

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

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** David M. Nicolau (left at 8:20 P.M.), Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong.

**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 6:00 P.M.

**PENDING DECISIONS:**

- 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. David M. Nicolau read the decision. ***Robert Littlefield moved to approve the language as written, Joe Vasta seconded and it was so voted, 5-0.***
- FY15-24      10 Telegraph Hill Road (*Residential 1 Zone*), B+C Construction on behalf of Evelyn Gentemann –**  
Robert Littlefield, Amy Germain, Joe Vasta and Jeffrey Haley sat on the case. Robert Littlefield read the decision. ***Jeffrey Haley moved to approve the language as written, Joe Vasta seconded and it was so voted, 3-0.***
- FY15-18      474 Commercial Street (*Residential 3, Zone*), Deborah Sanders & James Rosenfield –**  
David M. Nicolau, Amy Germain, Robert Littlefield, Joe Vasta and Jeffrey Haley sat on the case. The applicant did not submit a revised plan or a corrected non-conformancy checklist as requested by the Board.

**MINUTES: November 6, 2014 – *Robert Littlefield moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 7-0.***

The Board has not yet received an answer from Town Counsel regarding Sections 3110 and 5330.

Board members reviewed their vacation schedules for the winter.

Chair David M. Nicolau adjourned the Work Session at 6:30 P.M.

## PUBLIC HEARING

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

### PUBLIC HEARINGS:

**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. This matter has been continued to the December 18, 2014 Public Hearing.

**FY15-23**      **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 2640, Building Scale, and Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to redesign and raise the roof by 4' 10" within This matter has been postponed until the December 18, 2014 Public Hearing.

**FY14-25**      **39 Pearl Street (*Residential 3 Zone*), Cape Associates on behalf of Peter Portney –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, and Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to renovate an existing sunroom and add a roof deck, resulting in an increase of height within a front yard setback. This case has been postponed until the December 4, 2014 Public Hearing.

**FY15-26**      **17 Montello Street (*Residential 3 Zone*), William N. Rogers on behalf of Frank Gaynor –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct an outdoor stair as a second means of egress. This case has been postponed until the December 4, 2014 Public Hearing.

**FY14-34**      **17 Montello Street (*Residential 3 Zone*), William N. Rogers on behalf of Frank Gaynor –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a roof deck, resulting in an increase in height within a front yard setback. Gary Locke appeared to state that the applicant will be withdrawing the application, pursuant to a letter to be written by the Building Commissioner. The case has been postponed until the

December 4, 2014 Public Hearing.

- FY15-27**     **237-241 Commercial Street (Town Commercial Center Zone), Robin B. Reid on behalf of Ross' Grill, LLC –**  
The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase seating from 35 to 62. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley, and Peter Page sat on the case.  
**Presentation:** Attorney Robin B. Reid and Cesar Gerena, manager of Ross' Grill, LLC, appeared to present the application. The applicant seeks to amend a previous floor plan to show an increase in seating from 35 seats to 62 seats to be located within the existing area of service. According to Attorney Reid, the seating for the restaurant was originally limited by the constraints of the septic system at Whaler's Wharf and the Growth Management By-Law, not by the amount of space within which it operated. The proposed seats fit into the existing space and are in accordance with all building and safety codes. Whaler's Wharf is now connected to the Town sewer system. Ross' license was converted from seasonal to annual in 2013 and the applicant is committed to staying open all year. Attorney Reid argued that the restaurant is an anchor at Whaler's Wharf and, like the cinema, it is an important contributor to the financial survival of the property, especially in the off-season. It drives pedestrian traffic to the property. She argued that, pursuant to Article 5, Section 5330, the benefits of the proposal outweigh any detrimental effects. The benefits are that Ross' Grill is a sustainable year round business offering employment for local residents, dining options for visitors and residents alike and supports the economic viability of other businesses at Whaler's Wharf. That sustainability requires more than the existing 35 seats. She stated that there would be no adverse effects as a result of the proposal. The space will accommodate the seats, all waste is handled by the existing services and the service area is not being altered.  
**Public Comment:** None. There was 1 letter in favor of the application.  
**Board Discussion:** The Board questioned Attorney Reid about the seating plan. After having consulted with the Building Inspector, Attorney Reid said that the applicant had measured the floor space to determine that the number of seats requested would fit into the available space. The Board requested that the Building Commissioner make a site visit and certify that the seat count in the restaurant is in compliance with the State Building Code  
*Robert Littlefield moved to grant Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase seating from 35 to 62 at the property located at 237-241 Commercial Street (TCC) with the condition that the Building Commissioner certify the seat count, Joe Vasta seconded and it was so voted, 5-0.* Joe Vasta will write the decision.

