

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
September 4, 2014**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page.

Members Absent: Amy Germain (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 5:30 P.M.

PENDING DECISIONS:

- FY14-68** **152 Commercial Street (*Town Commercial Center Zone*), Janice Marlene Sawyer –**
David M. Nicolau, Robert Littlefield, Joe Vasta and Peter Page sat on the case. The applicant has not yet submitted a revised parking plan designating the location of the two spaces where vehicles will be required to turn their wheels at an angle.
- FY14-70** **173 Bradford Street (*Residential 3 Zone*), William N. Rogers on behalf of Young's Court East Condominium –**
David M. Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case. David M. Nicolau read the decision. *Joe Vasta moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 4-0.*
- FY14-74** **1 MacMillan Wharf (*Town Commercial Center and Harbor Overlay Zones*), Provincetown Public Pier Corporation –**
Robert Littlefield, Amy Germain, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Robert Littlefield signed the decision.
- FY14-76** **242 Bradford Street (*Residential 3, Zone*), Gary Reinhardt on behalf of Cindy Binder –**
David M. Nicolau, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Joe Vasta signed the approved plans.
- FY14-78** **26 Alden Street (*Residential 3 Zone*), 26 Alden, LLC –**

David M. Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case. The Board decided to re-open the case to discuss the conditions of the Special Permit in light of the Planning Board's site plan review of the project. ***Robert Littlefield moved to re-open Case #FY14-78 in order to discuss the conditions of the Special Permit, Joe Vasta seconded and it was so voted, 4-0.*** The Board discussed the conditions of the Special Permit. The Board decided to strike the conditions of the Special Permit that were imposed. Robert Littlefield read the decision. ***Joe Vasta moved to approve the language as amended, Jeffrey Haley seconded and it was so voted, 4-0.***

Vice Chair Robert Littlefield signed the approved minutes of the July 17, 2014 Executive Session.

Board reorganization – Election of Chair, Vice Chair and Clerk of the Board. This matter is postponed until the end of the meeting.

Application of Melinda Ancillo for Alternate Member of the ZBA. The Board met with Ms. Ancillo and asked her questions concerning her interest in joining the Board. The Board decided to postpone a vote on Ms. Ancillo's application.

Chair David M. Nicolau postponed the Work Session at 6:13 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 6:15 P.M. There were five members of the Zoning Board present and one absent.

FY14-75 3 Fishburn Court Residential 3 Zone), John DeSouza on behalf of Thomas Thompson –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to deviate from neighborhood average building scale to extend two porches, one of which is to be enclosed to create a mudroom. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: John DeSouza and Matthew Capaldo appeared to present the application. The applicant seeks to add a minor extension and enclose two existing porches. Mr. DeSouza submitted revised plans based upon requests for changes made by the Historic District Commission. Because of the revision, the scale numbers were recalculated and the project is now slightly smaller in scale. The existing scale is 25,900 cu. ft., the neighborhood average scale is 13,257 cu. ft., the allowable neighborhood scale is 15,246 cu. ft., the proposed addition is 890 cu. ft., for a total of 26,790 cu. ft. The current square footage is 1856 and the increase will be 168 sq. ft., for a total of 2024 sq. ft. Mr. DeSouza stated that the

project is in keeping with the Local Comprehensive Plan; Chapter 1, Section 1.2, Goal 1, Policy B and Goal 2, Policy A and Chapter 4, Section 4.2, Goal 2, Policy A. The project will be harmonious with the neighborhood and of limited visibility. As to the requirements of Article 2, Section 2640E, subparagraph 1, the project is in keeping with the goals of the LCP, and subparagraph 5 in that it successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the street and will not have a significant negative impact on natural light or on views from neighboring structures. A propos Article 5, Section 5330, Mr. DeSouza argued that the project will not create any hazard, congestion or environmental degradation and its benefits will be an increase in the tax base and better year round accommodations for the unit owners.

Public Comment: None. Mr. Capaldo read a letter from a unit owner in support of the application. There were 9 letters in support of the project and 3 in opposition to the project.

Board Discussion: The Board questioned Mr. DeSouza.

Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to deviate from neighborhood average building scale to extend two porches, one of which is to be enclosed to create a mudroom at the property located at 3 Fishburn Court (Res 3), Joe Vasta seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY14-80 10 Young's Court (Residential 3 Zone), John Pompeii –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to add a second floor and a dormer within the side yard setback. There was a request to postpone this matter until the September 18, 2014 Public Hearing. **David M. Nicolau moved to grant the request to postpone Case #FY14-80 until the September 18, 2014 Public Hearing, Joe Vasta seconded and it was so voted, 5-0.**

FY14-81 277 Commercial Street (Town Commercial Center Zone), Julie Trembley –

The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display art work. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: Julie Tremblay appeared to present the application.

