

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
June 5, 2014**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** David M. Nicolau, Robert Littlefield (arrived at 6:46 P.M. and left at 7:55 P.M.), Amy Germain, Jeffrey Haley, Joe Vasta and Peter Page.

**Members Absent:** None.

**Others Present:** Leif Hamnquist (Permit Coordinator) 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:**

**FY14-47**      **5 Dyer Street (*Residential 3 Zone*), Derik Burgess of Cape Associates on behalf of Jackie LaLonde -**

The applicant has submitted revised plans.

**FY14-60**      **205-209 Commercial Street, (*Town Commercial Center Zone*), Aquarium Wharf Realty Trust –**

David M. Nicolau, Amy Germain, Harriet Gordon, Joe Vasta and Jeffrey Haley sat on the case. Amy Germain read the decision. *Jeffrey Haley moved to accept the language as written, Joe Vasta seconded and it was so voted, 4-0.*

**MINUTES: May 1, 2014 – *Joe Vasta moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 5-0.***

The Board will schedule its reorganization at the Work Session on July 24, 2014 at 6:30 P.M.

Chair David M. Nicolau adjourned the Work Session at 6:50 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 none absent.

*Joe Vasta moved to take Case #FY14-68 out of order, Jeffrey Haley seconded and it was so voted, 6-0.*

**FY14-68      152 Commercial Street (Town Commercial Center Zone), Janice Marlene Sawyer** (continued from May 15, 2014) –

The applicant seeks a Special Permit under Article 2, Section 2440, B7, Permitted Principle Uses, of the Zoning By-Laws to reconfigure and add additional parking spaces. Amy Germain and Jeffrey Haley recused themselves because of conflicts of interest. David M. Nicolau, Robert Littlefield, Joe Vasta and Peter Page sat on the case. Chair David M. Nicolau explained to the applicant that since there were only four Board members seated on the case and the granting of a Special Permit required four assenting votes, the applicant had the choice of moving forward with the hearing of the case or postponing until a five-member Board could be seated. The applicant chose to proceed.

**Presentation:** Marlene Sawyer and Michael Potenza appeared to present the application. Ms. Sawyer explained that her neighbor, Paul Ditacchio, has complained that the gravel from her parking lot has been washing into a catch basin on Atlantic Avenue, which is fifty feet from the property. She denied the allegation. There have been no changes to her parking lot for twenty years, there never had been an issue with runoff and she doesn't know its origin. She said that there have been recent changes in the immediate area, including the installation of a stone driveway at 1 Atlantic Avenue, the installation of a brick patio by Mr. Ditacchio and the construction of six units abutting the parking lot and located on the hill behind his property. The parking lot was licensed for ten parking spaces and she has always had eighteen parking spaces. Ms. Sawyer is asking the Board for permission to retain the additional eight spaces that the property has had for twenty years and to correct the discrepancy in the number of parking spaces for which she is licensed. Mr. Potenza explained that the actual physical space of the parking lot has not changed, but that Ms. Sawyer has reconfigured the lot for eighteen parking spaces. Ms. Sawyer stated that she rents parking spaces on a seasonal basis to her neighbors and that is a benefit to the neighborhood and Town.

**Public Comment:** Len Bowen, Rob Anderson, Richard Giumarra, John Yandrisovitz, Michael Simpson, Johnny Pak and Laura Parker spoke in support of the application. Attorney John McCluskey, on behalf of Paul Ditacchio, and Mr. Ditacchio spoke in opposition to the application. There were 10 letters, 4 from abutters and 6 from non-abutters, in support of the application and 1 letter from Paul Ditacchio in opposition to the application.

**Board Discussion:** The Board questioned Ms. Sawyer. There was discussion about whether the issue of the runoff was a topic for the ZBA to consider or simply a dispute between private parties. The applicant had been in touch with the Building Dept. and the Dept. of Public Works and not gotten any resolution for this issue. Attorney McCluskey claimed that it is the Board's obligation to look at the issue. He would be willing to continue the case while the Board explores its options. The Board briefly discussed an issue raised by an abutter regarding the

possibility of cars parked in two parking spaces at the top of the property rolling down the hill and causing damage to his property. It was suggested that a four-by-four could be placed under the back wheels of the cars parked in those particular spaces. After much discussion, the Board decided to continue the case and conduct research, including speaking with DPW and Building Dept. staff about the issue.

