

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
January 9, 2014**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David M. Nicolau (left at 10:00 P.M.), Robert Littlefield, Amy Germain, Harriet Gordon (left at 10:20 P.M.), Joe Vasta, Leif Hamnquist and Jeffrey Haley.

Members Absent: None.

Others Present: Russ Braun (Building Commissioner), Gloria McPherson (Town Planner) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair David M. Nicolau called the Work Session to order at 6:45 P.M.

MINUTES: December 19, 2013 – *Joe Vasta moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 3-0.*

PENDING DECISIONS:

FY14-27 **674A Commercial Street (*Residential 1 Zone*), Brad Locke Development, Inc. on behalf of Elizabeth Reid –**

Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case. The applicant has submitted a Non-Conforming Checklist, but has not submitted signed plans. *Amy Germain moved to postpone the approval of the decision, Leif Hamnquist seconded and it was so voted, 5-0.*

FY14-33 **334 Commercial Street (*Town Commercial Center Zone*), Peter and Ann Okun, Broken Wheel Farm, LLC, d/b/a Purple Feather Café –**

Robert Littlefield, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case. Amy Germain read the decision. *Robert Littlefield moved to approve the language as written, Joe Vasta seconded and it was so voted, 4-0.*

Chair David M. Nicolau adjourned 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 seven members of the Zoning Board of Appeals present and none absent.

POSTPONED CASES:

FY14-28 664R Commercial Street (*Residential 3 Zone*), Brad Locke Development, Inc. on behalf of Basil P. Santos et ux –

The applicant seeks a Special Permit under Article 2, Sections 2440, footnote 8 and Section 2640 of the Zoning By-Laws for the construction of more than six dwelling units on a lot and for a deviation in building scale. This case has been postponed until the February 6, 2014 Public Hearing.

FY14-32 9 Telegraph Hill (*Residential 1 Zone*), Deborah Paine, Inc. on behalf of John R. Lamb –

The applicant seeks a Special Permit under Article 2, Section 2640E of the Zoning By-Laws to remove an existing deck and construct an 18'6" x 21'6" addition with a flat roof/roof deck above on the south elevation; construct a new deck on the south elevation with stairs down to grade and stairs up to the roof deck; modify the existing dormers on the south side of the roof from hip roof dormers to gable roof dormers; push out the front face of the dormers slightly and add a door to the southwest dormer for access to the roof deck; connect the existing dormers on the south side of the roof with a new shed dormer to allow for more windows on the second floor; and modify the existing dormers on the north side of the roof from hip roof dormers to gable roof dormers. David M. Nicolau recused himself because of a conflict of interest. Vice Chair Robert Littlefield informed the applicants' agents that there were only four Board members available to sit on the case. The applicants, needing a unanimous vote in order to be granted a Special Permit, could choose to continue until a five-member Board could be seated or to proceed with a four-member Board. Attorney Murphy chose to proceed, however he requested that the Chair take a poll of the Board before a vote is taken. The chair granted the request. Robert Littlefield, Amy Germain, Harriet Gordon and Leif Hamnquist sat on the case.

Presentation: Attorney Lester J. Murphy and Trevor Pontbriand presented the application. Mr. Pontbriand submitted plans that showed a redesign of the first floor, indicating a re-positioning of the stairs from the deck to the ground. The stairs will be moved back into the deck. The applicant seeks to renovate and put an addition on the existing structure. The lot in question is similar to other lots on Telegraph Hill Road, but smaller than the lots located on Point Street. Attorney Murphy argued that the proposed deviation in scale meets two of the criteria, subparagraphs 1 and 5, as required in Article 2, Section 2640E. The neighborhood average scale is 23,587 cu. ft. The maximum allowed scale is 29,472 cu ft. The existing house has a scale of 36,240 cu. ft. The proposed additional scale is 4,140 cu. ft., for a total of 40,380 cu. ft. or an 11.42% increase in the volume of the structure. He argued that the social, economic and other benefits to the

