

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
January 23, 2014**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David M. Nicolau Robert Littlefield, Amy Germain (arrived at 6:34 P.M.), Harriet Gordon, Joe Vasta, Leif Hamnquist and Jeffrey Haley (arrived at 6:45 P.M.).

Members Absent: None.

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

WORK SESSION

Chair David M. Nicolau called the Work Session to order at 6:30 P.M.

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 not submitted signed plans. *Joe Vasta moved to postpone the approval of the decision until the February 6, 2014 Public Hearing, Robert Littlefield seconded and it was so voted, 5-0.*
- FY14-36** **15 Commercial Street (*Residential 1 Zone*), David L. Silva on behalf of the Red Inn –**
Robert Littlefield, Harriet Gordon, Joe Vasta and Jeffrey Haley sat on the case. Harriet Gordon read the decision. *Robert Littlefield moved to approve the decision as amended, Leif Hamnquist seconded and it was so voted, 4-0.*
- FY14-39** **7 Cook Street (*Residential 3 Zone*), Lester J. Murphy, Jr., Attorney, on behalf of Doreen Birdsell and Lisa A. Feistel –**
Robert Littlefield, Amy Germain, Joe Vasta, Leif Hamnquist and Jeffrey Haley sat on the case. David M. Nicolau recused himself because of a conflict of interest. Robert Littlefield read the decision.
Amy Germain raised an issue about a conflict of interest on the part of Jeffrey Haley as his partner owns a guesthouse. He should have filled out a disclosure form and submitted it to the Board of Selectmen to approve his request to adjudicate the application. The Board discussed the issue. It was joined by Attorney Lester J. Murphy. He stated that no one raised an objection at the

hearing of the application. He made the potential conflict public, albeit he didn't follow the proper procedure. He, on behalf of his client, was prepared to take the risk that no one will appeal the decision on that basis. If someone filed an appeal, the matter could be remanded to the Board, but if no one does and the appeal period comes to an end and no one has appealed, the decision stands. The Board was polled by Vice Chair Robert Littlefield as to how it would move forward ***Amy Germain moved to request that Town Counsel be consulted on the conflict of interest issue and to continue Case #FY14-39 until the February 6, 2014 Public Hearing, Leif Hamnquist seconded and it was so voted, 3-0-2 (Joe Vasta and Jeffrey Haley abstaining).***

Amy Germain requested that the decision be e-mailed to Board members for further review.

Chair David M. Nicolau postponed the Work Session at 7:05 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:05 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. This case is continued to the February 6, 2014 Public Hearing.

POSTPONED CASES:

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. David M. Nicolau and Joe Vasta recused themselves because of conflicts of interest. Amy Germain disclosed that she has a financial interest in a property located at 25 Commercial Street. Vice Chair Robert Littlefield explained to the applicant that since there were only four members of the Board seated on the case and the granting of a Special Permit required four assenting votes, he had the choice of moving forward or postponing until a five-member Board could be seated. Attorney Murphy, on behalf of the applicant, chose to proceed, but requested that the Board be polled before a vote is taken. Robert Littlefield, Amy Germain, Harriet Gordon and Leif Hamnquist sat on the case.

Presentation: Attorney Lester J. Murphy, Jose Pimentel and Tom Fitzgerald presented the application. This application is for the front structure on the property. The proposed alterations involve a rear addition to that structure which will include a larger bedroom and bathroom on the west side of the first floor, a new layout of the kitchen and bathroom and the addition of a dormer on both the east and west side on the second floor to match the existing dormers. Attorney Murphy said that the project meets three of the six criteria required by Article 2, Section 2640E; subparagraphs 1, 5 and 6. The proposed addition will slightly expand the size of one bedroom and bathroom on the first floor and improve headroom on the second floor. The size of the addition is 176 sq. ft. in size. In terms of scale, the neighborhood average scale is 17,922 cu. ft. The allowed neighborhood scale is 20,610 cu. ft., the existing scale is 25,794 cu. ft., the proposed additional scale is 2,130 cu. ft., for a proposed total of 27,924 cu. ft. or an 8.25% increase. The structure is already over scale and the addition would constitute a modest increase. The principal structures in the neighborhood have a wide variety of volumes. Attorney Murphy argued pursuant to Article 5, Section 5330, that the social, economic and other benefits outweigh any detrimental effects. The space will become more usable for the applicant. The structure will be more in keeping with the neighborhood and the historic character of the west end. It will result in an increase in the assessed value of the property and an increase in the tax revenue of the Town. The addition is one-story in height and will be barely visible from Commercial Street. Attorney Murphy reiterated that pursuant to Section 2640E, subparagraph 1, the proposed addition is in keeping with the intent and goals of the Local Comprehensive Plan, Section 1, Goal 1, Policy B and Goal 3, Section 4, Goal 2 and Policy A. The applicant is trying to bring back the historical character of the structure and the proposed design will more closely reflect that of a west end structure. Pursuant to subparagraph 5 of Section 2640E, the project will successfully integrate into its surroundings and is sited in such a manner that minimizes the appearance of mass from the streetscape and will not affect the natural light or views from neighboring structures. As to subparagraph 6, the addition is in keeping with the goals of, and has been approved by, the Historic District Commission. The proposed dormers will match