- FY15-28**     **101 Commercial Street (Residential 3 Zone), Hammer Architects on behalf of David A. Deckelbaum –**  
The applicant seeks a Variance pursuant to Article 2, Section 2560, Dimensional

FY15-29

Schedule, of the Zoning By-Laws to construct a new egress stair on the front of the existing structure and therefore create a new non-conformancy.

**101 Commercial Street (*Residential 3 Zone*), Hammer Architects on behalf of David A. Deckelbaum –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a two-story addition with new roof dormers and elevate the entire structure to comply with FEMA code requirements. David M. Nicolau recused himself because of a conflict of interest. The Board agreed to hear the two cases together. Acting Chair Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong sat on both cases.

**Presentation:** Attorney Lester J. Murphy, Don DiRocco, Greg Connors, and Mike Hammer appeared to present the application. Attorney Murphy stated that the project was approved by the Historic District Commission, which requested two changes to the plans that were previously submitted to the Board. On the northeast side of the structure, there are two windows that have been increased in size and the skirt around the foundation, or pilings, of the building where the addition is proposed will be removed.

According to Attorney Murphy, the building is located in a velocity zone and when renovation or foundation repair work is proposed in this type of zone, various regulations, such as State Building, FEMA and flood plain zoning, must be met. If more than 50% of a foundation is being replaced or if renovation work costing more than 50% of the value of a structure is being undertaken, codes require that all flood zone standards be met. In the velocity zone, the base flood zone requirement is 12' above sea level and the State Building Code requires that the structure be built 2' above that level. This requires that the structure be raised 4.5' above its existing height. The structure itself is not increasing in height, but the foundation under it is.

The flood plain elevation requirements, pursuant to state and federal law, are the primary reason the applicant is seeking both a Variance and a Special Permit. The existing structure contains two residential units and a covered deck used in conjunction with an abutting restaurant. The proposal includes eliminating one unit and establishing a single-family use of the property. The covered porch area will be removed as will the restaurant seating. Attorney Murphy asked that the Special Permit be heard under the *Goldhirsh v. McNear* ruling, which requires a Board finding that the changes will not be substantially more detrimental to the neighborhood than what exists. He reviewed the non-conforming checklist. Dormers will be added to the second floor of the proposed addition on the south side of the building. The structure, which is in disrepair, will be upgraded, enhanced and raised 4.5' and the back deck area will be rebuilt. Two non-conformancies will be removed; a second dwelling unit and the use of the rear portion of the property as part of a restaurant operation. The second floor deck will be removed as well as the enclosure on the first floor deck. The expansion

rearward will be about 10' on the first floor and about 20' on the second floor. The proposed structure will be an asset to the neighborhood and will not be substantially more detrimental than the existing structure.

Attorney Murphy stated that the request for the Variance is related to the front yard setback. The building is 5.74' off Commercial Street. That will not change for the bulk of the building, however because it has to be raised by 4.5' and the front door is on the street, a set of stairs is needed in order to access the building. The minimum stairway/landing standard necessary is being proposed to provide safe and legal egress to the building. The proposed stairway will be 3' closer to the street. A Variance would still be needed if the door were to be placed on the side of the building, as the building is non-conforming as to both side yard setbacks. He reviewed the criteria for a Variance as stated in Article 5, Section 5222 and explained how the proposal conforms to those requirements. The first criteria is that enforcing the by-law would involve a substantial hardship, financial or otherwise, to the applicant and that hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located. According to Attorney Murphy, the hardship in this instance is a safe and legal means of egress to the building. The applicant did look into other options to solve this issue, but those options were limited and none would solve the issue and not create new non-conformancies or increase existing non-conformancies. He said that the Board must find that relief may be granted without either substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the By-Law. The Variance will locate the staircase 2.8' from the street. It will run along about half of the building. Many buildings in this neighborhood are located closer to the street than the existing building with the addition of an access stairway.

