

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
October 2, 2014**

**MEETING HELD IN CAUCUS HALL AND THE JUDGE WELSH ROOM**

**Members Present:** David M. Nicolau, Robert Littlefield, Amy Germain (arrived at 6:35 P.M.), Joe Vasta (arrived at 6:20 P.M.) and Jeffrey Haley.

**Members Absent:** Peter Page (unexcused).

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

**WORK SESSION – CAUCUS HALL**

Chair David M. Nicolau called the Work Session to order at 6:15 P.M.

**PENDING DECISIONS:**

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

David M. Nicolau, Robert Littlefield, Joe Vasta and Jeffrey Haley sat on the case. David M. Nicolau read the decision. *Robert Littlefield moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 3-0.*

**FY15-09**      **69 Commercial Street (*Residential 2 Zone*), Ted Smith, Architects, LLC on behalf of Richard O'Reagan and Richard Hanson –**

Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. Robert Littlefield read the decision. *Jeffrey Haley moved to approve the language as amended, Joe Vasta seconded and it was so voted, 3-0.*

**MINUTES: September 18, 2014 – Robert Littlefield moved to approve the language as written, Joe Vasta seconded and it was so voted, 4-0.**

**FY15-11**      **457 Commercial Street (*Residential 3 Zone*), Ezra Block –**

David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case. The decision will be read at the next Public Hearing on October 16, 2014.

**Review of Elton Cutler application for Board membership.** Mr. Cutler has withdrawn his application.

Chair David M. Nicolau postponed the Work Session at 6:35 P.M.

## PUBLIC HEARING – JUDGE WELSH ROOM

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

**FY14-80**      **10 Young’s Court (Residential 3 Zone), John Pompeii** (*postponed from September 4<sup>th</sup>*) –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to add a second floor and a dormer within the side yard setback. David M. Nicolau recused himself because of a conflict of interest. Vice Chair Robert Littlefield 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 Pompeii, the applicant, chose to postpone until later in the meeting when by which time a fifth member of the Board might arrive.

Chair David M. Nicolau called for a motion to take Case #FY15-15 out of order. *Amy Germain moved to take Case #FY15-15 out of order, Jeffrey Haley seconded and it was so voted, 5-0.*

**FY15-15**      **293 Commercial Street (Town Commercial Center Zone), Provincetown Pilgrim Properties, LLC, dba Kung Fu Dumplings** –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase seating from 8 seats to 20 seats. David M. Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case.

Amy Germain read a letter from Building Commissioner Jeff Larsen regarding this property stating that the structure met the State Building Code requirements for an increase in seating.

**Presentation:** Stephen Rome appeared to present the application. He seeks to increase the seating at the establishment from 8 to 20 seats.

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

**Board Discussion:** The Board questioned Mr. Rome about his seating chart. After review of the seating chart, the Board calculated that the restaurant had 12 indoor seats and 16 outdoor seats. The Board requested that recycling and trash bins be located outside and that there be no table service either inside or outside.

*Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase seating from 8 seats to 28 seats at the property located at 293 Commercial Street (TCC) with the conditions that there be no table service, that recycling and trash barrels be placed in the outdoor eating area, that revised plans showing the location of 28 seats, 12 interior and 16 exterior, be submitted and that the Special Permit run with the applicant, Jeffrey Haley seconded and it was so*

*voted, 5-0.* Amy Germain will write the decision.

**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, to build an addition on the existing dwelling and Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a dormer within a side yard setback. David M. Nicolau, Robert Littlefield, Joe Vasta 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. Attorney Lester J. Murphy on behalf of the applicant, chose to proceed.

**Presentation:** Attorney Murphy, Christine Barker, Richard Salvador, contractor, and Don Di Rocco, architect, appeared to discuss the application. The applicant had submitted revised plans showing a smaller addition per the request of the Board as a result of the first hearing of the case. The size of the addition has been shortened by 3' 2" from 19' 2" width to a 16' width. The proposed south side dormer is located partially within the front and side yard setback and Attorney Murphy requested that this aspect of the application be considered under the *Goldhirsh v. McNear* ruling as the structure is a lawful, pre-existing, non-conforming two-family and that the Board determine that the dormer is not substantially more detrimental to the Town or the neighborhood than what exists.

***Robert Littlefield moved to hear the request for a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws at the property located at 169 Bradford Street (Res 3) under the Goldhirsh v. McNear ruling, Jeffrey Haley seconded and it was so voted, 4-0.***

The dormer will be located within the existing footprint of the building. The portion of the building partially within the rear and front setbacks will increase by a maximum height of 10', but the roof ridge height will not increase. According to Attorney Murphy, the project has gotten a lot of support from the neighborhood and he believes that the Board is clearly within its jurisdiction to make the ruling that the dormer will not be more substantially detrimental to the neighborhood, but in fact will benefit the neighborhood. As to Article 2, Section 2640E, the addition will be 8000 sq. ft., a 39.6% increase in scale. This is a 17% reduction from the previously proposed project.

