By-Laws to re-establish the use of a 37-seat restaurant for the service of food and alcoholic beverages at the site of a former 35-seat restaurant with a fish market and to request an increase in seating capacity by 13 seats pending the approval of an Economic Development Permit for the additional 13 seats, for a total of 50 seats. David Nicolau recused himself because of a conflict of interest. Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.

**Presentation:** Fred Hemley and Francis Iacono appeared to present the application. The applicants seek to operate the restaurant from 11:00 A.M. to 1:00 A.M., with only light fare being served after 11:00 P.M. An 8-seat bar is also proposed. They propose a season running from April 1<sup>st</sup> to January 2nd. There will be no negative impacts on the neighborhood and employment opportunities will be created.

**Public Comment:** Jonathan Sinaiko spoke in favor of the application. There was 1 letter in the file in favor of the application.

**Board Discussion:** The Board questioned Mr. Hemley and Mr. Iacono.

***Amy Germain moved to grant a Special Permit under Article 2, Sections 2314 B5, 2440 B5 ad 2460 of the Zoning By-Laws to re-establish the use of a 37-seat restaurant for the service of food and alcoholic beverages at the site of a former***

*35-seat restaurant with a fish market and to request an increase in seating capacity by 13 seats pending the approval of an Economic Development Permit for the additional 13 seats, for a total of 50 seats, at the property located at 9 Ryder Street Extension (TCC), with the condition that the Special Permit shall expire on January 2, 2013, Robert Littlefield seconded and it was so voted, 5-0. Amy Germain will write the decision.*

**FY12-32      23 Court Street, (Residential 3 Zone), Sextus Norden –**

The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to construct an addition and dormers. Robert Littlefield, Amy Germain, David Nicolau, Tom Roberts and Harriet Gordon sat on the case.

**Presentation:** Ted Smith and Sextus Norden appeared to present the application. The applicant seeks to add a second story on the south side, dormers on the north side and a two-story bump-out on the east side of the structure. The existing scale of the structure is 9,800 cubic feet, the neighborhood average is 13,600 cu. ft., the proposed additions will add up to 6,415 cu. ft., for a total of 16,240 cu. ft., 4% above the maximum allowable scale of 15,671 cu. ft. This increase constitutes a 60% increase over the existing scale. Mr. Smith argued that there would be no adverse effects, such as hazard, congestion and environmental degradation as a result of the project. The economic benefits would be the increase in the tax base. The project meets the requirements of categories 5 and 6 of Article 2, Section 2640, as the proposed structure will successfully integrate into its surroundings and there is no impact on the natural light or views from neighboring structures. The applicant has made an effort to use the same materials that now comprise the structure, and to match the size and shape of windows and the roof pitch. The property is in the Historic District and the addition is consistent with the guidelines of the Historic District Commission.

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

**Board Discussion:** The Board questioned Mr. Smith and Mr. Norden. The Board was concerned about the proposed increase in mass of the structure in relation to the size and the proximity of the abutting neighborhood structures. It was the sense of the Board that it would be more appropriate to the neighborhood if the project was revised to conform to the allowable neighborhood scale. The applicant requested to withdraw the application without prejudice.

*David Nicolau moved to grant the request to withdraw Case # FY12-32 without prejudice, Robert Littlefield seconded and it was so voted, 5-0.*

**FY12-33      14 Center Street, Unit #4 (Residential 3 Zone), Gary Reinhardt on behalf of Paul Lyons –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure on a pre-existing, non-conforming lot by adding a dwelling unit and under Article 4, Section 4170 of the Zoning By-Laws for a change of use from commercial to residential.

Robert Littlefield recused himself because of a conflict of interest. David Nicolau chaired the hearing. Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta

also sat on the case.

**Presentation:** Gary Reinhardt and Paul Lyons appeared to present the application. The applicant seeks to change the use of the unit from commercial to residential. The mixed-use building is pre-existing and non-conforming as to its use, as it contains more than 6 units, and as to structure, as the lot is not large enough to accommodate that number of units. Mr. Reinhardt stated that the pre-existing, non-conforming use will remain as the unit count and the lot size are not changing. He argued that the use of the building will be extended pursuant to Article 3, Section 3110 because another residential unit will be added. The benefits of this change to the neighborhood outweigh any adverse effects such as hazard, congestion or environmental degradation. One of the benefits to the neighborhood is that less people will be temporarily illegally parking their vehicles outside the unit, and entering and exiting the unit, as was done when the unit housed the offices of WOMR. The proposed change in use to a residential unit will conform to the rest of the neighborhood, which is primarily residential. By raising the percentage of residential units in the building to 80, FHA loans would become available to other unit owners, and property values in the greater neighborhood would potentially increase, which is a benefit to the Town and the neighborhood. The other non-conformancies on the lot are the two side yard setbacks, the rear yard setback, the height of the building and the lot coverage. Mr. Reinhardt went on to state how the project would satisfy the requirements of Article 4, Section 4170. He then explained how the project was consistent with the following sections of the LCP: The 'Town Vision' which states that a project "...should preserve and enhance historic architecture, Harbor views, the scale of streets and buildings, the mix of uses, and the pedestrian environment that characterize the Town"; Section 1.1, Land Use and Growth Management; 1.2 Goals and Policies, Goal 2, Policy A; Section 4.2, Goal 1, Policy B; Section 4.2, Goal 2; and Section 4.2, Goal 2, Policy C.

**Public Comment:** None. There were 10 letters in the file sent by direct abutters in support of the application. There were no letters in opposition.

**Board Discussion:** The Board questioned Mr. Reinhardt and Mr. Lyons. The Board informed the applicant that a Special Permit under Article 4, Section 4170, as amended, was not required. It was also the sense of the Board that a Variance was needed in order to change the use of the unit from commercial to residential as the non-conformancy was being increased, not just extended. The applicant requested a withdrawal without prejudice.

***Tom Roberts moved to accept the request to withdraw Case # FY12-33 without prejudice, Amy Germain seconded and it was so voted, 5-0.***

Vice Chair Robert Littlefield adjourned the Public Hearing at 9:35 P.M.

## WORK SESSION

Vice Chair Robert Littlefield reconvened the Work Session at 9:35 P.M.

Amy Germain had a question regarding the 12 Center Street case. Russ will report back when he has consulted Town Counsel.

**NEXT MEETING:** The next meeting will take place on January 5, 2012. It will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Amy Germain moved to adjourn at 9:45 P.M. and it was so voted unanimously.*

These minutes were approved by a vote of the Zoning Board of Appeals at their meeting on January 5, 2012.

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2012  
Anne Howard, Chair