neighborhood or Town outweigh any adverse effects such as hazard, congestion or environmental degradation. The structure will be more livable and usable for the owners and the increase in the structure's volume will increase the property taxes and generate more revenue for the Town. In addition, the project will employ local contractors, many of whom are already involved in the project, with more becoming involved as the work progresses. Lot coverage will increase slightly from 12.72% to 14.94%. All setbacks are being met. Attorney Murphy asserted that no adverse effects to the neighborhood or Town will result from this project. On the contrary, the property will be enhanced and improved, as will the neighborhood. Thus, the criteria set forth under Article 5, Section 5330 has been met as required if a deviation were to be approved by the Board. As required pursuant to Section 2640E, subparagraph 1, the addition is in keeping with the goals and objectives of the Local Comprehensive Plan under Section 1, Goal 1, Policy B and Goal 3 in that the structure will be consistent with the predominant scale, massing and density as well as the style of the neighborhood. In addition, the project is in keeping with Section 4, Goal 2 and Policy A of the LCP. As to subparagraph 5 of Section 2640E, the addition successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to or views from neighboring structures. Attorney Murphy argued that the structure has, and will continue to have after the project is complete, an appropriate scale for the neighborhood, the Telegraph Hill subdivision. In this subdivision, the smallest building has a scale of 31,640 cu. ft., the largest a scale of 46,320 cu. ft., with the average scale being 38,335 cu ft. The structure will continue to be harmonious and compatible with the surrounding buildings in the neighborhood. The Point and Commercial Street neighborhood and the Telegraph Hill Road neighborhood are very different and distinct. Commercial and Point Streets have older, smaller structures on smaller lots, and Telegraph Hill Road has larger lots and larger structures. Attorney Murphy argued that the 250 ft. radius that is used to determine neighborhood scale and that encompasses this structure doesn't really accurately reflect the neighborhood where the structure exists. He stated that once the Board views Mr. Pontbriand's presentation and sees what the addition will look like from the vantage point of looking up from Commercial Street, it will determine that the concerns of neighbors in that area that the proposed structure will seem to loom over them are misplaced. The addition is on the first floor of the structure and will not have a minimal impact on what can be seen from below Commercial and Point Streets. Mr. Pontbriand submitted additional materials; a copy of the assessor's map, color-coded to reflect the location of neighbors who had sent letters in favor, of concern or in opposition to the project and properties where no letters were sent concerning the project, a list of scale calculations for properties on Telegraph Hill and photos looking up at the property from locations on Commercial Street during the winter and summer. He explained the exhibits to the Board and presented a graphic visualization of what the structure will look like with the addition and what the structure will look like if one were standing on Commercial Street and looking up the hill at the structure. He reiterated that the neighborhood of Telegraph Hill Road and Point and

Commercial Street down the hill were two distinct different neighborhoods.

Public Comment: Bruce Deeley, Jerome Crepeau and Louis Lima, all abutters, spoke in opposition to the project. There was a petition signed by 26 abutters in opposition to the project. There were 21 letters, all but 1 from abutters, in support and 3 letters in opposition to the application.

Board Discussion: The Board questioned Mr. Pontbriand about the project details. The Board was read a Planning Board deed restriction that was recorded against a property on Telegraph Hill Road when it ruled on a site plan review for the subdivision. It stated that all areas of the lot below the 68' contour shall remain undisturbed and no clearing, cutting or trimming of trees or vegetation shall be permitted. Attorney Murphy responded that the entire property in question was below the 68' contour line. The Board questioned Mr. Pontbriand about the supporting pillars for the addition that were not shown on the plans. He stated that the point at which the deck is the highest off the ground is above the 60' contour and the height of the deck is 69.59', so the highest point of the deck above the ground is 9.59'. The Board decided to continue the case and requested that the applicants' agent(s) meet with the neighbors to clarify, review and discuss the plans. In addition, the Board would like to review and clarify the Planning Board deed restriction regarding the Telegraph Hill Road subdivision, allow members to conduct individual site visits and requested that Mr. Pontbriand show the supporting deck pillars with elevations and dimensions on the site plan. Attorney Murphy agreed to sign a waiver of the time constraints.

Amy Germain moved to continue Case #FY14-32 until the February 6, 2014 Public Hearing with the requirement that the Planning Board deed restriction on the property is clarified, that all Board members perform a site visit and that the supporting pillars on all plans are dimensioned and elevations for those pillars are shown, Harriet Gordon seconded and it was so voted, 4-0.

