

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
April 7, 2011

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Anne Howard, Elisabeth Verde, Robert Littlefield (left at 8:10 P.M.), David Nicolau, Tom Roberts and Harriet Gordon.

Members Absent: Amy Germain (excused).

Others Present: Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair Anne Howard called the Work Session to order at 6:32 P.M.

MINUTES: March 17, 2010 – *David Nicolau moved to approve the language as written, Tom Roberts seconded and it was so voted, 5-0.*

90 Shank Painter Road – Michael Lozano on behalf of The Community Builders, Inc. for a change in the financing agency and for a change in language from “commercial space” to “non-residential ancillary space.” Chair Anne Howard read a letter, dated March 28, 2011, from Kate Mitchell, attorney for TCB, into the record. The letter specified the changes being requested.

Presentation: Michael Lozano appeared to discuss the modification. TCB requests a change concerning the financing program under which it will be funded. The funding for the project will be obtained from the Massachusetts Partnership, under its Permanent Rental Financing Program, rather than the Massachusetts Housing Finance Agency. TCB requests that all references to MassHousing be changed to MHP. A second request is that any references within the Permit to “commercial space” be revised to read “non-commercial, non-residential ancillary space”. The project will not contain true commercial space, within the usual meaning of that phrase, but will contain non-residential space that is ancillary and complementary to the primary residential use and restricted to the uses set forth in the Permit. Draft language has been submitted for the Board to consider and adopt in its written decision were it to approve the requested changes.

Board Discussion: The Board discussed the changes. David Gardner, Assistant Town Manager, joined the discussion. He stated that Town Counsel considers these requests to be insubstantial and recommends that the Board approve them. The Board discussed the second change request regarding “non-commercial, non-residential ancillary uses”. The Board agreed that the language should be flexible in order to potentially attract as many eligible tenants to fill those spaces as possible.

Anne Howard moved that the changes requested by TCB are not substantial enough to

warrant a new Public Hearing, Robert Littlefield seconded and it was so voted, 5-0. David Nicolau moved to approve the request by TCB to change the funding from Massachusetts Housing Finance Agency to Massachusetts Housing Partnership and to revise the language in the Comprehensive Permit to clarify that the project will not contain any true commercial spaces, specifically to revise all references to “commercial space” to read “non-residential, non-commercial ancillary space” and under Parking Use, to amend the last line of the first paragraph to read, “a total of 8 spaces are assigned for a potential 2500 square feet of non-residential, non-commercial ancillary space”, Robert Littlefield 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 six members of the Zoning Board of Appeals present and one absent.

CONTINUED CASES:

FY11-67 **110 Commercial Street (Residential 3 Zone), Chris Beasley of Platinum Building and Remodeling on behalf of John J. Fresenius** (*continued from March 17, 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 discuss the case. He presented revised scale calculations. The removal of the privacy barriers will make the appearance of the deck less intrusive. The deck is not out of character with the rest of the neighborhood and will improve the look of the premises. He cited Article 2, Section 2640E, (5) and (6) as justification for the increase in scale.

Public Comment: None.

Board Discussion: The Board questioned Mr. Beasley.

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 a deck on the east elevation at the property located at 110 Commercial Street (Res 3), Tom Roberts seconded and it was so voted, 5-0. Tom Roberts will write the decision.

FY11-70 **5 Johnson Street (Residential 3 Zone), Mark Kinnane of Cape Associates 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 request from the applicant to withdraw the application without prejudice. *David Nicolau moved to grant the request to withdraw Case*

#FY11-70 without prejudice, Tom Roberts seconded and it was so voted, 5-0.

FY11-73 1 Ship's Way (Residential 1 Zone), Capizzi Home Improvement on behalf of Bradley Caton –

The applicant seeks a Special Permit under Article 2, Section 2560, Dimensional Schedule, Article 3, Section 3110, Pre-Existing, Non-Conforming structures, and Article 5, Section 5300 of the Zoning By-Laws to remove and replace an existing deck within the existing sideline setbacks. Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case.

Presentation: Jean Bowden and Bradley Caton appeared to present the application. The deck is in disrepair and the applicant proposes to replace it in the same location as the existing. The deck will be built in conformity with the State Building Code and will have a safety railing around its perimeter. It also serves as a second means of egress.

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

Board Discussion: The Board questioned Ms. Bowden and Mr. Caton.

David Nicolau moved to grant a Special Permit under Article 2, Section 2560, Dimensional Schedule, Article 3, Section 3110, Pre-Existing, Non-Conforming structures, and Article 5, Section 5300 of the Zoning By-Laws to remove and replace an existing deck within the existing sideline setbacks at the property located at 1 Ship's Way (Res 1), Tom Roberts seconded and it was so voted, 5-0. David Nicolau will write the decision.

FY11-74 698 Commercial Street (Residential 1 Zone), Attorney Christopher J. Snow on behalf of 698 Commercial Street Realty, LLC –

The applicant seeks a Variance under Article 3, Section 3230 and 3224 of the Zoning By-Laws from the Sign Regulations to replace two pre-existing, internally lit signs with two smaller signs with one internally lit sign plus one sign to be relocated. The applicant also seeks permission to place three temporary banners to be posted at the property for a one-month period. Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case.

Presentation: Attorney Christopher J. Snow and Robert Thomas appeared to present the application. The applicant wants to replace fluorescent signs at the premises with more aesthetically-pleasing, back-lit signs.

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

Board Discussion: The Board questioned Attorney Snow and Mr. Thomas.