the existing doghouse dormers on the structure and will not change the visual image from the streetscape. The addition is in the rear and will not be very visible because it is behind an existing portion of the building. Mr. Pimentel gave his presentation which included the submission of computer-generated photographs of the structure.

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

Board Discussion: The Board questioned Attorney Murphy and Mr. Pimentel. The Board discussed the photographs and discussed the criteria of Section 2640E, whether the addition would be visible from the streetscape. Attorney Murphy requested that the applicant be allowed to withdraw the application without prejudice.

Harriet Gordon moved to grant the request to withdraw Case #FY14-34 without prejudice, Leif Hamnquist seconded and it was so voted, 3-1 (Amy Germain opposed).

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 has been withdrawn. *Robert Littlefield moved to accept the withdrawal of Case #FY14-35, Joe Vasta seconded and it was so voted, 5-0.*

NEW CASES:

FY14-40 200 Commercial Street (Town Commercial Center Zone), Charles M. Sabatt, Counsel and Christopher J. Snow, Co-counsel on behalf of Designer Fragrances and Cosmetics Company, dba Kiehl's since 1851 –

The applicant seeks a Special Permit under Article 2, Section 2360 and 2362 (3) of the Zoning By-Laws to operate as a retail purveyor of skin care, hair care and related cosmetic products for men and women. David M. Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon and Joe Vasta sat on the case.

Presentation: Attorney Charles Sabatt, Attorney Christopher J. Snow and Tim Schaefer presented the application. Attorney Sabatt stated that the business will be seasonal with hours of operation from 10:00 A.M. until 8:00 P.M. The company will employ six people recruited from the local population. There will be no major structural changes in the building, however the exterior trim will be painted and a sign will be posted at the location. Kiehl's since 1851 sells skin care products, such as cleansers, scrubs, eye, lip and hair moisturizers, sun care toners, hair care products, body lotions, hand and foot treatments, sun protection and products for men, such as cleansers and pre-shave and shaving products. The company has 58 stores throughout the United States. In Massachusetts, there are only 3 stores, all located in the Boston area. Their products are sold online and by some separate companies, one of which is located in Falmouth and the other in Vineyard Haven. Unlike the typical chain store, this company is very low key and does not advertise. All of their promotion is through word-of-mouth. The brand is not universally known or associated with areas where other chain stores are located. It is part of the mission statement of this company to be charitable. As to Article 2,

Section 2362 (3), Attorney Sabatt stated that the two prongs of the test were the impact on the neighborhood and Town's visual character. He reviewed a letter from the Attorney General of Massachusetts, dated October 15, 2010, that specifically addressed this by-law, stating that the by-law refers to the economic impact that formula businesses may have, such as their potential negative impact on the Town's economy or economic vitality or threat to the Town's tourist economy. The Attorney General cautioned that when a permit was being decided, the Town may not consider the competitive effect of formula businesses on surrounding businesses. The question for the Board to consider is whether the proposal in some way undermines the attractiveness of Provincetown as a tourist destination, not whether the business is competitive or economically advantageous. Attorney Sabatt argued that there will be no impact on the neighborhood as Kiehl's is not a destination business, so that there will be no increase in traffic or need for more parking in the area. No food will be served at the premises, so issues of health, water or septic do not pertain. In addition, there will be no changes in the lighting at the premises, it is a seasonal business with limited hours of operation, the nature of the business does not have noise implications for the neighborhood and there will be no visual impacts since there will be no changes to the building. Pursuant to Article 5, Section 5330, there will be no hazard, congestion or environmental degradation related to this proposal and the social, economic or other benefits are that the retail space will be occupied by a vibrant business, local employees will be employed and useful and healthy products will be sold.