- FY14-34** **50 Commercial Street (Residential 2, Zone), David High –**
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 8.5' x 21' addition to the west elevation and to add two doghouse dormers. Attorney Lester J. Murphy appeared to submit a letter requesting a postponement and a waiver of the time constraints. *Robert Littlefield moved to approve the request to postpone Case #FY14-34 to the January 23, 2014 Public Hearing, Leif Hamnquist seconded and it was so voted, 5-0.*
- FY14-35** **106 Bradford Street (Residential 3 Zone), Andrew Pollock –**
The applicant seeks a Special Permit under Article 2, Section 2440, E3f and Article 3, Section 3420 of the Zoning By-Laws to operate a seasonal outdoor Farmer's Market at the Bas Relief subject to dates approved by the Board of Selectmen. This case is postponed until January 23, 2014 Public Hearing.
- FY14-36** **15 Commercial Street (Residential 1 Zone), David L. Silva on behalf of the Red Inn –**
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning

By-Laws for the renewal of their indoor entertainment license for a Sunday Jazz Brunch from Memorial Day weekend to Columbus Day weekend from 11:00 A.M. to 2:00 P.M. and to extend the time period from Memorial Day weekend through the New Year (January 1st) with hours of operation from 11:00 A.M. to 5:00 P.M. Amy Germain and David M. Nicolau recused themselves because of conflicts of interest. Jeffrey Haley disclosed that he is an abutter and will fill out a disclosure form. Vice Chair Robert Littlefield informed the applicant that there were only four Board members available to sit on the case. The applicant, needing a unanimous vote in order to be granted a Special Permit, could choose to continue until a five-member Board could be seated or to proceed with a four-member Board. The applicant chose to proceed. Robert Littlefield, Harriet Gordon, Joe Vasta and Jeffrey Haley sat on the case.

Presentation: David Silva presented the application. Mr. Silva is requesting that the restaurant be allowed to renew the Special Permit for the Jazz Brunch, which was very successful last year. He seeks to not only extend the period of time he is allowed to hold the Brunch until January 1st, but also to extend the hours of the Brunch from 2:00 P.M. to 5:00 P.M. Mr. Silva is also requesting that the Special Permit be in effect for 3 years. There have been no noise complaints registered with the Police Department during the past year.

Public Comment: None. There was 1 letter in support and 1 letter in opposition to the application.

Board Commission: The Board briefly questioned Mr. Silva and discussed his requests to revise the Special Permit.

Joe Vasta moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the renewal of their indoor entertainment license for a Sunday Jazz Brunch from Memorial Day weekend to Columbus Day weekend from 11:00 A.M. to 2:00 P.M. and to extend the time period from Memorial Day weekend through the New Year (January 1st) with hours of operation from 11:00 A.M. to 5:00 P.M. at the property located at 15 Commercial Street (Res 1), with the condition that the Special Permit runs with the applicant and will expire on January 1, 2017, Harriet Gordon seconded and it was so voted, 4-0. Harriet Gordon will write the decision.

NEW CASES:

FY14-37 269 Commercial Street (Town Commercial Center Zone), Paul Melanson, dba Tin Pan Alley –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to operate an 86-seat restaurant (formerly known as El Mundo) with a full liquor and food service and live entertainment and outdoor seating. David M. Nicolau recused himself because of a conflict of interest. Robert Littlefield, Amy Germain, Harriet Gordon, Joe Vasta and Jeffrey Haley sat on the case.

Presentation: Paul Melanson, Anthony Dejacima and John Kelly presented the application. The applicants seek to operate the restaurant with the same type of entertainment and liquor license and the same outdoor and indoor seating capacity as the previous establishment. They intend to operate from April through January 2nd with the hours of operation being 11:00 A.M. to 11:00 P.M. The licensed

capacity was for 86 seats. The number of seats granted by a previous Special Permit was 76 seats, 56 inside and 20 flex seats outside. The applicant is seeking to increase the number of seats to the licensed capacity of 86, with either 66 seats inside and 20 flex seats outside or 76 seats inside and 10 flex seats outside.

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

Board Discussion: The Board briefly questioned Mr. Melanson, Mr. DeJacima and Mr. Kelly. The Board asked about the proposed entertainment and how the applicants intend to prevent alcohol from being taken off the deck on the beach. The entertainment will consist of piano music with a vocalist performing and only in the front section of the restaurant. There is a door on the side of the building for emergency egress. The exterior deck will have no access to or from the beach and signage will be placed to indicate that alcohol shall be removed from the premises. The hours of entertainment will be from 11:00 A.M. until 3:00 P.M. and 9:00 P.M. until 12:00 A.M. on Sunday and 9:00 P.M. until 12:00 A.M., Monday through Saturday.

Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to operate an 86-seat restaurant (formerly known as El Mundo) with a full liquor and food service and live entertainment and outdoor seating at the property located at 269 Commercial Street (TCC) with the following conditions: that the Special Permit shall expire on January 2, 2015, that there shall be no amplified or live entertainment outside, that all windows and doors shall remain closed during the hours of entertainment, that signage be posted indicating that no alcohol shall be removed from the premises on the outside deck exit, Joe Vasta seconded and it was so voted, 5-0. Amy Germain will write the decision.

