

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
February 20, 2014**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David M. Nicolau, Robert Littlefield (arrived at 6:48 P.M. and left at 8:12 P.M.), Amy Germain, Harriet Gordon, Leif Hamnquist and Jeffrey Haley.

Members Absent: Joe Vasta (excused).

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 6:30 P.M.

PENDING DECISIONS:

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 Board signed plans.

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 –**
David M. Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon and Joe Vasta sat on the case. The decision was read at the February 6, 2014 Public Hearing. A signed, redacted lease has been submitted to the Board. *Jeffrey Haley moved to approve the language as written, Harriet Gordon seconded and it was so voted, 5-0.*

FY14-43 **2 Winthrop Place (*Residential 3 Zone*), Ted Smith, Architect, LLC on behalf of George Sauer –**
Robert Littlefield, Amy Germain, Harriet Gordon and Leif Hamnquist sat on the case. The reading of the decision will be postponed until the March 6, 2014 Public Hearing.

MINUTES: February 6, 2014 – Amy Germain moved to approve the language as written, Harriet Gordon seconded and it was so voted, 5-0.

Discussion regarding ZBA procedure – Chair David M. Nicolau postponed the discussion until more members of the Board were present.

Chair David M. Nicolau adjourned the Work Session at 6:42 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:00 P.M. There were six members of the Zoning Board of Appeals present and one absent.

Chair David M. Nicolau called for a motion to take Case #FY14-42 out of order. *Amy Germain moved to take Case #FY14-42 out of order, Jeffrey Haley seconded and it was so voted, 6-0.*

CONTINUED CASES:

FY14-42 175 Bradford Street Extension (Residential 3 Zone), Victor DePoalo –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for an increase in seating from a 33-seat restaurant to a 55-seat restaurant. David M. Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon and Jeffrey Haley sat on the case.

Presentation: Attorney Robin B. Reid and Victor DePoalo presented the application. Attorney Reid explained that this is a pre-existing, non-conforming use that the applicant was required to maintain as part of the development of the property under Article 4, Section 4170. The restaurant was approved for 40 seats, however the applicant did not have the gallons for all of those seats, so the restaurant has been operating as a 33-seat restaurant. The applicant seeks to strengthen the viability of his business by increasing his seats. The Town and the ZBA have repeatedly determined the restaurant to be of significant benefit in a pre-dominantly residential neighborhood. But that will only work if the applicant's business works. The applicant does not seek to change the area of service. Pursuant to Article 5, Section 5330, Attorney Reid identified three adverse effects of increasing the seating, the first being parking. The applicant has sought to accommodate his customers' needs in regard to parking, not allowing them to park on private property or use private bike racks and will continue to do so. He is working hard with the Town to increase public parking in the neighborhood, including taking a significant curb cut reduction at the three parcels he owns across Bradford Street in order to free up space to increase public parking. Secondly, with respect to noise, the applicant has been diligent about reducing the amount of noise emanating from his restaurant and will continue to do so. Thirdly, in regard to waste, the applicant has made sure that his business is well-maintained and waste materials are dealt with appropriately. The applicant has been a good neighbor and contributing to the viability of the business is good for the Town and neighborhood.

Public Comment: Attorney Ed Patton, on behalf of Attorney Jamie Veara, who represents an abutting condominium association, Steve Treon, Allen Gallant and

Rob Jason spoke in opposition to the application. Mike Ponte spoke in support of the application. There was one letter from an attorney in opposition to the application, one letter of no concern and 16 letters, 15 from abutters, in support of the application.

Board Discussion: The Board discussed the previous ZBA decision and the agreement that was reached between the applicant and the abutting condominium association. The agreement was not part of the decision, but was a third party agreement. It was an addendum to the decision. The Board would like to investigate whether any noise complaints have been lodged with the Provincetown Police Dept. against the establishment. The Board questioned Attorney Reid and Mr. DePoalo about parking both on site and in the area. The Board questioned Mr. DePoalo about the outside waiting area on site and the noise that was generated by patrons waiting for tables. The Board asked for a clarification of the seating plan. The Board would like to continue the case in order to allow Board members to review documents that were not made available to them, including the original Special Permit decision and a letter from Attorney Jamie Veara

Jeffrey Haley moved to continue Case #FY14-40 to the March 20, 2014 Public Hearing, Robert Littlefield seconded and it was so voted, 5-0.