**Robert Littlefield moved to continue Case #FY14-68 to the June 19, 2014 Public Hearing, Joe Vasta seconded and it was so voted, 4-0.**

**FY14-70      173 Bradford Street, (Residential 3 Zone), William N. Rogers, II on behalf of Young's Court East Condominium –**

The applicant seeks a Special Permit under Article 3, Section 3110, Nonconformancy – Change, Extensions or Alterations, of the Zoning By-Laws to construct a shed dormer and roof deck. There was a request to postpone this case until the July 17, 2014 Public Hearing.

**Jeffrey Haley moved to approve the request to postpone Case #FY14-70 until the July 17, 2014 Public Hearing, Joe Vasta seconded and it was so voted, 5-0.**

**FY14-59      169 Bradford Street, (Residential 3, Zone), Don DiRocco on behalf of PTown Landing, LLC (postponed from May 15, 2014) –**

The applicant seeks a Special Permit under Article 2, Section 2640, Building Scale, of the Zoning By-Laws to build an addition to the existing dwelling. There was a request to waive the time constraints for this case. **Amy Germain moved to waive the time constraints for Case #FY14-59, Jeffrey Haley seconded and it was so voted, 5-0.**

**FY14-62      386 Commercial Street (Town Commercial Center Zone), Al Gordon (continued from May 15, 2014) -**

The applicant seeks a Special Permit under Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to alter the seating layout and add flex seating but not increase the total number of seats. David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. **Amy Germain moved to waive the time constraints for Case #FY14-62, Jeffrey Haley seconded and it was so voted, 5-0.**

**Presentation:** Al Gordon appeared to present the application. Mr. Gordon said that it came to his attention that the seating plan on file for the property was obsolete. The business has always operated with a maximum of 145 seats. He is requesting a flex-seating plan, whose implementation will be weather-dependant. The only recent change has been the removal of a table and its replacement with bar seating at the raw bar location on the west side of the property.

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

**Board Discussion:** The Board questioned Mr. Gordon about the flex-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 seating layout and add flex seating but not increase the total number of seats at the property**

*located at 386 Commercial Street (TCC), with the condition that the Special Permit expire on January 2, 2015, Joe Vasta seconded and it was so voted, 5-0. Amy Germain will write the decision.*

**FY14-59      169 Bradford Street, (Residential 3, Zone), Don DiRocco on behalf of PTown Landing, LLC (postponed from May 15, 2014) –**

The applicant seeks a Special Permit under Article 2, Section 2640, Building Scale, of the Zoning By-Laws to build an addition to the existing dwelling. David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

**Presentation:** Attorney Lester J. Murphy and Christine Barker appeared to present the application. Attorney Murphy stated that the applicant seeks to alter the existing structure and to construct a 19'2" by 18'6" addition to the structure. This will allow the structure to conform to safety and health laws. The existing structure has no proper means of egress from the second floor and the expansion of the existing structure will allow for the installation of building code-compliant stairways. The increase in scale is in keeping with the scale of the neighborhood. The proposed addition will be on the southwest side of the structure and consist of two floors with a roof deck facing the south. It has been designed to blend in with the existing structure. The first floor will have a living room and a stairway providing a second means of egress to and from the second floor. The second floor will contain a bedroom, bathroom and stairway. The rear portion will include a deck and a pantry area on the third floor. The existing building scale is 20,190 cu. ft., the neighborhood average is 16,073 cu. ft., the maximum allowable scale is 18,484 cu. ft. The proposed addition is 9,575 cu. ft. and the total proposed scale is 29,765 cu. ft. This is a 47% increase in scale. There is a wide variety of structure sizes in the neighborhood. Attorney Murphy argued that the social, economic and other benefits outweigh any detrimental effects in that the increase will make the structure more livable and usable and it will provide legal, proper and safe egress from the second and third floors. It will also result in an increase in the assessed value of the property and tax payments to the Town. The project meets the criteria of Article 2, Section 2640E, subparagraphs 1, 5 and 6. Apropos subparagraph 1, it is in keeping with the goals and objectives of the Local Comprehensive Plan Section 1, 1.2 Goals and Policies, Goal 1, Policy B and Goal 3 and Section 4, Goal 2. Attorney Murphy argued that the project was consistent with subparagraph 5 of Section 2640E in that the addition integrated successfully into its surroundings and the proposed siting minimized the appearance of mass from the streetscape and would not have a significant negative impact on the views or natural light to neighboring structures. The project is also consistent with the criteria of subparagraph 6 in that the project is in keeping with Historic District Commission guidelines and has been approved by the HDC.

**Public Comment:** Steve Latasa-Nicks spoke in support of the application. There were 20 letters from in support of the application, 18 from abutters and 2 from non-abutters.