FY14-38 8 Cudworth Street (Residential 3 Zone), Ted Smith, Architect, LLC on behalf of Joseph Kaye –

The applicant seeks a Special Permit under Article 2, Sections 2560 and 2640 and Article 3, Section 3110 of the Zoning By-Laws to construct a covered porch up and along the pre-existing, non-conforming front yard setback and for a deviation in building scale. David M. Nicolau recused himself because of a conflict of interest. Robert Littlefield, Amy Germain, Harriet Gordon, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Ted Smith presented the application. The applicant seeks to add a covered porch to the front of the house, which is an L-shaped structure. The covered porch will be within the 'L', on the east side, facing Cudworth Street. The addition of the porch is why relief is being sought. The property is non-conforming as to the front yard setback. The porch will line up with the front of the house and extend that non-conforming setback. Under Article 2, Section 2640E, the requirements cited in subparagraphs 5 and 6 are met as the structure with the addition of the porch will integrate into its surroundings, is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a negative impact on natural light to neighboring structures. In addition, the property is located in the Provincetown Historic District and the porch is consistent with the Historic District Guidelines and approval of the deviation

would further the purpose and intent of the bylaw. Mr. Smith stated that the addition of the porch will not be more detrimental to the neighborhood or Town than what exists and there would be no negative effects on the neighborhood or Town such as hazard, congestion or environmental degradation.

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

Board Discussion: The Board asked Mr. Smith if there were any economic or social benefits as a result of the project. He responded that there would be economic value added to the structure resulting in an increase in property taxes. He cited no social benefits. He explained that pursuant to footnote 1 of Article 2, Section 2560, if the setback in Res 3 is less than 20', in which case an average of the setbacks of the two neighboring structures can be taken, however in this case those structures are further back. The non-conforming front yard setback is being extended as the porch will line up with the plane as the front of the structure.

Harriet Gordon moved to grant a Special Permit under Article 2, Sections 2560 and 2640 and Article 3, Section 3110 of the Zoning By-Laws to construct a covered porch up and along the pre-existing, non-conforming front yard setback and for a deviation in building scale at the property located at 8 Cudworth Street (Res 3), Joe Vasta seconded and it was so voted, 5-0. Leif Hamnquist will write the decision.

FY14-39

7 Cook Street (Residential 3 Zone), Lester J. Murphy, Jr., Attorney, on behalf of Doreen Birdsell and Lisa A. Feistel –

The applicants seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to confirm a change in use from a multi-family use to a guest house with six units as authorized in Case No. 94-89 (decision never recorded) and to allow the use of the shed as an additional guest unit and for a Parking Variance under Article 2, Section 2471 of the Zoning By-Laws for a reduction in the number of required parking spaces from eight to five. Harriet Gordon recused herself because of a conflict of interest. Jeffrey Haley disclosed that he is the owner of a guesthouse in Town. Robert Littlefield, Amy Germain, Joe Vasta, Leif Hamnquist and Jeffrey Haley sat on the case.

Presentation: Attorney Lester J. Murphy, Doreen Birdsell and Lisa A. Feistel presented the application. The applicants seek to confirm a change in use that was authorized in 1995 and to modify that decision by allowing an additional guest unit. They also seek to have the Board authorize a Variance from the parking requirements as the site does not have enough space to provide parking for all the units. The property is currently licensed as a 7-unit guesthouse, including the cottage, 7 bedrooms and the manager's quarters with 1 bedroom. The property recently went under agreement and as a consequence research was conducted into the property records and it was found that there were issues related to the use of the property, the number of units on the property and the septic system. In 1995, the previous owner sought, and was issued, a Special Permit to change the use of the structures from 4 residential units to a guesthouse, including a cottage. The property was non-conforming as to lot area and density. The restrictions of the Special Permit included a reduction in the number of kitchens on the site from 4 to 2, the installation of a Title V septic system, that no tandem parking be allowed