David Nicolau moved to grant a Variance under Article 3, Section 3230 and 3224 of the Zoning By-Laws from the Sign Regulations to replace two pre-existing, internally lit signs with two smaller signs with one internally lit sign plus one sign to be relocated and with two banners to be allowed to be displayed from April 17, 2011 to May 17, 2011 at the property located at 698 Commercial Street (Res 1), Certificate of Title #191760, Tom Roberts seconded and it was so voted, 5-0. Attorney Snow submitted a decision for consideration by the Board. Robert Littlefield will write the decision.

FY11-75 7 Masonic Place (Residential 3 Zone), Attorney James M. Norcross of Toabe

and Riley on behalf of 7 Masonic Place Realty Trust, Eliot W. Denault, III, Trustee –

The applicant seeks a Variance under Article 4, Section 4120 of the Zoning By-Laws from the Dimensional Requirements for six rental units. The property has 5,825 square feet and 6,000 sq. ft. is required. There was a request by the applicant to postpone the case until the April 21, 2011 Public Hearing.

David Nicolau moved to grant the request to postpone Case #FY11-75 to the April 21, 2011 Public Hearing, Tom Roberts seconded and it was so voted, 5-0.

FY11-76 356 Commercial Street (Town Commercial Center Zone), Town of Provincetown on behalf of the Provincetown Public Library –

The applicant seeks a Variance under Article 3, Section 3230, Sign Permit Regulations, of the Zoning By-Laws for the installation of two temporary signs; one to be 4' by 6' and one to be 4' by 8' as required by the Massachusetts Historical Commission and the United States Department of Agriculture and Rural Development. (Signs to be removed at completion of construction). Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case.

Presentation: David Gardner appeared to present the application. These signs are a requirement for the Library grants.

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

Board Discussion: The Board questioned Mr. Gardner.

Tom Roberts moved to grant a Variance under Article 3, Section 3230, Sign Permit Regulations, of the Zoning By-Laws for the installation of two temporary signs; one to be 4' by 6' and one to be 4' by 8' as required by the Massachusetts Historical Commission and the United States Department of Agriculture and Rural Development which will be removed at the completion of the construction at the property located at 356 Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 5-0. Anne Howard will write the decision.

FY11-77 39 Bradford Street (Residential 3 Zone), Sprinkle Home Improvement on behalf of Barbara Schatz and Brett Caledonia –

The applicants seek a Special Permit under Article 3, Section 3110 and Article 3, Section 3115 of the Zoning By-Laws to remove and replace existing steps and landings within existing setbacks. Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case.

Presentation: Rick Russell appeared to present the application. This project involves only the stairs on the east side of the structure. These deteriorated and dangerous stairs, which are the main means of egress, will be rebuilt in the same location and will be constructed in compliance with the State Building Code. The railing will have a more traditional style than the existing railing.

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

Board Discussion: The Board questioned Mr. Russell.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 and Article 3, Section 3115 of the Zoning By-Laws to remove and replace

existing steps and landings within existing setbacks at the property located at 39 Bradford Street (Res 3), David Nicolau seconded and it was so voted, 5-0. Tom Roberts will write the decision.

Chair Anne Howard adjourned the Public Hearing at 7:42 P.M.

WORK SESSION

Chair Anne Howard reconvened the Work Session at 7:42 P.M.

90 Shank Painter Road – David Gardner returned to the Hearing with a decision for the Board’s consideration. Anne Howard read the decision.

Robert Littlefield moved to approve the language as written, David Nicolau seconded and it was so voted, 5-0.

PENDING 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. Attorney Murphy was unable to attend the Public Hearing, so the case is continued until the April 21, 2011 Public Hearing.

PENDING DECISIONS:

FY11-69 **417 Commercial Street (Residential 3 Zone), Steven H. Cook on behalf of Bluewater Condominium –**

Anne Howard, Elisabeth Verde, Tom Roberts and Harriet Gordon sat on the case. Tom Roberts read the decision. *Elisabeth Verde moved to approve the language as written, Anne Howard seconded and it was so voted, 4-0.*

FY11-68 **65 Bayberry Avenue (Residential 1 Zone), John McElwee of Felco, Inc. on behalf of Robert M. Levin and Jerome P. Colin –**

Anne Howard, Elisabeth Verde, David Nicolau, Tom Roberts and Harriet Gordon sat on the case. There was revision made to the site plan showing a different location for the pool than what was previously approved and which was pursuant to a request by the Planning Board. Harriet Gordon read the decision. *Anne Howard moved to approve the language as written and to note that the decision is based upon a plan denoting Job #10095 by John McElwee, David Nicolau seconded and it was so voted, 5-0.*

FY11-71 **9 Whorf’s Court (Residential 3 Zone), David R. McMahan –**

Elisabeth Verde, David Nicolau, Tom Roberts and Harriet Gordon sat on both cases. David Nicolau read the decision. *Tom Roberts moved to approve the language as written, Harriet Gordon seconded and it was so voted, 5-0.*

FY11-72 **9 Whorf's Court (Residential 3 Zone), David R. McMahon –**
David Nicolau read the decision. *Tom Roberts moved to approve the language as written, Harriet Gordon seconded and it was so voted, 5-0.*

NEXT MEETING: The next meeting will take place on April 21, 2011. It will consist of a Work Session at 6:15 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT: *David Nicolau moved to adjourn at 8:30 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 21, 2011.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2011
Anne Howard, Chair