Public Comment: Carolyn Kramer, Lawrence Moran, Michael Poniatowski, Theresa Hickok, Christine Horovitz and Fred Biddle spoke against the application. There were 6 letters in favor and none in opposition to the application.

Board Discussion: The Board questioned Attorney Sabatt, Attorney Snow and Mr. Schaefer. The Board questioned Attorney Sabatt about the corporate structure of L'Oreal, its parent company, and the nature of its relationship with Kiehl's, the photograph of the signage and its location at the premises and the Attorney General's letter. The Board also discussed the pros and cons of having the business in Town, what the character of the Town is and whether Kiehl's would be in keeping with, or affect, that character in some way.

Robert Littlefield moved to grant a Special Permit under Article 2, Section 2360 and 2362 (3) of the Zoning By-Laws to operate as a retail purveyor of skin care, hair care and related cosmetic products for men and women at the property located at 200 Commercial Street (TCC) with the conditions that the Special Permit run with the applicant, that the applicant submit a fully-executed, redacted lease and that all window signs not exceed 25% of window areas, Joe Vasta seconded and it was so voted, 4-1 (Amy Germain opposed). Robert Littlefield will write the decision.

FY14-41

838 Commercial Street (Residential 1 Zone), Mariellen Serena –

The applicant seeks a Special Permit under Article 3, Sections 3110 and 3115 of the Zoning By-Laws to demolish and reconstruct a garage, making the west side

setback and front setback less non-conforming on the lot. 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.

Discussion: Mariellen Serena presented the application. The garage is a pre-existing, non-conforming structure that she seeks to make less non-conforming and safer for the neighborhood. She is proposing to demolish it because it is in a state of disrepair and unusable as a garage because of its size. She is seeking to rebuild a larger garage. The existing garage is 18' by 18' and the proposed will be 24' by 24'. Currently the garage is only conforming on the east and north sides, which will remain as such. The garage is non-conforming on the south and west sides. The west side setback will be increased to sit 1' off the lot line, as it currently encroaches on that lot line. However, she explained, it will actually increase the distance off the lot line by 17' due to a claim she had made on an additional piece of land on the west side of her property. This claim has been documented at the Registry of Deeds. The proposed garage will include a storage space above. The existing garage is the smallest building in the neighborhood. She stated that recently ten garages have been built across the street, all two-story constructions, and encompassing many different designs. Her proposed garage will be traditional-looking and exhibit a Cape Cod style. She has reduced the size and volume of the garage due to the Board's concerns about those issues when she sought a Special Permit several months ago. A 3'6" knee wall has been removed and the overall height reduced. On the east side, a previously proposed 8' dormer with four windows has been revised to a 6' dormer with one window. On the west side, an 8' dormer with two windows and three windows and a door has been revised to a 6' dormer with one window and two windows and a door. The two large windows previously proposed for the Commercial Street side have been revised to three smaller windows. The overall height of the proposed garage will be 21.3". She argued that the non-conformancy is not being increased and the garage will not be more detrimental to the neighborhood. The garage will integrate into the neighborhood and the property will be assessed at a higher value bringing more tax money to the Town. No adverse effects will result from this project.

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

Board Discussion: The Board questioned Ms. Serena. The Board discussed the strip of land claimed by Ms. Serena and noted that the applicant had not submitted the required Non-Conforming Checklist. Board members were encouraged to make a site visit if they had not done so. The site is staked. The Board decided to continue the case to the February 20, 2014 Public Hearing.

Amy Germain moved to continue Case #FY14-41, Leif Hamnquist seconded and it was so voted, 5-0.

David M. Nicolau adjourned the Public Hearing at 10:25 P.M.

WORK SESSION

David M. Nicolau reconvened the Work Session at 10:25 P.M.

PENDING CASES:

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

Robert Littlefield, Amy Germain, Harriet Gordon, Joe Vasta and Jeffrey Haley sat on the case. The decision was not ready.

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

Robert Littlefield, Amy Germain, Harriet Gordon, Joe Vasta and Leif Hamnquist sat on the case. Leif Hamnquist read the decision. *Robert Littlefield 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 February 6, 2014. It will consist of a Work Session at 6:00 P.M. followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Amy Germain moved to adjourn at 11:00 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on February 6, 2014
David M. Nicolau, Chair