**Public Comment:** Mark Juaira and Brandon Quesnell spoke in favor of the application. There were no new letters.

**Board Discussion:** The Board discussed the project. The sense of the Board was that the dormer was not substantially more detrimental to the neighborhood than what existed.

***Robert Littlefield moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a dormer within a side yard setback at the property located at 169 Bradford Street (Res 3) under the Goldhirsh v. McNear ruling, Joe Vasta seconded and it was***

*so voted, 4-0.*

**Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to build an addition to the existing dwelling at the property located at 169 Bradford Street (Res 3), Joe Vasta seconded and it was so voted, 4-0.** Robert Littlefield will write the decision.

**FY14-80 10 Young's Court (Residential 3 Zone), John Pompeii** (*postponed from September 4<sup>th</sup>*) –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to add a second floor and a dormer within the side yard setback. As a fifth Board member had not arrived, Chair David M. Nicolau disclosed his perceived conflict of interest, which he felt was not significant, and sat on the case. David M. Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case.

**Presentation:** John Pompeii and Justin Burley appeared to present the application. They seek to add a second floor and dormer. The increase will be 4' on the northerly side and 3' on the southerly side. The only portion of the project that will go outside the footprint of the building is in the front. The change to the rear section of the structure is going up and along a non-conforming dimension. The side yard setback is non-conforming because the structure does not have the required distance between it and an abutting structure. Mr. Pompeii informed the Board that the abutting structure on that side of the structure is a garage.

**Public Comment:** None. There were 20 letters in support, a majority from abutters, and 5 in opposition to the project.

**Board Discussion:** The Board questioned Mr. Pompeii and Mr. Burley. The Board discussed the various setbacks, specifically the rear yard setback, the distance away from the property on the northerly side and whether the project going up and along the rear and side yard setback was substantially more detrimental to the neighborhood than what existed. The sense of the Board was that the project in the rear and on the northerly side of the structure would not be substantially more detrimental to the neighborhood. There was a lot of support from the neighbors, including abutting property owners.

**Robert Littlefield moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to add a second floor and a dormer within the side yard setback at the property located at 10 Young's Court (Res 3), Jeffrey Haley seconded and it was so voted, 5-0.** Robert Littlefield will write the decision.

**FY15-12 1 Fortuna Road (Residential 1 Zone), Scott Grady Architects on behalf of Stan Sikorski** (*postponed from September 18<sup>th</sup>*) –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to build a dormer on an existing dwelling. David M. Nicolau recused himself because of a conflict of interest. Amy Germain disclosed that she is an abutter to Mr. Sikorski's business, but stated that she

would be able to render a fair and unbiased opinion in the matter. Vice Chair Robert Littlefield 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. Scott Brady, on behalf of the applicant, chose to proceed. Robert Littlefield, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case.

**Presentation:** Scott Brady and Stan Sikorski appeared to present the application. The applicant seeks to add a modest dormer to the existing building. The house is located in an area that affords a view of the Harbor and the applicant would like to take advantage of that by adding an 11' wide shed dormer on the south side of the structure. The dormer will not be detrimental to the neighborhood and will not be visible from the street. The structure with the addition of the dormer will fit into other structures in the neighborhood. The footprint will not be increased and the height of the structure will not be increased. The neighborhood average scale is 21,195 cu. ft., the allowable scale is 26,494 cu. ft., the existing scale is 35,320 cu. ft., the proposed addition is 1,210 cu. ft. and the total proposed scale is 36,530 cu. ft.

**Public Comment:** None. There were 2 letters in support of the application and 1 letter of no opposition to the application.

**Board Discussion:** The Board questioned Mr. Grady. Vice Chair Robert Littlefield noted that the project satisfied the requirement of Article 2, Section 2640E, subparagraph 5 and the majority of the Board agreed.

*Jeffrey Haley moved to grant Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to build a dormer on an existing dwelling at the property located at 1 Fortuna Road (Res 1), Joe Vasta seconded and it was so voted, 5-0. Joe Vasta will write the decision.*

**FY15-16**      **4 West Vine Street (Residential 2 Zone), Ted Smith, Architect, LLC on behalf of Jim McGuire –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2560, Permitted Accessory Uses, of the Zoning By-Laws to construct an 8' by 12' shed. There was a request to postpone this case until the October 16, 2014 Public Hearing. *Amy Germain moved to grant the request to postpone Case #FY15-16 until the October 16, 2014 Public Hearing at 7:00 P.M., Jeffrey Haley seconded and it was so voted, 5-0.*

**FY15-18**      **474 Commercial Street (Residential 3, Zone), Deborah Sanders & James Rosenfield –**

The applicants seek a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a second floor addition on the rear portion of the structure and construct a dormer along the entire east side of a roof. David M. Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case.