**Board Discussion:** The Board questioned Attorney Murphy and Ms. Barker

about the project. Several Board members were concerned about the size of the addition as the existing structure was itself over the neighborhood average scale and were of the opinion that the installation of safe egress from the second floor could be accomplished with a smaller addition. The Board discussed whether the increase in scale was in keeping with other structures in the neighborhood. A majority of the Board suggested that the applicant return with a proposal for a smaller addition that may be more acceptable to those members who thought the project was too large in scale and in keeping with the scale of other neighborhood structures. Attorney Murphy stated that the applicant would like to request a continuance to the July 17, 2014 Public Hearing in order to revise the plans. ***Amy Germain moved to grant the request for a continuance to the July 17, 2014 Public Hearing, Jeffrey Haley seconded and it was so voted, 5-0.***

**FY14-63      8 Winthrop Street (Residential 3 Zone), Robert H. Quigley (postponed from May 15, 2014) –**

The applicant seeks a Special Permit under Article 3, Section 3110, Nonconformancy – Change, Extensions or Alterations, of the Zoning By-Laws to demolish and reconstruct a utility/garden shed. Chair David M. Nicolau recused himself because of a conflict of interest. Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Acting Chair Amy Germain explained to the applicant that since there were only four Board members available and the granting of a Special Permit required four assenting votes, the applicant had the choice of moving forward with the hearing of the case or postponing until a five-member Board could be seated. The applicant chose to proceed.

**Presentation:** Robert Quigley appeared to present the application. He seeks to demolish an existing shed and reconstruct a smaller utility/garden shed. The proposed shed is 6' x 10' and will replace the existing shed which is 8.5' x 8.5'. The side yard setback of the proposed shed will be 3.8' and the rear yard setback is 3.6'. The side yard setback is more than 50% of the required 6' side yard setback. The rear yard setback is 1.4' short of 50% of the required 10' rear yard setback.

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

**Board Discussion:** The Board had no questions.

***Joe Vasta moved to grant a Special Permit under Article 3, Section 3110, Nonconformancy – Change, Extensions or Alterations, of the Zoning By-Laws to demolish and reconstruct a utility/garden shed at the property located at 8 Winthrop Street (Res 3), Peter Page seconded and it was so voted, 4-0. Jeffrey Haley will write the decision.***

**FY14-64      3 Creek Round Hill Road (Residential 1 Zone), William N. Rogers, II on behalf of Robert R. McBride et al. (postponed from May 15, 2014) –**

The applicant seeks a Special Permit under Article 2, Section 2450, Permitted Accessory Uses, of the Zoning By-Laws for the installation of an in-ground swimming pool. David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

**Presentation:** Gary Locke appeared to discuss the application. The saltwater pool will measure 17' by 40'. The proposed pool volume is 130.91 cu. yds. The water to fill the pool will be trucked to the site. The mechanicals will only emit 65db, a moderate noise level, of sound and will be located in a shed on the northwest side of the deck behind a 4' high fence.

**Public Comment:** None. There was 1 letter from a non-abutter in support of the application.

**Board Discussion:** The Board questioned Mr. Locke.

*Amy Germain moved to grant a Special Permit under Article 2, Section 2450, Permitted Accessory Uses, of the Zoning By-Laws for the installation of an in-ground swimming pool at the property located at 3 Creek Round Hill Road (Res 1) with the conditions that only low level lighting that adheres to the dark sky protocols are used in the pool area and that no outdoor speakers are installed in the pool area, Jeffrey Haley seconded and it was so voted, 5-0. Joe Vasta will write the decision.*

**FY14-65**      **307 Commercial Street (Town Commercial Center Zone), Steve Milliken, dba Dolphin Fleet** (postponed from May 15, 2014) –

The applicant seeks a Special Permit under Article 3, Section 3420, Outside Display, of the Zoning By-Laws to have an outdoor display. David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

**Presentation:** Steve Milliken appeared to present the application. He is seeking to have a sunglass display, a magnet display and a display of bags to draw in customers.

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

**Board Discussion:** The Board briefly questioned Mr. Milliken. The outdoor display will consist of 2 sweat shirts and 25 bags. The sunglass and magnet displays will also be outside the door of the store.

