

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
January 6, 2011**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon.

Members Absent: Elisabeth Verde (excused) and David Nicolau (excused).

Others Present: Russell Braun (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair Anne Howard called the Work Session to order at 6:52 P.M.

MINUTES: December 16, 2010 – *Tom Roberts moved to approve the language as amended, Anne Howard seconded and it was so voted, 3-0.*

Chair Anne Howard informed the Board that she had contacted Pru Sowers about writing an article related to Article 4 Section 4170 of the Zoning By-Laws.

PENDING DECISIONS:

FY11-44 15 Commercial Street (*Residential 1 Zone*), Phillip Mossy on behalf of the Red Inn, LLC –

Anne Howard, Elisabeth Verde, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the cases. The applicant submitted a floor plan clarifying the square footage of the dining room as requested by the Board. Robert Littlefield read the decision. ***Tom Roberts moved to approve the language as written, Harriet Gordon seconded and it was so voted, 4-0.***

Chair Anne Howard postponed the Work Session at 7:02 P.M.

PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 7:02 P.M. There were five members of the Zoning Board of Appeals present and two absent.

NEW CASES:

FY11-47 269 Bradford Street (Residential 2 Zone), Hal Winard, of Winard Construction and Development, on behalf of Hazel Warner –

The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale for the construction of a first floor addition and to relocate stairs to the second floor.

Attorney Christopher J. Snow rose to speak to a point of order. He advised the Board not to move forward on the hearing of any applications that are seeking relief under Article 2, Section 2640 of the Zoning By-Laws as approved at the previous Town Meeting. This revised Zoning By-Law has not yet been approved by the Massachusetts Attorney General. He claimed that, in his opinion, and as of this date, there is no Article 2, Section 2640 in the local Zoning By-Laws. He cautioned the Board against the consequences of ruling on a by-law that has not yet been, and may not be in the future, approved by the AG. He alleged that the Board had no basis in law or in the Provincetown Zoning By-Laws to act on those applications. The Board discussed the issue. *Amy Germain moved to ask Town Counsel as to the Attorney General's date of decision-making on the new Building Scale By-Law, Article 2, Section 2640, and if it is later than March 15th, 2011, then the Board will ask for an opinion from Town Counsel on whether the Board can hear cases under this By-Law, Robert Littlefield seconded and it was so voted, 5-0.*

Chair Anne Howard asked the applicants of Cases FY11-47 and FY11-48 if they would be willing to postpone their respective cases to the next Public Hearing on January 20, 2011. She stated that the Board would prefer not to act until a clarification from Town Counsel on the previously discussed issue has been received.

FY11-47 269 Bradford Street (Residential 2 Zone), Hal Winard, of Winard Construction and Development, on behalf of Hazel Warner –

The applicant requested a postponement of the case.

Amy Germain moved to grant the request for a postponement of Case #FY11-47, Robert Littlefield seconded and it was so voted, 5-0.

FY11-48 496 Commercial Street (Residential 3 Zone), Robert Santos –

The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to construct a legal means of egress. The applicant requested a postponement of the case.

Amy Germain moved to grant the request for a postponement of Case #FY11-48, Robert Littlefield seconded and it was so voted, 5-0.

FY11-49 10A Commercial Street (Residential 1. Zone), Jon Ziperman, of Sea Level Builders, on behalf of Andrew Stich –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along pre-existing, non-conforming lot lines. Amy Germain disclosed that she is an abutter to an abutter, but is certain that she can render a fair and impartial decision and has no financial interest in the outcome of the case. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Harry Palmer and Jon Ziperman appeared to present the case. The applicant seeks to construct dormers within a pre-existing, non-conforming setback. The change does not increase the non-conformity.

Public Comment: None. There was 1 letter in support of the application in the file.

Board Discussion: The Board questioned Mr. Palmer and Mr. Ziperman. *Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along pre-existing, non-conforming lot lines at the property located at 10A Commercial Street (Res 1), Tom Roberts seconded and it was so voted, 5-0.* Harriet Gordon will write the decision.

FY11-50 54 Mayflower Avenue (Residential 1 Zone), Deborah Paine, Inc. on behalf of Shawn Nightingale and Jay Jakubowski –

The applicant seeks a Special Permit under Article 2, Section 2560, Building Height, and Article 3, Section 3110 of the Zoning By-Laws to construct an addition along the existing footprint of the building and that it is heard under the *Goldhirsh v. McNear* ruling. There was a request by the applicant to postpone the case until the January 20, 2011 Public Hearing.

Amy Germain moved to approve the request to postpone Case #FY11-50 until the January 20, 2011, Harriet Gordon seconded and it was so voted, 5-0.

FY11-51 15 Carver Street (Residential 3 Zone), Richard Flores, of Riptide Building Company, on behalf of Scott Stevens and Timothy Deahl –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second floor addition up and along a pre-existing, non-conforming lot lines.

Presentation: Richard Flores and Timothy Deahl appeared to present the application. The applicant seeks to convert a studio into a one-bedroom structure in order to gain more space. The ridge line will be lowered from 21' to 20'.

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

Board Discussion: The Board questioned Mr. Flores and Mr. Deahl.

Amy Germain moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second floor addition up and along a pre-existing, non-conforming lot lines at the property located at 15 Carver Street (Res 3) with the condition that final plans that reflect the lowering of the roofline from 21' to 20' are submitted to the Department of Community Development before the next Public Hearing on January 20, 2011, Robert Littlefield seconded and it was so voted, 5-0. Anne Howard will write the decision.

Chair Anne Howard raised the topic of the Assessor's Office field cards, which contain information about Town properties and the buildings thereon. She reminded the Board that they provide a lot of information that could be useful to Board members. The Board briefly discussed the field cards and whether it should require the cards to be submitted along with ZBA applications. The Board decided not to require those submissions.

Chair Anne Howard adjourned the Public Hearing at 8:15 P.M.

WORK SESSION

Chair Anne Howard reconvened the Work Session at 8:15 P.M.

PENDING DECISIONS:

FY11-45 **15 Commercial Street (*Residential 1 Zone*), Phillip Mossy on behalf of the Red Inn, LLC –**
Anne Howard, Elisabeth Verde, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the cases. Robert Littlefield read the decision. *Harriet Gordon moved to approve the language as written, Anne Howard seconded and it was so voted, 4-0.*

FY11-46 **15 Commercial Street (*Residential 1 Zone*), Phillip Mossy on behalf of the Red Inn, LLC –**
Anne Howard, Elisabeth Verde, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the cases. Robert Littlefield read the decision. *Harriet Gordon moved to approve the language as written, Anne Howard seconded and it was so voted, 4-0.*

NEXT MEETING: The next meeting will take place on January 20, 2011. It will consist of a Work Session at 6:45 P.M. and a Public Hearing at 7:00 P.M.

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

These minutes were approved by a vote of the Zoning Board of Appeals at their meeting on January 20, 2011.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2011
Anne Howard, Chair