

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
December 18, 2014**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley (arrived at 7:00 P.M.) and Peter Page.

Members Absent: Amy Germain (excused), Rob Anderson (excused) and Bryan Armstrong (excused).

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

WORK SESSION

Chair David Nicolau called the Work Session to order at 6:04 P.M.

PENDING DECISIONS:

- 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 submitted a revised plan and a corrected non-conformancy checklist as requested by the Board.
- FY15-27** **237-241 Commercial Street (*Town Commercial Center Zone*), Robin B. Reid on behalf of Ross' Grill, LLC –**
David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley, and Peter Page sat on the case. Joe Vasta read the decision. The Board took no action.
- FY15-30** **29 Alden Street (*Residential 3 Zone*), George Van Dereck Haunstrup & Sandra L. Haunstrup –**
Robert Littlefield, Joe Vasta, Jeffrey Haley, Peter Page and Rob Anderson sat on the case. The decision has not been amended.
- FY15-25** **39 Pearl Street (*Residential 3 Zone*), Cape Associates on behalf of Peter Portney –**
Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case. Robert Littlefield read the decision. *Peter Page moved to approve the language as written, Joe Vasta seconded and it was so voted, 4-0.*

- FY 15-35** **29 Conant Street (Res 3 Zone), DKR Developers –**
Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case. The decision was not available.
- FY 15-37** **31 Bradford Street (Res 3 Zone), Ruesch, dba Devon’s Deep Sea Dive -**
Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case. The decision was not available.
- FY 15-38** **11 Bradford Acres Road (Res 3 Zone), James Turner -** Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case. The decision was not available.
- FY 15-39** **2 Conway Street (Res 2 Zoning District). Application by Regina Binder on behalf of Guy Busa –**
Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case. The decision was not available.
- FY 15-40** **42 Pleasant Street (Residential 3 Zone), Tupper Construction Co., on behalf of Kathy Kacergis –**
Robert Littlefield, Jeffrey Haley, Peter Page, Rob Anderson and Bryan Armstrong sat on the case. The decision was not available.

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

Chair David M. Nicolau adjourned the Work Session at 6:45 P.M.

PUBLIC HEARING

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 three absent.

PUBLIC HEARINGS:

- FY15-16** **4 West Vine Street (Residential 2 Zone), Ted Smith, Architect, LLC on behalf of Jim McGuire (continued from November 6) –**
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. Attorney Lester J. Murphy and Ted Smith appeared to request that the case be withdrawn without prejudice. **Joe Vasta moved to grant the request to withdraw Case #FY15-16 without prejudice, Peter Page seconded and it was so voted, 5-0.**

FY15-23

4 West Vine Street (Residential 2 Zone), Ted Smith, Architect, LLC on behalf of Jim McGuire (postponed from October 16) –

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 the front yard setback resulting in an overall increase in building volume. 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 since four favorable votes were needed for a Special Permit, the applicant had the choice of proceeding or requesting a continuance 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: Attorney Lester J. Murphy, Ted Smith and Jim McGuire appeared to present the application. Attorney Murphy stated that the revised plans under consideration by the Board were the result of changes requested by the Historic District Commission. The revised proposal was now much smaller in scale and much different in the extent of the renovations than the original one. As to Article 3, Section 3110, he stated that the project involved modifications to the side of the structure that faced West Vine Street. The building was located within the front yard setback, between 2' and 4' off the street. The existing north elevation has a narrow extension of the second floor addition. The proposal included continuing that narrow extension, a portion of which was located within the front yard setback, along the width of the structure. It would be expanded and incorporated as part of a dormer on the north elevation of the house to match the dormer on the south elevation. The project also included the removal of an unattractive, exterior stairway. Attorney Murphy argued that these changes constituted a significant improvement to the structure and the premises. He stated that the modification to the structure, albeit increasing the amount that was located within the front yard setback, was not substantially more detrimental to the neighborhood than what existed, and, in fact, was an improvement to the neighborhood.