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

Board Discussion: The Board questioned Ms. Tremblay. The display is against each side of the doorway and attached to the building. Peter Page had a concern regarding the location of the outside display, viewing it as a potential safety hazard as it was located in a means of egress.

David M. Nicolau moved to grant a Special Permit pursuant to Article 3, Section 3420, Outdoor Display, of the Zoning By-Laws to display art work at the property located at 277 Commercial Street (TCC), Joe Vasta seconded and it was so voted, 4-1 (Peter Page opposed).

FY15-02 910 Commercial Street (*Residential 1 Zone*), Carolyn Collins and Dorothy Varon –

The applicants seek a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to deviate from neighborhood average building scale and to construct two dormers up and along a pre-existing, non-conforming setback. This matter is postponed until the September 18, 2014 Public Hearing due to a clerical error. Attorney Lester J. Murphy, representing the applicants, appeared to inform the Board that the two postponements were not because his clients were unwilling or unable to move forward with this matter. Attorney Murphy submitted a waiver of time constraints.

FY15-05 5 Nickerson Street (*Residential 2, Zone*) Ted Smith, Architects, LLC, on behalf of Jane Barker and Linda Rohler –

The applicant requests a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to demolish an existing shed and reconstruct a smaller shed within the rear and side yard setbacks. David M. Nicolau recused himself because of a conflict of interest. Acting Chair Robert Littlefield explained that there were only four members seated on the case and four favorable votes are needed or a Special Permit. The applicant had the choice of proceeding or continuing until a five-member Board could be seated. The applicant chose to proceed. Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: Ted Smith appeared to present the application. The applicant seeks to tear down a shed and replace it with a smaller shed. The shed will be 8' wide by 10' long and shorter than the existing shed. The shed is located in the northeast corner of the lot. The side yard and rear yard setbacks are non-conforming. The applicant seeks to re-orient the shed so it is farther away from the lot line.

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

Board Discussion: The Board questioned Mr. Smith.

Joe Vasta moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to demolish an existing shed and reconstruct a smaller shed within the rear and side yard setbacks at the property located at 5 Nickerson Street (Res 2), Jeffrey Haley seconded and it was so voted, 4-0. Joe Vasta will write the decision.

FY15-07 220A Commercial Street (*Town Commercial Center Zone*), Christopher Stein, dba Quintessential Cape Cod –

The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outside Display, of the Zoning By-Laws to display merchandise on an outdoor patio. Robert Littlefield recused himself because of a conflict of interest. The applicant did not appear. The Board postponed this case to the September 18, 2014 Public Hearing. *Jeffrey Haley moved to continue Case #FY15-7 to the September 18, 2014 Public Hearing, Joe Vasta seconded and it was so voted, 4-0.*

FY15-08 169 Bradford Street (Residential 3, Zone), Don Di Rocco on behalf of Christine Barker –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to build an addition to the existing dwelling. David M. Nicolau, Robert Littlefield, 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 reviewed the history of this project, which has been brought to the Board twice previously. There was an original proposal, which the Board did not approve and a subsequent submission that was smaller in scale, which the Board also rejected. The applicant is now re-submitting the original plans. The project involves the construction of a 19'2" by 18'6" addition that is compliant with all building, safety and health laws. It will provide safe, legal access to the second and third floors. The project will provide two means of egress to the second floor. The property is non-conforming on the north and east side of the corner lot. The addition is two story and compatible with the existing building. The two-story addition will be on the southwest side of the building and will include a roof deck on the rear. The neighborhood average scale is 16,073 cu. ft., the maximum allowable neighborhood scale is 18,484 cu. ft., the existing scale is 20,190 cu. ft., the addition will add 9575 cu. ft., for a total of 29,765 cu. ft. This is a 47% increase in the scale of the building. Attorney Murphy reminded the Board that the neighborhood has a wide variety of building scales. The existing structure is already over the neighborhood average scale. Under Article 5, Section 5330, he argued that the benefits outweigh any adverse effects. The benefits include making the structure more livable and useful, provide safe egress from the second and third floor areas of the building, increase the assessed value of the property resulting in an increase in tax revenue to the Town. It will change two substandard dwelling units into two safe, functional and appropriate quality dwelling units for the Town. He argued that no adverse effects would result from the project. As to Article 2, Section 2640E, the project satisfies subparagraph one in that it meets the goals and objectives of the LCP; Chapter 1, Section 1.2, Goal 1, Policy B and Goal 2, Policy A. It satisfies subparagraph five in that the structure will successfully integrate into the neighborhood and will be sited in a manner that will minimize mass from the streetscape and will not interfere with light or views from neighboring structures, as well as subparagraph six which requires that the project is consistent with Historic District Commission guidelines.

