

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
June 19, 2014**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Robert Littlefield (arrived at 6:42 P.M. and left at 7:55 P.M.), Amy Germain, Jeffrey Haley, Joe Vasta and Peter Page (arrived at 6:30 P.M.).

Members Absent: David M. Nicolau (excused).

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

WORK SESSION

Acting Chair Amy Germain called the Work Session to order at 6:15 P.M.

PENDING DECISIONS:

- FY14-62** **386 Commercial Street (*Town Commercial Center Zone*), Al Gordon -**
David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Amy Germain read the decision. *Jeffrey Haley moved to approve the language as written, Joe Vasta seconded and it was so voted, 3-0.*
- FY14-63** **8 Winthrop Street (*Residential 3 Zone*), Robert H. Quigley –**
Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Jeffrey Haley read the decision. *Joe Vasta moved to approve the language as amended, Jeffrey Haley seconded and it was so voted, 4-0.*
- FY14-64** **3 Creek Round Hill Road (*Residential 1 Zone*), William N. Rogers, II on behalf of Robert R. McBride et al. -**
David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Joe Vasta read the decision. *Jeffrey Haley moved to approve the language as amended, Joe Vasta seconded and it was so voted, 4-0.*
- FY14-67** **11 Mermaid Avenue (*Residential 1, Zone*), William N. Rogers, II, on behalf of Neil Hanscomb –**
David M. Nicolau, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. The reading of the decision is postponed to the July 17, 2014 Public Hearing.

Vice Chair Robert Littlefield postponed the Work Session at 6:55 P.M.

PUBLIC HEARING

Vice Chair Robert Littlefield called the Public Hearing to order at 7:03 P.M. There five members of the Zoning Board of Appeals present and one absent.

- FY14-59** **169 Bradford Street, (*Residential 3 Zone*), Don DiRocco on behalf of PTown Landing, LLC –**
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. This case has been continued to the July 17, 2014 Public Hearing.
- FY14-68** **152 Commercial Street (*Town Commercial Center Zone*), Janice Marlene Sawyer –**
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. There was a request by the applicant to continue this case until the July 17, 2014 Public Hearing and a waiver of the time constraints was submitted. *Joe Vasta moved to approve the request to continue Case #FY14-68 until the July 17, 2014 Public Hearing, Amy Germain seconded and it was so voted, 5-0.*
- 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. This case has been continued to the July 17, 2014 Public Hearing.
- 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. This case has been postponed until the July 17, 2014 Public Hearing.
- FY14-71** **333 Commercial Street (*Town Commercial Center Zone*), Nancy Ann Meads –**
The applicant requests a Special Permit under Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase seating from 53 to 65, and Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display a welcome sign on an easel. Robert Littlefield, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.
Presentation: John DeSouza and Nancy Ann Meads appeared to present the application. The applicant seeks to increase seating by adding 5 seats at the bar, 1 new seat at the large corner banquette, 4 seats in the center of the dining room at two 6-tops. In addition, the applicant seeks to codify 2 seats, which are technically pre-existing, at the two booths at the corners of the room that actually seat 4

people. There will be no change in the use of the space. The property is hooked up to the sewer system and an EDC application has been filed with the Board of Selectmen for the additional gallonage. This will result in an increase in the property's sewer betterment. The requested change in seating is in keeping with the goals of the Local Comprehensive Plan, Chapter 5, Goal 1, Policy A, Goal 1, Policy B and Goal 5. In regard to Article 5, Section 5300, the change will create no disruptions to the character of the neighborhood and there are no detrimental effects such as hazard, congestion or environmental degradation. The economic benefits would be an increase in meals taxes and additional restaurant seating for visitors to the Town.

The outdoor display consists of an easel holding a chalkboard located within the boundary of the property and at the bottom of the stairway to the restaurant.

Public Comment: Marcene Marcoux and Stan Sikorski spoke in support of the application. There were 7 letters from non-abutters and 1 abutter in support of the application.

Board Discussion: The Board questioned Mr. DeSouza and Ms. Meads. The Board had a concern about the location of the easel and the width of the egress, which is not in conformity with the State Building Code for a commercial building. This location could potentially present a public safety hazard in an emergency situation. The Board discussed the location of the easel with Mr. DeSouza and Ms. Meads who explained that the easel is tucked to the side of the stairway and can be angled so as not to be an impediment to egress.