*David M. Nicolau moved to grant a Special Permit under Article 3, Section 3420, Outside Display, of the Zoning By-Laws to have an outdoor display at the property located at 307 Commercial Street (TCC) with the condition that the Special Permit run with the applicant, Joe Vasta seconded and it was so voted, 5-0.*

**FY14-66**      **322 Commercial Street (Town Commercial Center Zone), Steven Underwood** (postponed from May 15, 2014) –

The applicant seeks a Special Permit under Article 3, Section 3420, Outside Display, of the Zoning By-Laws to have an outdoor display. David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

**Presentation:** Steven Underwood appeared to present the application. He seeks to display 75 items.

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

**Board Discussion:** The Board briefly questioned Mr. Underwood.

*Jeffrey Haley moved to grant a Special Permit under Article 3, Section 3420, Outside Display, of the Zoning By-Laws to have an outdoor display at the*

*property located at 322 Commercial Street (TCC), Joe Vasta seconded and it was so voted, 5-0.*

**FY14-67**      **11 Mermaid Avenue (Residential 1, Zone), William N. Rogers, II, on behalf of Neil Hanscomb** (*postponed from May 15, 2014*) –  
The applicant seeks a Special Permit under Article 3, Section 3110, Nonconformancy – Change Extensions or Alterations, of the Zoning By-Laws to demolish and reconstruct a 12’ by 21’ deck. David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.  
**Presentation:** Gary Locke appeared to present the application. The applicant seeks to demolish and reconstruct a 12’ x 21’4” deck on four 12’ diameter concrete piers. The size of the proposed deck is being reduced and will be 16” off the ground. The building setbacks will remain the same.  
**Public Comment:** None. There was 1 letter from an abutter in support of the application.  
**Board Discussion:** The Board briefly questioned Mr. Locke.  
*Joe Vasta moved to grant a Special Permit under Article 3, Section 3110, Nonconformancy – Change Extensions or Alterations, of the Zoning By-Laws to demolish and reconstruct a 12’ by 21’ deck at the property located at 11 Mermaid Avenue (Res 1), Amy Germain seconded and it was so voted, 5-0.* Peter Page will write the decision.

**FY14-69**      **63 Shank Painter Road, (General Commercial Zone), Elizabeth Athineos** –  
The applicant seeks a Special Permit under Article 3, Section 3420, Outside Display, of the Zoning By-Laws to have an outdoor display. Peter Page recused himself because of a conflict of interest. Chair David M. Nicolau explained to the applicant that since there were only four Board members seated on the case and the granting of a Special Permit required four assenting votes, the applicant had the choice of moving forward with the hearing of the case or postponing until a five-member Board could be seated. The applicant chose to proceed. David M. Nicolau, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case.  
**Presentation:** Steve Athineos appeared to present the application. He said that the application is for a ground level deck that holds bicycles. Chair David M. Nicolau read a letter from the former Building Commissioner Russ Braun that cited zoning violations found at the site. Mr. Athineos stated that some of the zoning violations that were present on the site had been corrected. He explained that the ‘Open’ flags that were in violation of the By-Laws had been removed. There was an issue about the location of the sign on the site being on Town property, however Mr. Athineos stated that the sign was placed in the location that was shown on a site plan signed by Mr. Braun. DPW Director Rich Waldo said to Mr. Athineos that the cost of moving the sign off of Town property should be at the expense of the Town. Mr. Athineos said that the bicycles have been moved back out of the Town right-of-way. The canopy that was cited as a violation was for protection from the sun and rain while Mr. Athineos worked on the bicycles.  
**Public Comment:** None. There were 3 letters in support of the application and a

letter from Mr. Braun citing the Zoning By-Law violations that he found when inspecting the property.

**Board Discussion:** The Board questioned Leif Hamnquist about the zoning violations at the site. He said that one of the 'Open' flags was gone, however the other was still present and was over the allowed size. Merchandise has been moved out of the Town right-of-way, however the canopy is a temporary structure for which the Athineos' need to get a tent permit, the business sign is still in the Town right-of-way and a storage container on site is not a permitted use. The applicant has a temporary certificate of occupancy until the fall so she can operate the business through the summer. The Board decided that it needed clarification on the legal location of the sign and that the other violations needed to be rectified before a Special Permit could be issued. Mr. Hamnquist said that the Board had the options of conditioning the Special Permit to take effect only after the violations had been corrected, issuing a Special Permit with the condition that all bicycles be located on the deck or continuing the case until the next Public Hearing. The Board decided to continue the case until the July 17, 2014 Public Hearing in order to talk to staff about the issues at the property.

**NEXT MEETING:** The next meeting will take place on June 19, 2014. It will consist of a Work Session at 6:00 P.M. and a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Amy Germain moved to adjourn at 10:30 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on June 19, 2014  
David M. Nicolau, Chair