Attorney Murphy said that the scale of the building on the property will be increased slightly. The existing structure contains two dwelling units. The proposal included the removal of one of those units, decreasing the density of dwelling units on the premises. After the renovations, the building would be harmonious with other structures in the neighborhood. He argued that the project is compliant with the criteria pursuant to Article 2, Section 2640E, subparagraphs 1, 5 and 6. The neighborhood average scale is 16,507 cu. ft., the maximum allowable scale is 18,983 cu. ft. and the existing structure is 21,728 cu. ft. The proposed addition will be 970 cu. ft. and the total proposed scale is 22,698 cu. ft. The percentage increase is 4.5%, a modest increase. There are buildings with a wide variety of scales in the neighborhood. He stated that the social, economic and other benefits of the project outweigh any adverse effects. The benefits included an upgraded building with one dwelling unit removed, which was a decrease in the density of dwelling units on the lot. The structure would be made

more livable and useable and more tax revenue would be collected as a result of the upgrades. Pursuant to Section 2640E, subparagraph 1, the project met the goals and objectives of the Local Comprehensive Plan, Chapter 1, Section 1.2, Goal 1, Policy B and Goal 3, Chapter 4, Section 4.2, Goal 2, Policy A. Pursuant to subparagraph 5, the addition would successfully integrate into its surroundings and would be sited in such a manner that minimized the mass from the street, as the dormer would be built into an existing roofline, and would not have a negative impact on light or views from surrounding buildings. And pursuant to subparagraph 6, the building was consistent with the guidelines of the HDC.

Public Comment: None. There were 11 letters in favor of the application.

Board Discussion: The Board questioned Attorney Murphy, Mr. Smith and Mr. McGuire.

Peter Page moved to grant 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 the structure within the front yard setback resulting in an overall increase in building scale at the property located at 4 West Vine Street (Res 2), Joe Vasta seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

FY15-36 43 Race Point Road (Residential 3, Zone), Edward Malone on behalf of Community Housing Resource, Inc. –

The applicant seeks an amendment to Special Permit #2004-096, pursuant to Article 2, Section 2400, Use Regulations, and Article 3, Section 3100, Nonconformancy, of the Zoning By-Laws to allow expanded and flexible office, art studio and neighborhood retail use within existing buildings and to allow woodworking within the existing stable under the F4 use category (a use externally observable attributes similar to uses permitted). David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: Ted Malone appeared to present the application. According to Mr. Malone, approval of the request would allow permitted uses on the property within any of the existing structures. The proposal did not seek to alter the existing footprint or scale of existing structures, however it did seek to allow unit owners flexibility of use for their building spaces and the possibility of creating opportunities for economic development and growth. Mr. Malone said that the proposal would create economic benefits by supporting businesses that have limited options for office space and for supporting artisans and tradespeople who have limited options for workspace. In addition, Mr. Malone requested to use up to 350 sq. ft. of the 1660 sq. ft. of the horse stables for a woodworking operation. There are currently no horses in the stables and would not be during the construction phase of the Stable Path housing development, which is scheduled to be built on the premises.

Public Comment: Rich Wood spoke in favor of the application. Jane MacDonald had a question about the garages on the premises. Pat Franzese had a concern about noise being created by the proposed woodworking studio. There was a letter from Mr. Wood in support of the application and a letter that was not relevant to

the matter being discussed.

Board Discussion: The Board questioned Mr. Malone about the plan for the garages on the premises. He stated that they would be removed during the Stable Path housing development construction phase. Bernard Cohen, the woodworker who will occupy the woodworking studio, joined Mr. Malone to discuss the issue. The Board questioned Mr. Cohen and Mr. Malone about the studio. The Board requested that Mr. Malone insulate and sheetrock the woodworking studio area in order to contain noise. Mr. Malone agreed to the request and agreed not to put openings in the studio that would face the paddock area.

