

Planning Board Public Hearing  
Wednesday, December 14, 2009  
Grace Gouveia Building, Room 6  
26 Alden Street, Provincetown, MA 02657

Planning Board Members Present: Howard Burchman, Joe DeMartino, Marianne Clements, Dorothy Palanza and Peter Page.

Excused Absent: None.

Staff Present: Maxine Notaro, Permit Coordinator and Russ Braun, Building Commissioner.

Howard Burchman, Chairman, called the meeting to order at 7:00 p.m.

**Case #2009-11 Site Plan Review** (Request to continue to January 11, 2010)

Application by Eliot Parkhurst, Esq. on behalf of Coastal Land Trust under Article 2, Section 2320 of the Zoning Bylaws for High Elevation Protection District B. The applicant seeks approval for the modification to existing retaining walls and installation of reconfigured pool and hot tub with associated walkways and retaining walls at the property located 9 Oppen Lane, Provincetown, MA, (RES1 Zone).

The Board members received a letter from Eliot Parkhurst, Attorney on behalf of Coastal Land Trust requesting a continuance to the Planning Board meeting on January 11, 2010 in order to provide additional time to comply with the requests of the Board made during the November 16, 2009 hearing. The applicant(s), in the letter further agreed to waive the time constraints.

Howard Burchman stated for the record that the Planning Board did not ask for any additional information other than what is required by law. Mr. Burchman asked the Building Commissioner how a building permit was issued without first having been sent back to the Planning Board for further review.

Russ Braun said the applicants had a permit to construct decks and install the swimming pool. It appears the project grew and they took it upon themselves to do other things. However, a landscaping timber wall does not require a building permit because it is less than four feet. I would not have seen a building permit for that because it is not required by code. If an applicant looks at the building code they would find that a permit is not required.

When the office was made aware of what was taking place we told them to stop and advised them they needed to seek Planning Board approval.

Joe DeMartino asked if the Planning Board needed to change the Zoning Bylaws so that a permit is required.

Russ Braun said zoning regulates use. We can't supersede State Law; the Building Code is state law and a permit for this type of wall is not required.

Howard Burchman said the building plans from one owner to the other were radically different and he does not know how someone could compare the two; it's just an excuse.

Joe DeMartino asked if the Planning Board needed to create criteria to deal with these types of situations.

Russ Braun said there are certain things that are not required under the building codes such as fences under six feet don't require a permit.

Howard Burchman said there are licensed professionals that should know what the bylaws are.

Russ Braun said the licensed professionals were not from this area, however there is no excuse.

Howard Burchman said the licensed professionals that are working on projects in Provincetown should know what our bylaws are. The worst position for the boards to be put in is fait au complete.

Russ Braun said the board could request that the applicants stabilize the slope and make it the way it was and replant.

Motion: To continue the 9 Oppen Lane case to January 11, 2010 and approving the request to waive time constraints.

Moved: Dorothy Palanza moved. Seconded: Marianne Clements. Voted: 5-0-0.

**Approval Not Required** (Continued from November 16, 2009)

Christopher J. Snow, Attorney and John McElwee on behalf of Donahue Family Nominee Trust and 435 Commercial Street Realty Trust to confirm that these two properties known as 429-431 Commercial Street, Provincetown, MA (Res3 Zone) and 435 Commercial Street, Provincetown, MA (Res3 Zone) are two separate distinct lots.

Chris Snow stated that the land in reality has always been divided. A former Assessor combined the two lots for zoning purposes and sent one tax bill.

Howard Burchman asked if at any time these two lots were divided did they merge to become further developed. Chris Snow said no.

Dorothy Palanza said there was a difference between a buildable lot and an unbuildable lot.

Chris Snow stated that is true, however, these two lots are both occupied. One lot houses an Art Gallery with an apartment and the other lot houses a restaurant.

Peter Page stated in doing this the lots would lose their pre-existing non-forming status.

Chris Snow said this is not going anywhere except for assessing purposes.

Joe DeMartino stated with the property being considered as one, it would be a hassle for municipal leans. The Assessor would lean all three properties. I see this as an impediment. Other lots could come before the Planning Board for similar requests. What's to prevent this from happening with other lots?

