

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS**

**MEETING MINUTES OF
June 30, 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: Russ Braun (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 5:30 P.M. There were six members of the Zoning Board of Appeals present and one absent.

MINUTES: June 16, 2010 – *David Nicolau moved to approve the language as written, Robert Littlefield seconded and it was so voted, 4-0.*

PENDING CASES:

FY11-93 **131A Commercial Street (Town Commercial Center Zone), Attorney E. James Veara on behalf of Jay Charles Anderson** –
The applicant seeks an Appeal of the Building Commissioner’s decision under Article 5, Section 5330. The applicant has requested a postponement until the July 21, 2011 Public Hearing.

Amy Germain moved to grant the request to postpone Case # FY11-93 until the July 21, 2011 Public Hearing, David Nicolau seconded and it was so voted, 5-0.

FY11-86 **49 Harry Kemp Way (Residential B Zone), Alan Hall, Director of Facilities and Purchasing, on behalf of Outer Cape Health Services** –
The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation of building scale for a proposed addition. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

Presentation: Attorney Lester J. Murphy, Alan Berg and Sally Deane appeared to discuss the application. The applicant has submitted revised development plans that were approved by the Planning Board under the site plan review process and the developmental impact statement as requested by the Board. According to Attorney Murphy, all necessary permits have been obtained by the applicant. He

argued that the applicant did not need to seek relief under Article 4, Section 4000, as had been previously requested by the Board. He argued that the applicant has clearly met the criteria under Article 2, Section 2640. The enhancement and expansion of health and dental services will be of substantial social and economic benefit to the Town. Then Mr. Berg explained that the changes in the plans address concerns raised at the previous Public Hearing, including the installation of only 1 parallel parking space, not two as previously proposed, behind the building. That space has been relocated to the east side of the building. There will be a total of 66 parking spaces at the premises, which represents one more space than the Zoning Laws require. There is additional screening around the generator and the compressor has been shifted farther to the east and away from abutting properties. The landscaping plan now requires any existing trees that are within 5' of disturbed or paved areas be saved. An arborist has been hired to examine any trees within that buffer area in order to determine their viability and if they are an invasive species. All trees that meet the criteria will be retained. The Planning Board approved the proposed lighting plan and the light scatter. The area on the south of the site will have minimal impact from the project and there is a significant amount of natural vegetation that will not be impacted at all.

Board Discussion: Chair Anne Howard read a letter from the Massachusetts Division of Fisheries and Wildlife in response to questions from Jill Vaughn, an abutter. The project was reviewed and it was determined that no 'take' of rare species under the regulations of the Massachusetts Endangered Species Act would occur. There was also a letter from the Conservation Trust in the file. The Board questioned Attorney Murphy and Mr. Berg.

David Nicolau moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation of building scale for a proposed addition at the property located at 49 Harry Kemp Way (Res B) with the condition that the impact statement be incorporated into the decision, Robert Littlefield seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY11-89 19-35 Race Point Road (Residential 3 Zone), Edward Malone of Community Housing Resource, Inc. –

The applicant seeks a Special Permit under Article 2, Section 2440, A1, footnote 8, of the Zoning By-Laws for more than six dwelling units on contiguous parcels to be constructed in a tow phase project (6 units to be constructed in Phase 1 on Lot #10 and 23 units to be constructed in Phase II on Lot #8 for a total of 29 units). Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

Presentation: Ted Malone appeared to discuss the project. He had submitted fully dimensioned site plans with a graphic scale, correspondence with the Conservation Agent, Brian Carlson, concerning the drainage issue in the horse corral and the developmental impact statement required by the Planning Board, all as requested by the Board. The Planning Board approved the project contingent upon the Fire Department's approval. The Fire Department had concerns about the location of fire hydrants, the size the water mains on the property and the width of the road going up to the high elevation area of the development. The

road width in that area has subsequently been revised.

Board Discussion: The Board questioned Mr. Malone. The Board was concerned that the new plans were just being submitted. After discussion and because of the large scale of one of the buildings at the proposed site, the Board wanted to consult with Town Counsel in regard to a question about excluding buildings from future scale calculations.

Amy Germain moved to continue Case #FY11-89 until the 6:00 Work Session of the July 21, 2011 Public Hearing, David Nicolau seconded and it was so voted, 5-0.

FY11-90 19-35 Race Point Road (Residential 3 Zone), Edward Malone of Community Housing Resource, Inc. -

The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in Building Scale for Building 6-8-10 located on Lot #8 (Building 6-8-10 is one of eleven structures on two lots in a two-phase development).

Amy Germain moved to postpone Case #FY11-90 until the July 21, 2011 Public Hearing, Tom Roberts seconded and it was so voted, 5-0.

The Board discussed a letter from Attorney Nancy Correia regarding Unit 10½ of Delft Haven Condominium, 10 Commercial Street. According to the decision rendered by the Board regarding the property in Case #2000-18, the site plans were supposed to be filed with the Land Court. Because the plans were not the size required by the Land Court, they were not. However the plans have been available at the Town Clerk's Office. Attorney Correia is requesting that the Board issue a decision that approves a waiver of the requirement that the plans for the project be filed with the Registry of Deeds in order to clear the title for the property. The Board briefly discussed the issue. Amy Germain volunteered to contact Attorney Correia in regard to the language of the decision.

David Nicolau moved to approve the waiver submitted by Attorney Nancy Correia subject to her providing accurate language referencing the stamped plans on file at the Town Clerk's Office for Unit 10 ½ at Delft Haven Condominium, 10 Commercial Street, Amy Germain seconded and it was so voted, 5-0.

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

ADJOURNMENT: *Amy Germain moved to adjourn at 7:30 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 July 7, 2011.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2011

Anne Howard, Chair