Robert Littlefield moved to amend Special Permit #2004-096, pursuant to Article 2, Section 2400, Use Regulations, and Article 3, Section 3100, Nonconformancy, of the Zoning By-Laws to allow expanded and flexible office, art studio and neighborhood retail use within existing buildings and to allow woodworking within the existing stable under the F4 use category (a use externally observable attributes similar to uses permitted) at the property located at 43 Race Point Road (Res 3) with the condition that the woodworking studio is insulated and sheet-rocked, Joe Vasta seconded and it was so voted, 5-0. David M. Nicolau will write the decision.

FY15-41 29 Point Street (Residential 1 Zone), Ted Smith Architect, LLC, on behalf of Jeff Larsen –

The applicant seeks a Variance pursuant to Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws to construct a new single-family residence within a front yard setback. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: Attorney Lester J. Murphy, Ted Smith, Jeff Larsen and Joe Bolduc appeared to present the application. Attorney Murphy submitted photographs of the site, of the lot next door to the site and of other buildings on Point Street, showing their proximity to the edge of the road. He argued that the criteria for granting a Variance existed in this situation. The first criterion was that a literal enforcement of the front yard setback would involve a substantial hardship for the applicant. The second criterion was that the hardship was owing to the soil conditions, shape or topography of the lot and did not generally affect other lots in the zoning district. He said that the portion of the lot that could be built upon without zoning relief was located in a steeply sloping portion of the lot where the elevation changes from 22' to 40' over a 30' distance. The front portion of the lot, the most level, was where the applicant seeks to build the structure. He was requesting that the structure be built with a front yard setback of 10' from Point Street, instead of the 30' setback requirement for this zoning district. According to Attorney Murphy, the hardship exists because if the applicant attempted to comply with the 30' setback, the building would have to be built on the steepest part of the lot. He said that on the lot next door, the owner had attempted to build in an area of the lot with a similar topography, with disastrous results. Engineers who have reviewed this site have said that a structure could be built in that area of the lot, but only after great expense and not without the possibly of destabilizing

the property and abutting properties. The soil and the topography of the lot constitute a substantial hardship and justify the Board's granting of a Variance. Attorney Murphy added that the Variance could be granted without substantial detriment to the public good or without nullifying or substantially derogating from the intent or purpose of the By-Law. He stated that if the applicant was granted a Variance and allowed to build in the proposed portion of the lot, all other setbacks for the structure would be met. He pointed out that most other buildings on Point Street were located in their front yard setbacks.

Public Comment: Lyn Plummer and Jerome Crepeau, both abutters, spoke in support of the application. There was a letter from an abutter in opposition to the project.

Board Discussion: The Board questioned Attorney Murphy, Mr. Smith, Mr. Larsen and Mr. Bolduc. Attorney Murphy reiterated his arguments that the soil conditions and topography created a substantial hardship for the applicant and justified the Board's granting of a Variance. The Board the issue, including what the definition of a buildable lot was and what constituted a hardship when discussing a Variance. Chair David M. Nicolau read an excerpt from Mark Bobrowski's, Handbook of Massachusetts Land Use and Planning Law, regarding Variances and what constituted statutory hardship, after which he stated why he didn't think this proposal met the requirement. In his opinion, the hardship, financial or otherwise, was self-imposed and suggested to the applicant that a smaller, cottage-style house could be built on the lot without requiring any zoning relief. It might involve more expense, but it was a valid option. At the request of Attorney Murphy a poll of the Board was taken. He then requested to withdraw the matter without prejudice. **Robert Littlefield moved to grant the request to withdraw Case #FY15-41 without prejudice, Joe Vasta seconded and it was so voted, 5-0.**

FY15-42 29 Point Street (Residential 1 Zone), Ted Smith Architect, LLC, on behalf of Jeff Larsen –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct a new single-family residence.

Attorney Murphy requested to withdraw the matter without prejudice. **Robert Littlefield moved to grant the request to withdraw Case #FY15-42 without prejudice, Joe Vasta seconded and it was so voted, 5-0.**

NEXT MEETING: The next meeting will take place on Thursday, January 15, 2015. It will consist of a Work Session at 6:00 P.M. followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Jeffrey Haley moved to adjourn at 9:00 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on January 15, 2015
David M. Nicolau, Chair