on the site and that off-site parking be provided. In addition, the existing shed could not be converted to a guest room. There would be a total of 5 guest units, a manager's quarters and the cottage, or 6 guest units. That Special Permit was never recorded at the Registry of Deeds. At some point in the past, the shed was converted to a studio and then to a guest unit. And upon further research, it was found that the additional guest unit had never been authorized by the Zoning Board of Appeals. The applicants are seeking to legitimize the guesthouse use of the property by having the Board grant a new Special Permit authorizing the guesthouse use of the property. In addition, if a new Special Permit is granted, the applicants seek to have the Board remove the condition regarding the issue with the shed and allow the guesthouse to retain 7 guest units and the manager's quarters. Attorney Murphy argued that the Board based on its 1995 decision, must have found, pursuant to Article 3, Section 3110, that the extension or alteration of the pre-existing use was no substantially more detrimental to the neighborhood in converting from 4 multi-family residential units to the guesthouse. And since 1995, it has been operated as such. The guesthouse has not been detrimental to the neighborhood, it has been a good neighbor over the years, and the neighbors support it and one provides off-site parking for its use. If the Board confirms the use, it will allow the guesthouse to continue to provide accommodations for tourists and insure that additional rooms tax revenue continue to be collected by the Town. The social and economic or other benefits to the Town or neighborhood outweigh any adverse effects such as hazard, congestion and environmental degradation. If the Special Permit is granted, the property owners have agreed to connect to the sewer system and they have filed for an Economic Development Grant for the additional gallonage for the 8th bedroom. The lot is already non-conforming as to density, therefore under Article 3, Section 3110, the Board could extend the non-conformancy to allow an additional guest unit. Attorney Murphy explained that 8 parking spaces are required. The site plan shows 3 parking spaces on site, but can accommodate 5 vehicles with a tandem arrangement. Off-site, overflow parking is provided now at 8 Cook Street and in an area located behind the Provincetown Art Museum by arrangement of the owners of those properties. These spaces will continue to be available in the future. However, about 60% of guests that have stayed at the guesthouse have not brought cars.

Public Comment: None. There was 1 letter in support and 1 letter in opposition to the application. There was a petition signed by 12 abutters in support of the application.

Board Discussion: The applicants were questioned about the location of the off-site parking and how the on-site parking was configured. The Board discussed whether it should consider the application or continue because of the late hour. The Board decided to try and render a decision that evening and resumed questioning Attorney Murphy, Ms. Birdsell and Ms. Feistel. The Board discussed the density issue and whether the addition of the extra guest unit would be substantially more detrimental to the neighborhood or Town. Also discussed was whether or not the use was conforming as a 6-unit guesthouse plus a manager's quarters pursuant to staff notes. The Building Commissioner clarified his opinion

on the issue. There is nothing in the definition of a 'guesthouse' that says that requires the manager to have a dwelling unit. He has ignored that accommodation in his calculation of allowable density. In this case because the lot is 6000+ sq. ft. for this use, in his opinion, the applicants are allowed 6 guest units plus the manager's unit. An increase in density would require a Variance. Attorney Murphy disagreed with that opinion that the lot is conforming because the requirement for a dwelling unit requires 2500 sq. ft. plus 1000 sq. ft. for each guest unit, whether one goes back to the original multi-family or what was authorized by the Special Permit that was never recorded. The Board discussed whether the existing use is conforming and by adding a unit, a non-conformancy would be created and a Variance would be required. Or whether the use was pre-existing, non-conforming in which case the issue was whether the non-conforming use could be altered or extended by adding an 8th unit or if that constituted an increase in the non-conformancy, requiring a Variance.

Amy Germain moved to continue Case #FY14-39 until the January 23, 2014 Public Hearing. There was no second.

The Board continued its discussion and questioning of Attorney Murphy and the applicants.

Jeffrey Haley moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to confirm a change in use from a multi-family use to a guest house with six units as authorized in Case No. 94-89 (decision never recorded) and to allow the use of the shed as an additional guest unit at the property located at 7 Cook Street (Res 3), Joe Vasta seconded and it was so voted, 4-1 (Amy Germain opposed). Robert Littlefield will write the decision.

Joe Vasta moved to grant a Parking Variance under Article 2, Section 2471 of the Zoning By-Laws for a reduction in the number of required parking spaces from eight to five at the property located at 7 Cook Street (Res 3), Leif Hamnquist seconded. The Board discussed the motion. The Board voted to amend the motion.

Leif Hamnquist moved to grant a Parking Variance under Article 2, Section 2471 of the Zoning By-Laws for a reduction in the number of required parking spaces from eight to five at the property located at 7 Cook Street (Res 3) with the condition that the property will have access to 4 off-site and off-street parking spaces at all times, Joe Vasta seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

NEXT MEETING: The next meeting will take place on January 23, 2014. 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 12:00 A.M. and it was so voted unanimously.***

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on January 23, 2014
David M. Nicolau, Chair