**Public Comment:** None. There were 17 letters in support of the application in the file.

**Board Discussion:** The Board questioned Attorney Murphy, Mr. DiRocco, Mr. Hammer and Mr. Connors about the project. Attorney Murphy reiterated his argument that the Board could approve the application for a Variance and the reasons why a Variance was needed.

***Article 3, Section 3110: Joe Vasta moved to hear the request for a Special Permit pursuant to Article 3, Section 3110 of the Zoning By-Laws under the Goldhirsh v. McNear ruling, Bryan Armstrong seconded and it was so voted, 5-0.***

Acting Chair Robert Littlefield proposed that the Board make a finding that the proposal is not substantially more detrimental to the neighborhood or Town than what currently exists.

***Peter Page moved to make a finding that the proposal as presented is not substantially more detrimental to the neighborhood or Town than what currently exists and to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to construct a***

*two-story addition with new roof dormers and elevate the entire structure to comply with FEMA code requirements at the property located at 101 Commercial Street (Res 3), Joe Vasta seconded and it was so voted, 5-0. Robert Littlefield will write the decision.*

**Article 2, Section 2560:** *Peter Page moved to grant a Variance pursuant to Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws to construct a new egress stair on the front of the existing structure and therefore create a new non-conformancy at the property located at 101 Commercial Street (Res 3), Joe Vasta seconded and it was so voted, 5-0. Robert Littlefield will write the decision.*

**FY15-30      29 Alden Street (Residential 3 Zone), George Van Dereck Haunstrup & Sandra L. Haunstrup –**

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, and Section 3115, Demolition and Reconstruction, to demolish a pre-existing shed and reconstruct the shed with a basement resulting in an increase in overall height and construct a dormer within side and front yard setbacks and construct an access stair to the basement. Acting Chair Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Rob Anderson sat on the case.

**Presentation:** George Van Dereck Haunstrup and Sandra L. Haunstrup appeared to present the application. According to Mr. Haunstrup, the shed's use was changed from storage to artist's studio several years ago. He had hired a structural engineer who evaluated the studio and found that it was structurally unsound. He is seeking to demolish the structure and rebuild it with several changes. The changes include constructing a dormer on the north roof, raising the structure 12" to prevent flooding when it rains heavily, adding a basement and installing an exterior access stairway to the basement to be located in an exclusive use area. He will be taking the structure down himself and re-using some materials in the renovation.

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

**Board Discussion:** The Board questioned Mr. and Mrs. Haunstrup. The Board reviewed the non-conforming checklist and discussed whether the plans showed the stairs encroaching further into the non-conforming side yard setback. The Board concluded that the new stairs would not encroach further into the side yard setback, but would just go along that non-conforming dimension.

**Rob Anderson moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extension or Alteration, and Section 3115, Demolition and Reconstruction, to demolish a pre-existing shed and reconstruct the shed with a basement resulting in an increase in overall height and construct a dormer within a side and front yard setbacks and construct an access stair to the basement at the property located at 29 Alden Street (Res 3), Joe Vasta seconded and it was so voted, 5-0. Jeffrey Haley will write the decision.**

**FY15-31      344-346 Commercial Street (*Town Commercial Center Zone*), Trevor's Tide, LLC –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2470, Parking Requirements, of the Zoning By-Laws to waive the parking requirements from two required parking spaces to zero parking spaces for a new two-bedroom apartment. Acting Chair Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case.

