

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
March 3, 2011**

**MEETING HELD IN THE JUDGE WELSH ROOM**

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

**Members Absent:** Elisabeth Verde (excused).

**Others Present:** Russell Braun (Building Commissioner) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Chair Anne Howard called the Work Session to order at 6:30 P.M.

**MINUTES: February 17, 2010** – *Amy Germain moved to approve the language as amended, Robert Littlefield seconded and it was so voted, 6-0.*

**PENDING DECISIONS:**

**FY11-56**     **315 Commercial Street (Town Commercial Center Zone), Linda and Nelson Vital of the Coffee Pot** –  
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Robert Littlefield read the decision. *Amy Germain moved to approve the language as written, David Nicolau seconded and it was so voted, 5-0.*  
*Amy Germain moved to reconsider the approval of the decision, David Nicolau seconded and it was so voted, 5-0.* She reminded the Board about the condition related to the lapse of the Special Permit.  
*Amy Germain moved to add the following condition to the decision: “Special Permits shall lapse twenty-four months following grant thereof (plus such time required to pursue or await the determination of an appeal referred to in Sec. 17, Ch. 40A, G.L. ) if a substantial use thereof, or construction, has not sooner commenced, except for good cause as determined by the Board of Appeals”, Robert Littlefield seconded and it was so voted, 5-0.*

**FY11-57**     **336 Commercial Street (Town Commercial Center Zone), Kristyn Samok on behalf of the Governor Bradford Realty Trust** –  
Robert Littlefield, Amy Germain, David Nicolau, Tom Roberts and Harriet Gordon also sat on the case. Robert Littlefield read the decision. *Amy Germain*

*moved approve the language as written with the following condition added to the decision: “Special Permits shall lapse twenty-four months following grant thereof (plus such time required to pursue or await the determination of an appeal referred to in Sec. 17, Ch. 40A, G.L. ) if a substantial use thereof, or construction, has not sooner commenced, except for good cause as determined by the Board of Appeals”, David Nicolau seconded and it was so voted, 5-0.*

**FY11-58**      **247 Commercial Street (Town Commercial Center Zone), Richard J. Murray, DMD on behalf of the Crown and Anchor, Inc. –**  
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Anne Howard read the decision. *David Nicolau moved to accept the language as written, Amy Germain seconded and it was so voted, 5-0.*

**FY11-59**      **247 Commercial Street (Town Commercial Center Zone), Richard J. Murray, DMD on behalf of the Crown and Anchor, Inc. –**  
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Tom Roberts read the decision. *Robert Littlefield moved to approve the language as amended, Amy Germain seconded with a point of order.* Amy Germain brought up an issue concerning the Town sign by-law as it applied to the previous case and decision. She inquired of Russ Braun if he had investigated the issue of whether a light projected on the side of a building, such as is occasionally done on the side of the Crown and Anchor, is considered a sign pursuant to the Zoning By-Laws. Russ will investigate and get back to the Board. The discussion will continue after the Public Hearing.

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 six members of the Zoning Board of Appeals present and one absent.

### **NEW CASES:**

**FY11-63**      **242 Commercial Street (Town Commercial Center), Attorney Lester J. Murphy, Jr., on behalf of Timothy F. Barry –**  
The applicant seeks a Variance under Article 2, Section 2560 of the Zoning By-Laws for the reduction of a lawful pre-existing, non-conforming lot area from 4,694 sq. ft. to 4,592 sq. ft. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and David Nicolau sat on the case.  
**Presentation:** Attorney Lester J. Murphy, Jr. and Timothy F. Barry appeared to present the application. The applicant seeks to reduce the lot area of 242 Commercial Street by 102 sq. ft., which would be added to the lot at 101 Bradford

Street. This would make the former parcel more non-conforming and the latter parcel less non-conforming as to lot area. Attorney Murphy argued that the significant hardship created for his applicant is owing to the shape and configuration of the structure and relief could be granted without substantial detriment to the public good or without nullifying or substantially derogating from the intent of the local Zoning By-Laws. The structure in question is on the parcel at 101 Bradford Street and encroaches slightly onto a small portion of the parcel at 242 Commercial Street. The hardship is created by virtue of the shape and location of this structure. The structure at 101 Bradford Street was granted a Variance in 2008 because it needed to be raised in order to meet new FEMA requirements, which required the addition of a set of stairs that further increased the encroachment into the front yard setback. The structure cannot be moved closer to Bradford Street in order to correct the encroachment. The only solution was to try and increase the rear yard area of the lot. This situation has also created a title issue for the applicant in his attempt to re-finance the property and complete the renovation of the structure. The lot area to be transferred is only 2% of the total lot area of 242 Commercial Street. The only other solution to the issue would involve tearing down a portion of the structure, but Attorney Murphy argued that that action would not be in keeping with the Local Comprehensive Plan as this is an old historic structure that is being saved and renovated.

**Public Comment:** None. There was 1 letter of no objection to the application in the file from an abutter.

**Board Discussion:** The Board questioned Attorney Murphy and Mr. Barry. Several Board members had questions for Town Counsel regarding easements and Variances.

*David Nicolau moved to grant a Variance under Article 2, Section 2560 of the Zoning By-Laws, with the condition that Town Counsel renders an opinion that the owner of Parcel A cannot grant an easement to the owner of Lot 2 to cure the encroachment onto Parcel A of the building on Lot 2 if the owner of Parcel A and Lot 2 are the same person, for the property located at 242 Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 4-1 (Tom Roberts opposed).* Anne Howard will write the decision.