Section 2460: *Amy Germain moved to grant a Special Permit under Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase seating from 53 to 65 at the property located at 333 Commercial Street (TCC), Joe Vasta seconded and it was so voted, 5-0.* Amy Germain will write the decision

Section 3420: *Amy Germain moved to grant a Special Permit Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display a welcome sign on an easel at the property located at 333 Commercial Street (TCC), Jeffrey Haley seconded and it was so voted, 4-1 (Peter Page opposed).* Peter Page requested that the ZBA's Outdoor Display form state that the outdoor display is to remain outside the width of the staircase.

Acting Chair Robert Littlefield reminded staff that the Board had decided not to allow more than one Special Permit to be requested on one ZBA application. The Board briefly discussed the issue. The Board requested that staff look at the fee structure for ZBA applicants applying for two Special Permits in an effort to insure that fees are not prohibitive to applicants.

FY14-72 **56 Commercial Street (Residential 3 Zone), Donald Murphy –**
The applicant seeks a Special Permit under Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and reconstruct a deck within the same footprint. Joe Vasta recused himself because of a conflict of interest. Vice Chair Robert Littlefield 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. Robert Littlefield, Amy Germain, Jeffrey Haley and Peter Page sat on the case.

Presentation: Donald Murphy appeared to present the application. He seeks to demolish and rebuild a deck in kind. The deck is non-conforming as it encroaches into the side yard setback.

Public Comment: None. There was 1 letter from an abutter who had no issue with the project.

Board Discussion: The Board briefly questioned Mr. Murphy.

Amy Germain moved to grant a Special Permit under Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and reconstruct a deck within the same footprint at the property located at 56 Commercial Street (Res 3), Jeffrey Haley seconded and it was so voted, 4-0. Amy Germain will write the decision.

FY14-73 586 Commercial Street (Residential 2, Zone), B&C Construction on behalf of Louise Silver –

The applicant seeks a Special Permit under Article 3, Section 3110, Nonconformancy – Change, Extensions or Alterations, of the Zoning By-Laws to extend a pre-existing, non-conforming deck by 3 feet. Robert Littlefield, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: Kevin Bazarian and Louise Silver appeared to present the application. The applicant seeks to extend 3 decks on the Commercial Street side of the structure. The decks measure 6' x 10' and are 40' away from Commercial Street. All decks are conforming except for the west side of the west deck. The setback is currently 4'5" and the proposed 3' extension will be 4'9" away from the west lot line and non-conforming. The non-conformancy will not be increased.

Public Comment: None. There was 1 letter from abutter in favor, 1 letter from a unit owner of the Condominium opposed and 1 letter from the Condominium Trustees who voted to support the application.

Board Discussion: The Board questioned Mr. Bazarian and Ms. Silver. The Board requested that the plans be dated and indicate who prepared them and that the applicant state the benefits versus the detrimental effects of the project. Ms. Silver stated that the decks would be done in mahogany and look nicer and provide more space for her to maneuver on the deck. The Board determined that there would be no negative effects as a result of the project. Mr. Bazarian explained the decks were in need of repair and that proper footings and framing will make them more structurally sound and safer.

Joe Vasta moved to grant a Special Permit under Article 3, Section 3110, Nonconformancy – Change, Extensions or Alterations, of the Zoning By-Laws to extend a pre-existing, non-conforming deck by 3 feet at the property located at 586 Commercial Street (Res 2), Peter Page seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY14-74 1 MacMillan Wharf (Town Commercial Center and Harbor Overlay Zones),

