

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
April 3, 2014**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** David M. Nicolau, Amy Germain Harriet Gordon, Leif Hamnquist (left at 8:30 P.M.), Jeffrey Haley, Joe Vasta (arrived at 6:35 P.M.) and Peter Page.

**Members Absent:** Robert Littlefield (excused).

**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:**

**FY14-42**      **175 Bradford Street Extension (*Residential 3 Zone*), Victor DePoalo –**  
David M. Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon and Jeffrey Haley sat on the case. The reading of the decision was postponed.

**FY14-44**      **85/87 Shank Painter Road (*General Commercial Zone*), MacGregor Hay on behalf of Bay Ocean Properties, LLC –**  
Robert Littlefield, Amy Germain, Harriet Gordon, Jeffrey Haley and Peter Page sat on the case. Amy Germain read the decision. *Jeffrey Haley moved to accept the language as written, Leif Hamnquist seconded and it was so voted, 5-0.*

**FY14-49**      **9 Wareham Road (*Residential 3 Zone*), Helen Ryde and Kate Schiappa –**  
David M. Nicolau, Amy Germain, Leif Hamnquist, Jeffrey Haley and Peter Page sat on the case. Leif Hamnquist read the decision. *Amy Germain moved to accept the language as amended, Jeffrey Haley seconded and it was so voted, 5-0.*

**FY14-50**      **10 Harbour Drive (*Residential 1 Zone*), William N. Rogers, II, on behalf of Bay Harbour LLC, II –**  
Amy Germain, Harriet Gordon, Leif Hamnquist, Jeffrey Haley and Peter Page sat on the case. The file was not complete as it was missing letters from the public written in support of the application. The reading of the decision was postponed.

**FY14-51**      **8 Harbour Drive (*Residential 1 Zone*), William N. Rogers, II, on behalf of Amanda Burden –**  
Amy Germain, Harriet Gordon, Leif Hamnquist, Jeffrey Haley and Peter Page sat

on the case. The file was not complete as it was missing letters from the public written in support of the application. The reading of the decision was postponed.

Chair David M. Nicolau postponed the Work Session at 7:00 P.M.

## PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:02 P.M. He explained the Public Hearing procedures to the public. There were seven members of the Zoning Board of Appeals present and one absent.

### CONTINUED CASES:

**FY14-47 5 Dyer Street (*Residential 3 Zone*), Derik Burgess of Cape Associates on behalf of Jackie LaLonde (continued from March 20, 2014) –**  
The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a dormer on the rear elevation. David M. Nicolau and Harriet Gordon recused themselves because of conflicts of interest. Amy Germain, Joe Vasta, Leif Hamnquist, Jeffrey Haley and Peter Page sat on the case.  
**Presentation:** Derik Burgess appeared to present the application. He has submitted revised plans and the scale calculation hasn't changed as a result of the revision. The applicant seeks to convert an attic into a bedroom in order to increase the height of an existing kitchen ceiling, enlarging the kitchen space. The attic will be enlarged by a dormer in the rear of the building approximately 4' back from the intersecting ell. The dormer will not be visible from a public way. Pursuant to Section 2640E, subparagraph 4, Mr. Burgess argued that every other building on Dyer Street is large so the addition of the dormer will not disrupt the character of the neighborhood, pursuant to subparagraph 5, the proposed addition will successfully integrate into the surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and pursuant to subparagraph 6, the addition is consistent with Historic District Guidelines and has been approved by the Historic District Commission. He added that there are projects of similar scope in Town that have been approved by the Board.  
**Public Comment:** None. There were 3 letters in support of the application.  
**Board Discussion:** The Board discussed the scale and whether the addition was more detrimental than what exists. The Board noted that the existing structure is already 4000 cu. ft. larger than the allowable scale. It was also noted that the several scale calculations were missing from the application. The Board will continue the case until the application is complete. The Board also requested that Mr. Burgess submit plans showing existing elevations.  
***Leif Hamnquist moved to continue Case #FY14-47 until April 17, 2014, Peter Page seconded and it was so voted, 3-2 (Joe Vasta and Jeffrey Haley opposed).***

