

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
March 17, 2011**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Anne Howard, Elisabeth Verde (left at 9:00 P.M.), David Nicolau, Tom Roberts and Harriet Gordon.

Members Absent: Amy Germain (excused) and Robert Littlefield (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 6:32 P.M.

MINUTES: March 3, 2010 – *David Nicolau moved to approve the language as written, Harriet Gordon seconded and it was so voted, 4-0.*

PENDING DECISIONS:

FY11-63 **242 Commercial Street (Town Commercial Center), Attorney Lester J. Murphy, Jr., on behalf of Timothy F. Barry –**
Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and David Nicolau sat on the case. *David Nicolau moved to reconsider the vote, Tom Roberts seconded.* David Nicolau explained that he had obtained answers to questions he had about the case from Town Counsel and would like the Board to reconsider its vote. The Board discussed the new information. *The motion was so voted, 4-0. David Nicolau moved to request that the applicant reappear before the Board to answer further questions regarding the case, Harriet Gordon seconded and it was so voted, 4-0.*

FY11-64 **40 Nelson Avenue (Residential 3, Zone), Russell J. Perry of Highland Builders, Inc., on behalf of Richard Cappotto –**
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. David Nicolau read the decision. He added the Special Permit expiration condition to the decision. *Tom Roberts moved to approve the language as amended, Harriet Gordon seconded and it was so voted, 3-0.*

FY11-37 **293 Commercial Street (Town Commercial Center Zone), Julie Knapp of Julesan, Inc., d/b/a Twistd Sister –**

Julie Knapp appeared before the Board and submitted a new floor/seating plan for the premises. There is a small change in the plan pursuant to recommendations of the Licensing Board. The area of service for beer and wine will be located nearer to the center of the restaurant.

Anne Howard moved to accept the new floor plan for Julesan, Inc., d/b/a Twistd Sister, as approved by the Licensing Board on March 8, 2011, Elisabeth Verde 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. –

Rick Murray appeared before the Board at its request to note the exact location and physical measurement from the street of the proposed signs on the plot plan for the premises. Mr. Murray confirmed the information for the Board.

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 five members of the Zoning Board of Appeals present and two absent.

NEW CASES:

FY11-67 110 Commercial Street (Residential 3 Zone), Chris Beasley of Platinum Building and Remodeling on behalf of John J. Fresenius (postponed from March 3, 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 deck on the east elevation. Anne Howard, Elisabeth Verde, David Nicolau, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Chris Beasley appeared to present the application. He stated that the proposed deck did not create any hazard, congestion or environmental degradation. It is a second story deck that is being increased by 94 sq. ft. and opened up by the removal of privacy barriers.

Public Comment: None. There were 6 letters from direct abutters in the file in favor of the application.

Board Discussion: The Board questioned Mr. Beasley. The Board specifically wanted to know which subsection of Article 2, Section 2460E of the Zoning By-Laws was relevant to the project. The Board also requested that the application be completed. Mr. Beasley requested a continuance to the April 7, 2011 Public Hearing. *Elisabeth Verde moved to grant the request for a continuance to the April 7, 2011 Public Hearing, Harriet Gordon seconded and it was so voted, 5-0.*

FY11-68

65 Bayberry Avenue (*Residential 1 Zone*), John McElwee of Felco, Inc. on behalf of Robert M. Levin and Jerome P. Colin –

The applicant seeks a Special Permit under Article 2, Section 2450, G12, of the Zoning By-Laws for the replacement of a 12' by 14' swimming pool with an 18' by 34' swimming pool. Anne Howard, Elisabeth Verde, David Nicolau, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Attorney Jamie Veara appeared to present the application. The proposed pool will replace an existing pool and will be larger by 260 sq. ft. The pool is changing from chlorinated to saltwater. Attorney Veara argued that there will be no adverse effects such as hazard, congestion or environmental degradation. The advantages are an increase in the value of the property and the Town tax base, and the change in pool water from chemically-treated to saltwater.

Public Comment: None. There were 4 letters in the file in favor of the application and 1 in opposition.

Board Discussion: The Board questioned Attorney Veara. Craig Panaccione, a landscape designer, joined the discussion.

David Nicolau moved to grant a Special Permit under Article 2, Section 2450, G12, of the Zoning By-Laws for the replacement of a 12' by 14' swimming pool with an 18' by 34' swimming pool at the property located at 65 Bayberry Avenue (Res 1), Tom Roberts seconded and it was so voted, 5-0. Harriet Gordon will write the decision.

FY11-69

417 Commercial Street (*Residential 3 Zone*), Steven H. Cook on behalf of Bluewater Condominium –

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 shed dormer and egress decks and stairs. David Nicolau recused himself because of a conflict of interest. Anne Howard explained that since there were only 4 members seated and a unanimous decision would be needed in order to grant a Special Permit, the applicant had the choice of postponing until a 5 member Board was seated or to proceed with 4 members. The applicant chose to proceed and requested that the Board be polled before a motion was made. Anne Howard, Elisabeth Verde, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Steven H. Cook and Kevin Bazarian appeared to present the application. The building is mixed use with a retail space on the first floor, and condominium units on the upper floors. The basement is a storage area for the commercial space on the first floor. The building is in poor condition and much of the building, including the existing decks on the rear of the building, does not meet the requirements of the State Building Code. There are no egress stairs on the decks. There is only one means of egress from the second floor. Many of the proposed changes will address safety and egress issues. The proposal is to build new decks on all three floors with egress stairs on each. There is a dormer being placed on the third floor to provide adequate headroom at the top of an interior stairway. The existing scale is 24,025 cu. ft. and the proposed project will add 5,200 cu. ft., for a total of 29,225 cu. ft. The neighborhood average is 19,200 cu. ft. and the allowable scale is 22,105 cu. ft. Mr. Cook argued that the project was

consistent with Goal 2, Policy A of the LCP and Article 2, Section 2640E, subsection 5 of the Zoning By-Laws.