Provincetown Public Pier Corporation –

The applicant seeks a Special Permit under Article 2, Section 2450, G11, Permitted Accessory Uses, of the Zoning By-Laws to allow the sale of food from local vendors within the Pier pavilion. Robert Littlefield, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: Rex McKinsey and Ginny Binder appeared to present the application. The Pier Corporation seeks to undertake a trial program to sell prepared food in the Pavilion area at the end of the Pier. This is an economic development project for the Pier Corp. and could potentially be of economic benefit to the Town and to the Pier. It will be an opportunity to gather information, gauge demand and find out what the market will bear for this type of enterprise. Ms. Binder stated that the social and economic benefits outweigh any detrimental effects. This area is beyond where the ferries embark and disembark and will not increase vehicular or pedestrian congestion or hazard and from an environmental standpoint, multiple trash barrels and recycling barrels will be located in the pavilion as well as along the Pier. As a social benefit, every transportation terminal has food for sale or serves food and this project is an accessory use to a ferry transportation terminal. The use is consistent with the location. Mr. McKinsey stated that there will be a water line run to the Pavilion to allow a hot and cold water hand-washing sink. Since the sewer only runs as far as the Harbormaster's Office, a holding tank will be used to hold the gray water until it can be pumped out with the HM's pump out boat, which is emptied into the sewer system that is connected to the courtesy float. Only a section of the Pavilion will be used. Since this is a pilot project, once the metrics have been studied and demand gauged, the Pier Corp. will return to the Board to discuss operating on a more permanent basis. The request is to test this on a trial basis for the remainder of the season. If the trial succeeds, the information gathered will help in the writing of a request for proposals that would then be advertised in order to attract vendors. The Pavilion was supposed to be a revenue-generating part of the infrastructure when the Pier was renovated, however that never materialized partly because of opposition by business owners in Lopes Square. More revenue is needed in order to maintain the Pier and this aspect is one of a number of projects that the Pier Corp. is instituting in order to raise funds.

Public Comment: Tim Grobleski was concerned about maintaining the use of the Pavilion for protection against the weather. There were no letters in the file.

Board Discussion: The Board questioned Ms. Binder and Mr. McKinsey about the process by which vendors will be chosen and the details of the use of the Pavilion. The Pier Corp. has been approached by several vendors already who are interested in participating in the trial. Since this season is an informal trial, no RFP will be advertised at this point. Mr. McKinsey explained that removable panels/awnings will be used in inclement weather and vendors will use only a portion of the pavilion. The Board discussed seating in the pavilion. Mr. McKinsey said that there are benches in the pavilion and around it, however they are not permanently affixed to the ground and are moved around by visitors to the Pier. Mr. McKinsey and Ms. Binder agreed to a limit of four vendors at any one

time. The vendors who will participate will be required to get a caterer's license and be in good standing with the Board of Health. Hours of operation were discussed and will be cited as a finding in the decision.

Amy Germain moved to grant Special Permit under Article 2, Section 2450, G11, Permitted Accessory Uses, of the Zoning By-Laws to allow the sale of food from local vendors within the Pier pavilion at the property located at 1 MacMillan Wharf (TCC and Harbor Overlay) with the conditions that the Special Permit expire on January 2, 2015 and that there will be a maximum of four vendors at any one time in the pavilion, Peter Page seconded and it was so voted, 5-0. Joe Vasta will write the decision.

Acting Chair Robert Littlefield adjourned the Public Hearing at 9:00 P.M.

WORK SESSION

Acting Chair Robert Littlefield reconvened the Work Session at 9:00 P.M.

Tim Grobleski appeared to discuss his letter to the ZBA concerning the Special Permit granted to Land's End Inn. The Board had a copy of the letter for its review. Mr. Grobleski has questions and observations about the subsequent results of the granting of the Special Permit.

Amy Germain recused herself because of a conflict of interest. Acting Chair Robert Littlefield did not sit on the case and did not participate in the discussion. The Board discussed how to proceed with the matter.

Acting Chair Robert Littlefield read a letter that the Board had received from Attorney Lester J. Murphy who represents Land's End Inn, stating that he could not attend the Hearing tonight and requesting that the Board postpone any discussion of the letter until he could appear in order to speak on behalf of his clients. He is able to appear at the next Public Hearing on July 17, 2014.

Mr. Littlefield and Ms. Germain left the room.

The remaining Board members heard a statement from Mr. Grobleski. The Board will take the letter under consideration.

NEXT MEETING: The next meeting will take place on July 17, 2014. It will consist of a Work Session at 5:15 P.M. and 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 July 17, 2014
David M. Nicolau, Chair