**Presentation:** James Palacinos, who appeared on behalf of Tom Tannariello, presented the application. The building is being renovated and will contain one residential dwelling unit with a commercial space beneath. The structure covers approximately 95% of the entire property, therefore providing the required parking is not possible. There are several public parking lots available in the neighborhood and during the winter, parking is allowed on the street.

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

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

*Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2470, Parking Requirements, of the Zoning By-Laws to waive the parking requirements from two required parking spaces to zero parking spaces for a new two-bedroom apartment at the property located at 344-346 Commercial Street (TCC), Bryan Armstrong seconded and it was so voted, 5-0. Robert Littlefield will write the decision.*

**FY15-32      67 Harry Kemp Way (*Residential B Zone*), William N. Rogers on behalf of Demetrios Daphnis –**

The applicant seek a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws for relief from the building scale requirement for two of the four new buildings. Acting Chair Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Rob Anderson sat on the case.

**Presentation:** Attorney Lester J. Murphy, Gary Locke and Demetrios Daphnis appeared to present the application. According to Attorney Murphy, in 2008, the Board had granted the applicant a Special Permit for a project involving five buildings, three of which needed scale relief. The project has since been revised and reduced in scope. One building has been removed and the remaining buildings have been reduced in size. Only two of the four buildings now require scale relief. The neighborhood average scale is 18,249 cu. ft., the maximum allowable scale is 22,812 cu. ft. The proposed scale of Building 1 is 35,135 cu. ft. and the proposed scale for Building 2 is 30,960 cu. ft. He argued that the two buildings will be in keeping with the character of the neighborhood and that the benefits outweigh any detrimental effects. The benefits include an increase in quality housing in Town, in tax revenue for the Town and in employment activities during the construction phase of the project. He stated that there would be no detrimental effects as a result of the project. He explained how the proposal satisfied the requirements of both subparagraphs 1 and 5 of Article 2, Section 2640E. The project was in keeping with the goals and policies of the Local Comprehensive Plan Chapter 1, Section 1.2, Goal 3 and Policy D and Chapter 4,

Section 4.2, Goal 2, Policy A and Policy C. Pursuant to subparagraph 5, the proposed buildings will successfully integrate into their surroundings and will be sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures.

**Public Comment:** Eric Engstrom, an abutter, had questions and concerns about the project. There were no letters in the file.

**Board Discussion:** The Board questioned Attorney Murphy, Mr. Locke and Mr. Daphnis. The Board determined that Mr. Engstrom's question could be answered during the project's site plan review by the Planning Board.

**Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws for relief from the building scale requirement for two of the four new buildings at the property located at 67 Harry Kemp Way (Res B), Joe Vasta seconded and it was so voted, 5-0.** Peter Page will write the decision.

**FY15-33      12 Prince Street (Residential 3 Zone), William Z. Bayba –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2450, G12, Permitted Accessory Uses, of the Zoning By-Laws for the installation of an in-ground swimming pool. Acting Chair Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Bryan Armstrong sat on the case.

**Presentation:** William Z. Bayba and Matt Ruch appeared to present the application. The in-ground pool is one-piece, comprised of fiberglass and measures 12' by 24'. The pool will meet all setback requirements. Cherry Hill Pools, which has installed other pools in Town, will be installing the pool.

**Public Comment:** None. There were 2 letters of 'no objection' to the application.

**Board Discussion:** The Board questioned Mr. Bayba and Mr. Ruch. According to the applicant, the water for the pool will be trucked onto the site and the pool will be covered during the winter. The Board asked about the pool pump equipment. The pump will emit a sound measuring 65 dB.

**Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2450, G12, Permitted Accessory Uses, of the Zoning By-Laws for the installation of an in-ground swimming pool at the property located at 12 Prince Street (Res 3), Bryan Armstrong seconded and it was so voted, 5-0.** Robert Littlefield will write the decision.

**NEXT MEETING:** The next meeting will take place on Thursday, December 4, 2014. It will consist of a Work Session at 5:45 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Joe Vasta moved to adjourn at 9:30 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on December 4, 2014  
David M. Nicolau, Chair