

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
January 20, 2011**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain, David Nicolau, Tom Roberts and Harriet Gordon.

**Members Absent:** None.

**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 6:45 P.M.

**MINUTES: January 6, 2010** – *Amy Germain moved to approve the language as written, Robert Littlefield seconded and it was so voted, 5-0.*

**PENDING DECISIONS:**

**FY11-49**      **10A Commercial Street (*Residential 1. Zone*), Jon Ziperman, of Sea Level Builders, on behalf of Andrew Stich –**  
Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case. Harriet Gordon read the decision. *Robert Littlefield moved to approve the language as amended, Amy Germain seconded and it was so voted, 5-0.*

Chair Anne Howard postponed the Work Session at 7:00 P.M.

## PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 7:00 P.M. There were seven members of the Zoning Board of Appeals present and none absent.

### NEW CASES:

**FY11-52**     **5 Harbour Drive (*Residential 1 Zone*), William N. Rogers, II, P.E., P.L.S., on behalf of Bay Harbour LLC II –**

The applicant seeks a Special Permit under Article 2, Section 2450 of the Zoning By-Laws for the installation of a 15' wide by 29' long in-ground salt water swimming pool. The applicant requested a postponement until the February 3, 2011 Public Hearing.

*David Nicolau moved to grant the postponement of Case #FY11-52 until the February 3, 2011 Public Hearing, Robert Littlefield seconded and it was so voted, 5-0.*

Chair Anne Howard briefly explained Town Counsel's opinion regarding Article 2, Section 2640, which has not yet been approved by the Attorney General.

**FY11-47**     **269A Bradford Street (*Residential 2 Zone*), Hal Winard, of Winard Construction and Development, on behalf of Hazel Warner (*postponed from January 6, 2011*) –**

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. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

**Presentation:** Hal Winard and Hazel Warner appeared to present the application. The applicant seeks to build a small addition, 10' by 20', which will be used for storage and as a sun room. The increase in scale is about 13% and the structure is already 15% over the allowable neighborhood scale. Mr. Winard stated that the visibility from the street is minimal, there is no negative impact on light and the structure will be more harmonious with the surrounding neighborhood.

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

**Board Discussion:** The Board questioned Mr. Winard and Ms. Warner.

*David Nicolau moved to grant an "at-risk" 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 at the property located at 296A Bradford Street (Res 2), Robert Littlefield seconded and it was so voted, 4-1 (Amy Germain opposed).* Anne Howard will write the decision.

**FY11-48**     **496 Commercial Street (*Residential 3 Zone*), Robert Santos (*postponed from January 6, 2011*) –**

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.

Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

**Presentation:** Robert Santos and Brian Seppala appeared to present the application. Mr. Santos seeks to add an egress deck, which will encroach in the rear yard setback, to the rear of the structure. The building is already over the allowable neighborhood scale.

**Public Comment:** Attorney Christopher J. Snow, representing direct abutters David King and John Frishkopf, spoke against the application. There were 2 letters in the file in opposition to the project.

**Board Discussion:** The Board questioned Mr. Santos and Mr. Seppala. The Board consulted the written, and solicited the verbal, opinion of Mr. Braun regarding the project, including his suggestions regarding non-encroaching options for a second means of egress. The Board requested that the applicant revise the plot plan to show the parking delineation at the premises, to show elevations and to indicate that there are three units in the structure on the building plans and to re-think the location of a second means of egress. The Board also requested that the applicant supply important information missing from the application, such as lot coverage and density summary. The Board would like to continue the case to the February 3, 2011 Public Hearing. The Board discussed the subject with comments from Mr. Braun and a point of order from Attorney Snow. The applicant requested a withdrawal without prejudice.