Russ Braun said this is not a subdivision; it is if buildings are on the lot. It is clear, based on the records he has looked at, that it is two separate lots. The Planning Board is only putting a line on paper. The Planning Board under 81L needed another rationale. It's a poster child for that definition. Do we want to encourage people from dividing up their land? There is enough case law to the courts to not look favorably upon this.

Chris Snow stated they could sell the buildings separately but it would still be taxed as one lot. Also, if one side does not pay their taxes then it affects the other owner. This would prevent and protect each property owner.

Joe DeMartino asked if the Planning Board would be setting precedence by doing this.

Russ Braun said it prevents taxes, municipal lean certificates from the two parties.

Chris Snow said these are already separated lots. A previous Assessor combined them for tax purposes.

Joe DeMartino asked when this started.

Jack Donaghue, property owner said in 1992 they lost their records in a fire.

Peter Page asked why the Assessor's Office was asking that the Planning Board review this to determine if

it is in fact two separate lots.

Chris Snow said the Assessor's Office is not asking for it, he is because he has exhausted his communications with the Assessor. I don't know why he is doing this.

Joe DeMartino said he spoke with the Assessor. The Assessor informed him that he does not have the authority to separate the lots and the then Assessor probably did not have the authority to combine them for tax purposes.

Howard Burchman said the opinion is that it meets the definition of an ANR because it is on a public way and it had frontage at the time.

Joe DeMartino asked when it was established that these were separate parcels. He said he would be satisfied if it is determined that these were two separate parcels prior to the adoption of the 1978 zoning bylaws.

Chris Snow said there is documentation in the building files referencing 1945 deeds that show them as two separate parcels.

Motion: To endorse the ANR plan as submitted.

Moved: Marianne Clements moved to endorse. Seconded: Dorothy Palanza. Voted: 5-0-0.

### **Approval Not Required Pre-Application**

William N. Rogers II, P.E.P.L.S on behalf of Stephen P. Johnson to remove a lot line combining two lots into one lot at the property located at 29R and 31 Court Street, Provincetown MA (Res3 Zone).

William Rogers said 29R is a land locked parcel and they are proposing to remove the lot line making it all one lot.

Joe DeMartino said the parcel to be combined is the land locked parcel. Where is the frontage?

Russ Braun said the frontage is on Court Street, however, the parcel is pre-existing, non-conforming because it does not have the 50' of frontage on Court Street.

The Board members say no issues with what is being requested. Mr. Rogers will file the Approval Not Required Plan for the January 11, 2010 meeting.

Outer Cape Health Facility, Harry Kemp Way

Russ Braun said the Health Care Facility is planning on an expansion to their existing facility. The question is; does it require Site Plan Review? The way he reads the bylaw, it would not because it is a single use building plus the addition and therefore, would not require Site Plan Review.

Board members agreed based on the need and use of the public facility.

### **Any other business that shall properly come before the Board**

Barbara Rushmore discussed with the Board the possibility of creating a zoning bylaw entitled Formula Business Exclusion District. This would prevent chain store establishments. She has been most upset about the operation of Cuffy's because it ruins business for the small business owners who live here year-round that make their own sweatshirts and articles of clothing.

Howard Burchman said he would like to get more information and hear comments from others before drafting an article.

Catherine Russo said she and her partner have a shop in town and Cuffy's has made it very difficult for not only her partner but for other businesses to survive here. The character of the town is the small historic shops.

There are a few chain stores and to name just a few there is Ben & Jerry's, Stop and Shop, Cuffy's.

Joe DeMartino said in his opinion he would like to see a CVS come into town because it's an inconvenience to have to keep driving down to Orleans.

Barbara Rushmore will submit more information on what other towns have been working on to develop a bylaw of formula businesses.

Minutes of November 16, 2009

Motion: To approve as corrected.

Moved: Joe DeMartino. Seconded: Peter Page. Voted: Unanimously. 5-0-0.

**Curb Cut Procedures**

Maxine Notaro handed out a memo regarding the procedures for curb cuts.

**Registry of Deeds**

Board members signed a new signature sheet required for the Registry of Deeds.

Maxine Notaro reminded the board that the Town Report is due in January.

**2010 Annual Meeting Calendar**

Board members reviewed and approved the annual 2010 meeting schedule.

**Adjournment**

Motion to adjourn at 8:47 p.m.

Respectfully submitted,  
Maxine Notaro  
Permit Coordinator