Public Comment: Brandon Quesnell, Steven Katsurinis spoke in favor of the application. There were 14 letters in favor of the application.

Board Discussion: The Board questioned Attorney Murphy and Ms. Barker. Several Board members were concerned about the size of the addition and the appearance of mass from the streetscape. The Board advised the applicant to check the front yard averaging along Dyer Street to determine if relief under Article 3, Section 3110 was needed. The Board decided to continue the case until the September 18, 201 Public Hearing.

David M. Nicolau moved to continue Case #FY15-8 to the September 18, 2015 Public Hearing, Jeffrey Haley seconded and it was so voted, 5-0.

- FY15-09** **69 Commercial Street (Residential 2 Zone), Ted Smith, Architects, LLC on behalf of Richard O'Reagan and Richard Hanson –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to construct a new entry stoop within a front yard setback. A quorum of the Board was not present to hear the case. This case is postponed to the September 18, 2014 Public Hearing. *Peter Page moved to postpone Case #FY15-9 to the September 18, 2014 Public Hearing, Joe Vasta seconded and it was so voted, 5-0.*
- FY15-10** **15 Cottage Street (Residential 3 Zone), William Needell –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, of the Zoning By-Laws to remove an existing solarium and replace with a shed within the same footprint but with an increase in height of two feet. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.
Presentation: William Needell appeared to present the application. The applicant seeks to replace a solarium that is in disrepair with a shed.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board questioned Mr. Needell. The Board discussed whether the applicant needed relief under Article 3, Section 3115 as well.
David M. Nicolau moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension and Alteration, and Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to remove an existing solarium and replace with a shed within the same footprint but with an increase in height of two feet at the property located at 15 Cottage Street (Res 3), Jeffrey Haley seconded and it was so voted, 5-0. Jeffrey Haley will write the decision.
- FY15-11** **457 Commercial Street (Residential 3 Zone), Ezra Block –**
The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to build a dormer on the south-facing roof. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.
Presentation: Ezra Block appeared to present the application. The applicant seeks to build a dormer on the third floor on the water side of the structure. The dormer will measure 6' by 14' 4".
Public Comment: Klara Mueller spoke in opposition to the application. There was 1 letter in support from the owner of the property and 2 letters in support of the application.
Board Discussion: The Board questioned Mr. Block.
David M. Nicolau moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to build a dormer on the south-facing roof at the property located at 457 Commercial Street (Res 3), Joe

Vasta seconded and it was so voted, 5-0. Peter Page will write the decision.

FY15-13 **12 Atlantic Avenue (Residential 3 Zone), Vincent Edwards –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish an existing brick staircase and reconstruct a wooden staircase in the same footprint. David M. Nicolau recused himself because of a conflict of interest. Acting Chair Robert Littlefield explained that that there were only four members seated on the case and four favorable votes are needed for a Special Permit. The applicant had the choice of proceeding or continuing until a five-member Board could be seated. The applicant chose to proceed.
Presentation: Vincent Edwards appeared to present the application.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board questioned Mr. Edwards.
Joe Vasta moved to grant a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish an existing brick staircase and reconstruct a wooden staircase in the same footprint at the property located at 12 Atlantic Avenue (Res 3), Jeffrey Haley seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

Chair David M. Nicolau adjourned the Public Hearing at 8:25 P.M.

WORK SESSION

Chair David M. Nicolau reconvened the Work Session at 8:25 P.M.

MINUTES: August 27, 2014 – Jeffrey Haley moved to approve the language as written, Peter Page seconded and it was so voted, 4-0.

Board reorganization – Election of Chair, Vice Chair and Clerk of the Board.

Peter Page moved to nominate David M. Nicolau for Chair of the Board, Robert Littlefield seconded and it was so voted, 5-0.

Jeffrey Haley moved to nominate Robert Littlefield as Vice Chair of the Board, David M. Nicolau seconded and it was so voted, 5-0.

David M. Nicolau moved to nominate Amy Germain as the Clerk of the Board, Robert Littlefield seconded and it was so voted, 5-0.

NEXT MEETING: The next meeting will take place on Thursday, September 18, 2014. It will consist of a Work Session at 6:00 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Jeffrey Haley moved to adjourn at 8:35 P.M. and it was so voted*

unanimously.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on September 18, 2014
David M. Nicolau, Chair