Public Comment: Olga Vitello had a question about the location of the stairway in relation to the beach and the number of condominium units in the building. There were 2 letters from an abutter asking questions about the project. Chair Anne Howard suggested that the applicant reach out to the abutter. Mr. Cook stated that Mr. Bazarian is on the site frequently and can answer any questions the abutter might have about the project.

Board Discussion: The Board questioned Mr. Cook and Mr. Bazarian.

Tom Roberts moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to construct a shed dormer and egress decks and stairs at the property located at 417 Commercial Street (Res 3), Elisabeth Verde seconded and it was so voted, 4-0. Tom Roberts will write the decision.

FY11-70 5 Johnson Street (Residential 3 Zone), Mark Kinnane, of Cape Associates, Inc., on behalf of Thomas Shirk –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct an addition up and along pre-existing, non-conforming setbacks. There was a letter in the file requesting a postponement until the April 7, 2011 Public Hearing.

FY11-71 9 Whorf's Court (Residential 3 Zone), David R. McMahon –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct an addition up and along pre-existing, non-conforming setbacks. The Board will hear both of these cases together.

FY11-72 9 Whorf's Court (Residential 3 Zone), David R. McMahon –

The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to construct an addition. Anne Howard, Elisabeth Verde, David Nicolau, Tom Roberts and Harriet Gordon sat on both cases.

Presentation: Attorney Lester J. Murphy, John Erdman and David R. McMahon appeared to present the application. The building is in poor condition and the proposal is for a total renovation and re-build, with the construction of an addition. There is currently 152 sq. ft. of structure that is within the rear setback. The new structure will be located 5' away from its existing location in relation to the rear setback. The only portion of the re-built structure that will be within a setback will be about a 72 sq. ft. section. The structure will meet or exceed all other setbacks. As the amount of structure is being reduced by more than half and is being pulled back 5', it will create a much less detrimental situation for the neighborhood and neighboring properties. The property will become more consistent with other structures in the neighborhood. The applicant proposes to place a lattice with vegetation on the south side of the building.

The existing scale is 15,500 cu. ft., the neighborhood average is 13,344 cu. ft. and the maximum allowable scale is 15,347 cu. ft. The proposed addition is 6,630 cu. ft. and the proposed total scale will be 22,180 cu. ft. This is a 42% increase in

scale. The project conforms to subsections 5 and 6 of Article 2, Section 2460E of the Zoning By-Laws. The design and siting of the building have been created to reduce the appearance of mass. The benefits of the project are that the appearance and integrity of the structure will be improved and the property values of this and other properties in the neighborhood will be increased. The plans also call for a garage and expanded parking on the property, thereby allowing for better passage of vehicles on Whorf's Court.

Public Comment: None. There were 4 letters in the file in support and 1 letter in opposition of the application.

Board Discussion: The Board questioned Attorney Murphy, Mr. Erdman and Mr. McMahan.

Elisabeth Verde moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct an addition up and along pre-existing, non-conforming setback at the property located at 9 Whorf's Court (Res 3), and a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to construct an addition at the property located at 9 Whorf's Court (Res 3), with the condition that the vegetation that is shown on the plans is always to remain the same percentage on the structure, Anne Howard seconded. The Board discussed the motion.

FY11-71 *Anne Howard moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct an addition up and along pre-existing, non-conforming setback at the property located at 9 Whorf's Court (Res 3), Elisabeth Verde seconded and it was so voted, 5-0.* David Nicolau will write the decision.

FY11-72 *David Nicolau moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to construct an addition at the property located at 9 Whorf's Court (Res 3), with the condition that the lattice on the south side of the building, as well as the flat roof over the kitchen, be vegetated, Tom Roberts seconded and it was so voted, 5-0.* David Nicolau will write the decision.

Chair Anne Howard adjourned the Public Hearing at 9:00 P.M.

WORK SESSION

Chair Anne Howard reconvened the Work Session at 9:05 P.M.

PENDING DECISIONS:

FY11-65 **54 Bradford Street, Unit A (General Commercial Zone), Dale Huebner and Robin Dwyer –**
Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case. New plans have been submitted. Tom Roberts read the

decision. *Anne Howard moved to approve the language as written, Harriet Gordon seconded and it was so voted, 3-0.*

FY11-66 **2 Bradford Street (Residential 3 Zone), William N. Rogers, II, P.E., P.L.S. on behalf of Sheila A. Oliver –**
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Anne Howard read the decision. *Tom Roberts moved to approve the language as written, David Nicolau seconded and it was so voted, 3-0.*

FY11-52 **5 Harbour Drive (Residential 1 Zone), William N. Rogers, II, P.E., P.L.S., on behalf of Bay Harbour LLC II –**
Tom Roberts read the revised the findings, pursuant to the suggestions of Attorney David Reid, in the decision.

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

ADJOURNMENT: *David Nicolau moved to adjourn at 9:30 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 April 7, 2011.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2011
Anne Howard, Chair