**Presentation:** Deborah Sanders appeared to present the application. Ms. Sanders

said that the dormer would encroach in the side and rear yard setbacks. Chair David M. Nicolau asked Ms. Sanders if she wanted the application to be heard under the *Goldhirsh v. McNear* ruling. She said she would like it to be heard under *Goldhirsh*. ***Robert Littlefield moved to hear the request for a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a second floor addition on the rear portion of the structure and construct a dormer along the entire east side of a roof at the property located at 247 Commercial Street (Res 3) under the Goldhirsh v. McNear ruling, Joe Vasta seconded and it was so voted, 4-1 (Amy Germain opposed).***

The dormer will not increase the footprint of the building. It is an extension of an existing dormer above a newer part of the structure.

**Public Comment:** Sue Garda, speaking on behalf of the condominium abutting the property, spoke against the application. There were 2 letters of support, 7 in opposition to the application, all from unit owners in the abutting condominium, and 1 letter of concern about the project.

**Board Discussion:** The Board noted that a non-conforming checklist had not been submitted with the application. Board members decided to do a site visit to familiarize themselves with the property and decided to continue the case until the October 16, 2014 Public Hearing. Chair David M. Nicolau suggested that Board members review M.G.L. c. 40A before the next meeting.

***Robert Littlefield moved to continue Case #FY15-18 until the October 16, 2014 Public Hearing at 7:00 P.M. and requested that the applicant submit a non-conforming checklist to the Board before the Public Hearing, Amy Germain seconded and it was so voted, 5-0.***

**FY15-19      963 Commercial Street (Residential 1 Zone), Carol Wells and William Browne –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Building Scale, of the Zoning By-Laws to construct a second floor addition, a new second floor deck and a new roof deck. David M. Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case.

**Presentation:** Carol Wells and William Browne appeared to present the application. Ms. Wells stated that most of the buildings in the neighborhood have two stories. However, there was only one building in the row of condominium units in which the property is located that has two stories. The applicants plan to become year round residents and seek to improve their unit by increasing its size. The cottage currently has 420 sq. ft. of space. The footprint will not increase. The second floor will be a duplicate of the first in terms of structure. The scale increase is primarily because of the proposed 123 sq. ft. deck. The existing scale is 4,200 cu. ft., the addition would add 6,800 cu. ft. for a total of 11,000 cu. ft. The neighborhood average is 7,812 cu. ft. and the allowable scale without a Special Permit is 9,765 cu. ft.

**Public Comment:** Linda Salmon, a Trustee of the Beach Point Club Condominium of which the property is a component, and Sandra Pata spoke in

support of the application. There were 8 letters in support and 1 letter in opposition to the application.

**Board Discussion:** The Board questioned Ms. Wells. The Board had concerns about the increase in building scale having a detrimental effect on the cottage colony community character of the neighborhood at Beach Point. The sense of the Board was that the proposed changes would make the cottage stick out amongst the surrounding buildings and not integrate well into the streetscape. Other potentially detrimental issues raised by the Board include density, environmental degradation and an increase in water consumption. The Board had concerns that this project would create a domino effect in the condominium colony, creating a whole cluster of two story cottages that would be out of character with the neighborhood. Board members were not satisfied that any of the requirements of Article 2, Section 2640E had been fulfilled. Ms. Wells requested that the Board allow her to withdraw the application without prejudice.

**Robert Littlefield moved to grant the request to withdraw Case #FY15-19 without prejudice, Joe Vasta seconded and it was so voted, 5-0.**

**FY15-21**

**8 Cudworth Street (Residential 3 Zone), Joseph Kaye –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Alteration or Extension, of the Zoning By-Laws to reconstruct the roof resulting in an increase in building height within a front yard setback. David M. Nicolau, Robert Littlefield, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case.

**Presentation:** Joseph Kaye and Charlie Hunt appeared to present the application. The applicant seeks to raise the height of the roof ridge by 4” to a height of 26.9’. This is necessary in order to rebuild the roof and make it structurally sound. The second floor will be vaulted into the attic area. The height of the porch roof will be increased as well.

**Public Comment:** None. There was 1 letter signed by 4 people in support of the application.

**Board Discussion:** The Board questioned Mr. Hunt and Mr. Kaye. The Board noted that a non-conforming checklist had not been submitted.

**Amy Germain moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Alteration or Extension, of the Zoning By-Laws to reconstruct the roof resulting in an increase in building height within a front yard setback at the property located at 8 Cudworth Street (Res 3) with the condition that a non-conforming checklist be submitted to the Board, Robert Littlefield seconded and it was so voted, 5-0.** David M. Nicolau will write the decision.

Chair David M. Nicolau adjourned the Public Hearing at 9:50 P.M.

## **WORK SESSION**

Chair David M. Nicolau reconvened the Work Session at 10:15 P.M.

The Board signed plans and discussed the deliberation process.

**NEXT MEETING:** The next meeting will take place on Thursday, October 16, 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 9:15 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on October 16, 2014  
David M. Nicolau, Chair