*Amy Germain moved to grant the request to withdraw Case #FY11-49 without prejudice, Robert Littlefield seconded and it was so voted, 5-0.*

- FY11-50**      **54 Mayflower Avenue (Residential 1 Zone), Deborah Paine, Inc. on behalf of Shawn Nightingale and Jay Jakubowski** (*postponed from January 6, 2011*)– 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. The applicant further requests to be heard under Article 2, Section 2640 for a deviation in building scale. Chair Anne Howard and David Nicolau recused themselves because of conflicts of interest. Vice Chair Robert Littlefield chaired the hearing of this application. Amy Germain, Elisabeth Verde, Tom Roberts and Harriet Gordon also sat on the case.
- Presentation:** Deb Paine and Bill Kwaak appeared to present the application. She requested to withdraw her request to be heard under the *Goldhirsh v. McNear* ruling. The applicant seeks to put an addition on an existing three-story structure, which is already above the allowable neighborhood average. The addition will house a garage and allow a small office to be created and an existing master suite and two guest bedrooms to be enlarged. The addition will extend, but not increase the non-conformity. The existing height of the structure is 25.2', the proposed will be 26.63'. The existing volume is 20,410 cu. ft., the proposed addition is 12, 270 cu. ft., for a total of 32,680 cu. ft. The neighborhood average is 13,889 cu. ft. The allowable volume is 17,360 cu. ft. The scale increase requested is 60%. Ms. Paine showed the Board photos that illustrated that no increase in the visual impact of

the proposed addition will occur. She cited the LCP, Section 1, 1.4D and Section 4, Policy C to support the request. She argued that the project was not more detrimental than what exists and all neighbors, several of whom wrote letters, they spoke to were in support of the project.

**Public Comment:** None. There were 4 letters in support of the application.

**Board Discussion:** The Board questioned Ms. Paine and Mr. Kwaak. Some Board members had concerns about the size of the addition and the increase in scale. Vice Chair Robert Littlefield polled the Board. The applicant requested a withdrawal without prejudice.

*Amy Germain moved to grant the request for a withdrawal of Case # FY11-50 without prejudice, Elisabeth Verde seconded and it was so voted, 5-0.*

**FY11-53      15 Standish Way (Residential 3 Zone), Craig W. Combs & Charles G. Roberts –**

The applicants seek a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in the neighborhood average building scale by 6.37 building scale units to a pre-existing, non-conforming single-family residence. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

**Presentation:** John DeSouza appeared to present the application. The applicants seek to increase the size of the structure in order to extend the kitchen, create a new entry hall and a rectangular bump-out on the living room for use as a music room. Several building elements will be removed, including the entry porch covering and a cupola. The addition will add 1280 cu. ft., or 6.37 scale units, to the structure. Mr. DeSouza cites Goal 1, Policy B and Goal 2, Policy A of the Local Comprehensive Plan and Article 2, Section 2640, #5, of the Zoning By-Laws to support the request. He argued that the proposed addition integrates into its surroundings and is sited in such a manner as to minimize its size when viewed from the street

**Public Comment:** None. There were 2 letters from abutters; 1 in support of, and 1 with no objection to, the project and there was 1 letter from a non-abutter in support of the project.

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

*David Nicolau moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in the neighborhood average building scale by 6.37 building scale units to a pre-existing, non-conforming single-family residence at the property located at 15 Standish Way (Res 3) with a notation in the decision that the studio is an actual dwelling and that the lot is pre-existing and non-conforming, Robert Littlefield seconded and it was so voted, 4-1 (Amy Germain opposed). Robert Littlefield will write the decision.*

Chair Anne Howard adjourned the Public Hearing 10:20 P.M.

## WORK SESSION

Chair Anne Howard reconvened the Work Session at 10:20 P.M.

Deb Paine addressed the Board regarding the hearing of Case #FY11-50 and Board procedure. Chair Anne Howard recused herself because of a conflict of interest and left the room.

The Board discussed the topic raised by Ms. Paine.

The applicant in Case #FY11-51 did not submit a revised plan, so that decision will not be read into the record.

**NEXT MEETING:** The next meeting will take place on February 3, 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 10:45 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 February 3, 2011.

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2011  
Anne Howard, Chair