- FY14-48**      **4 Bradford Street (*Residential 3 Zone*), Kenneth S. Johnson –**  
 The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, and Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to enlarge a cottage with pre-existing, non-conforming side and rear setbacks. David M. Nicolau recused himself because of a conflict of interest. Amy Germain, Harriet Gordon, Joe Vasta, Leif Hamnquist and Peter Page sat on the case.  
**Presentation:** Kenneth S. Johnson appeared to present the application. He is seeking to add a second level to a one-story dilapidated structure. The proposed scale is below the allowable scale for the neighborhood. Additional parking will be added on the site. Mr. Johnson argued that tax revenue will be increased, the appeal of the property will be enhanced and the proposed structure will create year round housing.  
**Public Comment:** None. There was 1 letter of concern from an abutter, 2 letters from abutters in support of the application and 3 letters from abutters in opposition to the project.  
**Board Discussion:** The Board questioned Mr. Johnson. The Board discussed whether the proposed addition was more detrimental to the neighborhood and out of character with the neighborhood. The Board asked Mr. Johnson if the drawings submitted were the actual construction drawings and reminded him that its policy was to require an applicant to submit fully-dimensioned plans. The Board’s interpretation of Article 3, Section 3115 was that when a structure is demolished, it must be rebuilt in the same footprint, which was not the proposal in this application. After some discussion, Board members were polled. At least two members were not in favor of approving the application, thinking the project more detrimental and out of character with the rest of the neighborhood. It was noted that the structure used to be a garage, was now a cottage and the applicant was seeking to make it into a house. The applicant requested to withdraw the application without prejudice.  
*Leif Hamnquist moved to accept the request to withdraw Case #FY14-48 without prejudice, Harriet Gordon seconded and it was so voted, 5-0.*
- FY14-53**      **39 Bradford Street, Unit 4 (*Residential 3 Zone*), Pavel Fiodarau on behalf of Johnny Pak –**  
 The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to install a roof over an existing pergola. There was a request to postpone to the April 17, 2014 Public Hearing.
- FY14-54**      **39 Bradford Street, Unit 1 (*Residential 3 Zone*) Daniel Skahen and Brad Mallow –**  
 The applicant seeks a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-laws to demolish and reconstruct a shed within a side yard setback. David M. Nicolau, Amy Germain, Joe Vasta, Leif Hamnquist and Peter Page sat on the case.  
**Presentation:** Joel Harms appeared to present the application. The applicants

seek to demolish and reconstruct a shed in the same footprint. The shed is in a dilapidated state and the applicants have contracted with a company that will replace the existing shed with an exact replica. Chair David M. Nicolau noted that the shed was being demolished and reconstructed within a setback and would need relief under Article 3, Section 3110 of the Zoning By-Laws as well. He will consult with Town Counsel and find out if it can be heard pursuant to Article 3, Section 3115 only or if it needed to be heard pursuant to Article 3, Section 3110 as well and would thus need to be re-advertised. The Board continued the matter to the April 17, 2014 Public Hearing.

*Amy Germain moved to continue Case #FY14-54 until the April 17, 2014 Public Hearing, Leif Hamnquist seconded and it was so voted, 5-0.*

**FY14-55**

**22 Commercial Street (Residential 1 Zone), LEI Inn, LLC –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to serve alcoholic beverages to patrons of an inn. David M. Nicolau, Amy Germain, Joe Vasta and Leif Hamnquist recused themselves because of conflicts of interest. Jeffrey Haley disclosed that his husband owns an inn, but that he would be able to render a fair decision in this matter. The applicant had no issue with allowing him to sit on the case. Peter Page disclosed that he had done work for the applicant in the past but was no longer employed by the applicant. Peter Page, Harriet Gordon, Joe Vasta and Jeffrey Haley sat on the case.

**Presentation:** Attorney Lester J. Murphy and Stan Sikorski appeared to present the application. According to Attorney Murphy, Land's End Inn and other guesthouses in Town have been able to offer wine and champagne as an additional amenity without issue. At times in these establishments, when patrons are celebrating a special occasion, they will request a higher quality of wine or champagne be brought to their room. The inn or guesthouse would then charge for that service, which meant that they were then involved in the sale of liquor. In order to continue to offer that service legally, guesthouses and inns have to be licensed to sell alcohol. According to Attorney Murphy, the Board must find that the social, economic or other benefits to the Town or community outweigh any detrimental effects. He emphasized that the Special Permit requested is strictly limited to the ability to serve wine, champagne and beer only to patrons of the Inn and only in the interior premises of the Inn. It is just to maintain a kind of amenity that has existed at the property for a number of years. Contrary to some of the concerns of the neighbors, the request is not to establish a bar at the Inn. Attorney Murphy argued that the benefits of the proposal outweighed any detrimental effects. Being able to continue this amenity will insure that room tax revenue and the meals tax revenue generated by guests of the Inn eating in Town restaurants will both continue to be generated.

**Public Comment:** Clarence Walker spoke in favor of the application. There was 1 letter of concern, 10 letters in support of the application and 4 letters in opposition to the application.

**Board Discussion:** The Board questioned Attorney Murphy and Mr. Sikorski. Licensing requirements were discussed. Town Planner Gloria McPherson

suggested that the Board put restrictions on the license as it allows greater latitude than what is being proposed in this matter. The Board discussed conditions including hours of service, areas of service and the expiration date of the Special Permit.

*Peter Page moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to serve alcoholic beverages to patrons of an inn at the property located at 22 Commercial Street (Res 1) with the following conditions: that the area of service will be the entire property, that the hours of service will be 8:00 A.M. to 9:00 P.M., the Special Permit will expire on January 2, 2015, that management shall be required to comply with all state and local laws and that sales of alcohol be to guests of the Inn only, Harriet Gordon seconded and it was so voted, 4-0. Peter Page will write the decision.*

**FY14-56      225 Commercial Street (Town Commercial Center Zone), Attorney Robin B. Reid on behalf of Topknot Properties, LLC –**

The applicant seeks a Special Permit under Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to alter the service area and add flex-seating. Peter Page recused himself because of a conflict of interest. David M. Nicolau, Amy Germain, Harriet Gordon, Joe Vasta and Jeffrey Haley sat on the case.