**FY11-64**

**40 Nelson Avenue (Residential 3, Zone), Russell J. Perry of Highland Builders, Inc., on behalf of Richard Cappotto –**

The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to construct dormers on the north and south elevations and to construct a deck with stairs. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

**Presentation:** Bob Henrique, Karen Cappotto, David Cappotto and Russell Perry appeared to present the application. Mr. Henrique stated that the project exceeds the building scale by 8.14 scale units. Most homes in the neighborhood have dormers and full second stories and the project meets one or more of the criteria for the allowance of a deviation in scale.

**Public Comment:** None. There was a petition signed by 28 abutters in the file in favor of the application.

**Board Discussion:** The Board questioned Mr. Henrique, Ms. Cappotto, Mr. Cappotto, and Mr. Perry. The Board was concerned about the large second floor space being converted into bedrooms.

**Amy Germain moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to construct dormers on the north and south elevations and to construct a deck with stairs at the property located at 40 Nelson Avenue (Res 3) with the condition that the structure be deed-restricted to three bedrooms, Robert Littlefield seconded and it was so voted, 5-0.** David Nicolau will write the decision.

**FY11-65      54 Bradford Street, Unit A (General Commercial Zone), Dale Huebner and Robin Dwyer –**

The applicants seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second-story addition up and along pre-existing, non-conforming side yard setbacks. David Nicolau recused himself because of a conflict of interest. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

**Presentation:** John DeSouza appeared to present the application. The applicants seek to increase the living space in the unit. Mr. DeSouza cited Chapter 1, Goal 1, Policy B, Goal 2, Policy A and Chapter 4, Goal 2, Policy A of the LCP to support the application. He argued that the changes will be harmonious with the surrounding neighborhood and will have limited visibility. The changes will also have no adverse effects such as hazard, congestion or environmental degradation.

**Public Comment:** None. There were 5 letters, 2 from unit owners, in the file in favor of the application.

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

**Amy Germain moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second-story addition up and along pre-existing, non-conforming side yard setbacks at the property located at 54 Bradford Street, Unit A (GC), Robert Littlefield seconded and it was so voted, 5-0.** Tom Roberts will write the decision.

**FY11-66      2 Bradford Street (Residential 3 Zone), William N. Rogers, II, P.E., P.L.S. on behalf of Sheila A. Oliver –**

The applicant seeks a Special Permit under Article 3, Section 3115 of the Zoning By-Laws for the demolition of an existing structure, previously approved by the Zoning Board of Appeals dated April 1, 2010, to be renovated on the existing modified footprint. Said structure is unable to be renovated in place due to insufficient framing and materials, existing overhead utilities and close proximity (4 ft. =+-) to the neighboring two-story dwelling with a brick foundation.

**Presentation:** Gary Locke and Marianne Clements appeared to present the application. The applicant seeks to demolish the structure on the property. The Board previously granted a Special Permit to rebuild the structure in place, however as that project progressed, certain issues arose. One issue involved the location of overhead utility wires just above the structure, which the utility company is not inclined to move because they are main trunk lines. In order to lift

the building, those lines would need to be moved. Another issue involved the great stress that would be placed on an abutting structure, located just 4' away, if the structure in question was lifted. The Historic District Commission has granted its permission to demolish the structure.

**Public Comment:** None. There was 1 letter in the file with no objection to the project.

**Board Discussion:** The Board questioned Mr. Locke and Ms. Clements. *David Nicolau moved to grant a Special Permit under Article 3, Section 3115 of the Zoning By-Laws for the demolition of an existing structure, previously approved by the Zoning Board of Appeals dated April 1, 2010, to be renovated on the existing modified footprint. Said structure is unable to be renovated in place due to insufficient framing and materials, existing overhead utilities and close proximity (4 ft. = +/-) to the neighboring two-story dwelling with a brick foundation at the property located at 2 Bradford Street (Res 3) with the condition that the Board relied upon the decision rendered in Case #2010-21, Amy Germain seconded and it was so voted, 5-0.* Robert Littlefield will write the decision.

- FY11-67**      **110 Commercial Street (Residential 3 Zone), Chris Beasley of Platinum Building and Remodeling on behalf of John J. Fresenius –**  
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 deck on the east elevation. Mr. Beasley requested a postponement to the March 17, 2011 Public Hearing.  
*Amy Germain moved to grant the request to postpone Case #FY11-67, Robert Littlefield and it was so voted, 5-0.*

Chair Anne Howard adjourned the Public Hearing at 9:20 P.M.

## WORK SESSION

Chair Anne Howard reconvened the Work Session at 9:20 P.M.

The Board continued its discussion of the sign by-law.

### PENDING DECISIONS:

- FY11-59**      **247 Commercial Street (Town Commercial Center Zone), Richard J. Murray, DMD on behalf of the Crown and Anchor, Inc. –**  
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Tom Roberts read the decision. *The motion was so voted, 5-0.*
- FY11-60**      **15 Commercial Street (Residential 1 Zone), David L. Silva of the Red Inn –**  
Anne Howard, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the case. Tom Roberts read the decision. *Anne Howard moved to approve the*

*language as written, Harriet Gordon seconded and it was so voted, 4-0.*

**FY11-61**     **67 Bradford Street (Residential 3 Zone), Eliot F. Parkhurst on behalf of Brass Key Hospitality Group, LLC –**  
Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case. Amy Germain read the decision. *Anne Howard moved to approve the language as written, Robert Littlefield seconded and it was so voted, 5-0.*

**FY11-62**     **67 Bradford Street (Residential 3 Zone), Eliot F. Parkhurst on behalf of Brass Key Hospitality Group, LLC –**  
Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case. Amy Germain read the decision. *Tom Roberts moved to approve the language as written, Robert Littlefield and it was so voted, 5-0.*

**NEXT MEETING:** The next meeting will take place on March 17, 2011. It will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Amy Germain moved to adjourn at 10:15 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 March 17, 2011.

Respectfully submitted,  
Ellen C. Battaglini

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