- 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. A quorum was not available to hear the case. The Board will continue the case until the March 6, 2014 Public Hearing. *Harriet Gordon moved to continue Case #FY14-41 until the March 6, 2014 Public Hearing, Leif Hamnquist seconded and it was so voted, 4-0.*

NEW CASES:

- FY14-44** **85/87 Shank Painter Road (General Commercial Zone), MacGregor Hay on behalf of Bay Ocean Properties, LLC –**
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the approval of a final seating layout and to allow public entertainment. A quorum was not available to hear the case. The Board postponed the case until the March 20, 2014 Public Hearing. Acting Chair Amy Germain explained to the applicant that if there were only four members of the Board available to be seated on the case on March 20, 2014, and the granting of a Special Permit required four assenting votes, the applicant would have the choice of moving forward or postponing until a five-member Board could be seated. Sam Bradford, representing Mr. Hay, stated that he would be willing to go forward with a four-member Board on that date. *Amy Germain moved to continue Case #FY14-41 until the March 20, 2014 Public Hearing, Harriet Gordon seconded and it was so voted, 3-0.*

- FY14-45** **572 Commercial Street (Residential 2 Zone), Ron Kollen –**

The applicant seeks a Special Permit under Article 2, Section 2450, Permitted Accessory Uses, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws for an extension of a pre-existing, non-conforming garden shed by a height of 24 inches. David M. Nicolau recused himself because of a conflict of interest. Acting Chair Amy Germain 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, the applicant had the choice of moving forward or postponing until a five-member Board could be seated. John DeSouza, representing the applicant, chose to proceed. Amy Germain, Harriet Gordon, Leif Hamnquist and Jeffrey Haley sat on the case.

Presentation: John DeSouza presented the application. There are two pre-existing garden sheds on the property. The applicant seeks to increase the sidewall height of the smaller shed on the east side of the property. The shed footprint is 6' by 10' and has a ridge height of 7'10". Because of the height of the ridge, the door to the shed is only 54" high, which is less than the height of a standard door. The applicant would like to add 2' to each sidewall in order to install a standard 78" door. The shed is pre-existing and non-conforming and is a permitted accessory use. There are two non-conforming dimensions, one 5' and the other 4.5', into a side yard setback. The square footage of the non-conforming footprint is 51 sq. ft. There will be no adverse effects as a result of this change.

Public Comment: None. There were no letters.

Board Discussion: The Board noted that the applicant did not submit a Non-Conforming Situation Checklist.

Leif Hamnquist moved to grant a Special Permit under Article 2, Section 2450, Permitted Accessory Uses, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws for an extension of a pre-existing, non-conforming garden shed by a height of 24 inches at the property located at 572 Commercial Street (Res 2), Harriet Gordon seconded and it was so voted, 4-0. Mr. DeSouza will submit the Checklist to the Board within the next two weeks. Leif Hamnquist will write the decision.

- FY14-46** **99 Commercial Street (Residential 3 Zone), Lora Papetsas/Sal's Place –**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the use of an A-frame signboard. Leif Hamnquist recused himself because of a conflict of interest. David M. Nicolau, Amy Germain, Harriet Gordon and Jeffrey Haley sat on the case. Chair David M. Nicolau 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, the applicant had the choice of moving forward or postponing until a five-member Board could be seated. The applicant chose to proceed.
- Presentation:** Lora Papetsas presented the application. The signboard is a mahogany-framed A-frame signboard measuring 39" high by 20" wide. It has been used at the site in the past, but has not been permitted. She will place announcements, hours of operation and specials on the signboard. It will be located off to the side and in her private driveway area that leads to the side entrance of the restaurant.

Public Comment: Fred Long and Helen Valentine, both abutters, spoke in opposition to the application.

Board Discussion: The Board questioned Ms. Papetsas about the proposed location of the signboard and the location and description of other signs on the property. It was noted that the site plan submitted with the application was not dimensioned. The Board discussed the location of the signboard on the site plan.

David M. Nicolau moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the use of an A-frame signboard at the property located at 99 Commercial Street (Res 3) with the condition that the outside display is located as shown on a site plan dated February 22, 2010, drawn by Slade Associates. The Board discussed the location of the signboard. Gloria McPherson suggested that the Board dimension the plans and put the location of the sign based on those dimensions into the decision. David M. Nicolau withdrew his motion.

Harriet Gordon moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the use of an A-frame signboard at the property located at 99 Commercial Street (Res 3) with the condition that the signboard is located 4-6' from the face of the building, Jeffrey Haley seconded and it was so voted, 4-0. Amy Germain will write the decision.

NEXT MEETING: The next meeting will take place on March 6, 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 9:10 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

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