**Presentation:** Attorney Robin B. Reid, Rob Anderson, Loic Rossignon and Tom Pucci appeared to present the application. New seating plans drawn to scale were submitted. Attorney Reid explained that the property is stalled in the Chapter 91 process. Last year an interim plan was requested involving allowing 24 of the 44 EDC seats to be used as fast food seats and approved by the Board. This year, the applicants seek another interim plan involving the use of all 44 seats. The proposal is to add the rear yard to the area of service. The interior floor plan will remain the same as last year, with 24 seats. The proposal includes flex plan (A) that would involve the other 20 fast food seats to be placed around a large table in the back yard. Only paper plates and plastic silverware would be used. Patrons would order food inside and take it outside to eat in the backyard. The back would be accessed through the lane on the west side of the building. Flex plan (B) would take the 20 seats and use them as full service seats. The same table would be used, however only 11 seats would be at the table. These full service seats, at 35 gallons each, would allow wait service and food would be served on china with silverware. Flex plan A would be used more often with Flex plan B, which would only be used occasionally, for special events. There will be more staff on duty in the back during the implementation of this plan. The owners would like to serve alcohol in the backyard as well. According to Attorney Reid, compliance with the SP would be easy to confirm as the Zoning Enforcement Officer would only need to stand in the parking lot of Seamen's Bank to observe the seating arrangements in the backyard. The social and economic benefits outweigh any detrimental effects. The project is in keeping with the goals and intent of the Local Comprehensive Plan as elucidated in Chapter 1, Goal 1, Policy B and Goal 2, Policy A and Chapter 5, Goal 1, Policy B and Goal 5. This is a business that is

compatible with the Town's cultural and economic strengths and employment opportunities as well as tax revenue will be increased as a result of this proposal. There are already quite a few outdoor, alcohol-related activities on the beach in that area of Town. The hours of operation are 11:00 A.M. to 2:00 A.M., with the service of beer and wine service ending at 1:00 A.M. The seasonal operation will be from April 1<sup>st</sup> until January 15<sup>th</sup>. The applicants would like to have background music in the backyard.

**Public Comments:** None. There were 2 letters in favor of the application.

**Board Discussion:** The Board questioned Attorney Reid. She assured the Board applicants will make sure that the waste and trash will be managed appropriately on the property. Conditions were discussed. Low level lighting that adheres to the dark sky protocol was requested by the Board as was signage indicating that no alcohol can be taken off site. The Board requested indicating where the bus station would be located on the exterior seating plan.

*Amy Germain moved to grant a Special Permit under Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to alter the service area and add flex-seating at the property located at 225 Commercial Street (TCC) with the following conditions: that the Special Permit will run with the applicant, that the exterior busing station be delineated on the seating plan to be submitted to the Town Planner, that a sign stating that no alcohol shall be taken from the premises be posted at exits, that lighting adhere to the dark sky protocols and that the Special Permit expire on January 2, 2015, Harriet Gordon seconded and it was so voted, 5-0. Amy Germain will write the decision.*

**FY14-57**      **175 Bradford Street Extension (Residential 3 Zone), Attorney Robin B. Reid, on behalf of Victor DePaolo (withdrawn by applicant) –**  
The applicant seeks a Special Permit pursuant to Article 2, Section 2471, Parking Requirements – Applicability, of the Zoning By-Laws amending SP 2007-004 to reduce the parking relief required from 10 spaces to 9 spaces and to allow 55 seats.

Chair David M. Nicolau adjourned the Public Hearing at 10:00 P.M.

## WORK SESSION

Chair David M. Nicolau reconvened the Work Session at 10:00 P.M.

### PENDING DECISIONS:

**FY14-42**      **175 Bradford Street Extension (Residential 3 Zone), Victor DePaolo –**  
David M. Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon and Jeffrey Haley sat on the case. Attorney Robin B. Reid submitted the decision written by Robert Littlefield. Mr. Littlefield had consulted with Attorney Reid while writing the decision. David M. Nicolau read the decision. The Board noted several

corrections to be made. *Amy Germain moved to approve the language as noted in the meeting, Harriet Gordon seconded and it was so voted, 5-0.*

**FY14-52      247 Commercial Street (Town Commercial Center Zone), Crown and Anchor, LLC –**

David M. Nicolau, Amy Germain, Harriet Gordon, Jeffrey Haley and Peter Page sat on the case. The applicant has submitted the revised seating plan, which was subsequently reviewed and approved by the Building Commissioner. Amy Germain read the decision. *Jeffrey Haley moved to accept the language as written, Joe Vasta seconded and it was so voted, 5-0.*

**MINUTES:** Approval of the minutes for March 6 and March 20, 2014 were postponed.

**NEXT MEETING:** The next meeting will take place on April 17, 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 9:15 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on April 17, 2014  
David M. Nicolau, Chair