

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS**

**MEETING MINUTES OF
July 21, 2011**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts (arrived at 6:30 P.M.).

Members Absent: Elisabeth Verde (excused) and Harriet Gordon (excused).

Others Present: Russ 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 6:00 P.M.

MINUTES: July 7, 2011 – *Amy Germain moved to approve the language as amended, Robert Littlefield seconded and it was so voted, 3-0.*

APPLICANT INTERVIEW: The Board questioned Joe Vasta who is applying for an alternate position on the Board.

Amy Germain moved to approve the application of Joe Vasta for an alternate position on the ZBA, Robert Littlefield seconded and it was so voted, 3-0-1 (David Nicolau abstaining).

PENDING DECISIONS:

FY12-01 **42 Conwell Street (General Commercial Zone), Teresa Shields Bryan** – Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case. Anne Howard read the decision. *Amy Germain moved to approve the language as written, Robert Littlefield seconded and it was so voted, 3-0.*

FY12-02 **83 Franklin Street (Residential 3 Zone), Dorothy Palanza and Tina Trudel** – Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case. Anne Howard read the decision. *Amy Germain moved to approve the language as written, Robert Littlefield seconded and it was so voted, 3-0.*

David Nicolau raised the issue of the existing protocol for soliciting zoning opinions from Town Counsel. *David Nicolau moved to invite Assistant Town Manager David Gardner to the next ZBA Work Session on August 4, 2011 to discuss the protocol for soliciting opinions from*

Town Counsel regarding zoning issues and how the Board would like to handle that protocol, Anne Howard seconded and it was so voted, 4-0.

FY11-93 **131A Commercial Street (Town Commercial Center Zone), Attorney E. James Veara on behalf of Jay Charles Anderson** (*continued to the August 4, 2011 Public Hearing*) –

The applicant seeks an Appeal of the Building Commissioner's decision under Article 5, Section 5330. The applicant has submitted a letter waiving the time constraints.

Amy Germain moved to take Case #FY11-89 out of order, Robert Littlefield seconded and it was so voted, 4-0.

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 two-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 application. He submitted 3D-modelings of the site and the surrounding area from different perspectives, showing the locations, sizes and dimensions of buildings in the project, and selected abutting buildings, superimposed over Google Earth images of the property and the surrounding area. All building renderings were based on visual and Assessor's data.

Board Discussion: The Board questioned Mr. Malone. The Board requested that for clarity's sake that the viewpoints of the 3D renderings be noted on the site plans. Mr. Malone left the Hearing and will return with those revisions before Case # FY11-90 is heard.

David Nicolau moved to grant 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 two-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) at the property located at 19-35 Race Point Road (Res 3), Robert Littlefield seconded and it was so voted, 5-0. Anne Howard and David Nicolau will write the decision.

Chair Anne Howard adjourned the Work Session at 7:03 P.M.

PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 7:03 P.M. There were five members of the Zoning Board of Appeals present and two absent.

NEW CASES:

- FY12-03** **276 Commercial Street (Town Commercial Center Zone), Cabot's Candy of Cape Cod –**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of baskets of taffy, candy, fudge and baked goods on a 6' x 3' table. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.
Presentation: John Cicero and Scott Kazlouskas-Noyes appeared to present the application. The applicant seeks to set up a table on the northwest corner of the building housing his store on Saturdays when the Farmer's Market is in operation to display products sold in the store. The hours of operation will be from 10:00 A.M. to 4:00 P.M. on Saturdays from May 1st to November 30th.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board questioned Mr. Cicero and Mr. Kazlouskas-Noyes. The Board agreed that an umbrella no larger than 6' could be used by the applicant to shield the table from the elements.
Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of baskets of taffy, candy, fudge and baked goods on a 6' x 3' table at the property located at 276 Commercial Street (TCC), Tom Roberts seconded and it was so voted, 5-0. Amy Germain will write the decision.

- FY12-04** **205-209 Commercial Street (Town Commercial Center Zone), Hera Navassardian –**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for a seasonal canopy to protect the outside display of merchandise from inclement weather. There was a letter from the applicant seeks to postpone until the August 4, 2011 Public Hearing.

- FY12-05** **36 Pleasant Street (Residential 3 Zone), Colin Brown –**
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a roof deck on top of a rubber roof up and along pre-existing, non-conforming setbacks. There was a letter from the applicant seeks to postpone until the August 4, 2011 Public Hearing.

CONTINUED CASES:

- FY11-92** **698 Commercial Street (Residential 1 Zone), Attorney Christopher J. Snow on behalf of 698 Commercial Street Realty Trust, LLC –**
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to provide the following forms of entertainment: Movies, pool tables,

karaoke, dancing by patrons and live entertainment, including amplified music and theatrical shows. Chair Anne Howard informed the applicant that Tom Roberts has watched the recording of the previous hearing on the application and will sit on the case this evening. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

Presentation: Attorney Christopher J. Snow and Bob Thomas appeared to discuss the application.

Board Discussion: The Board has read all of the letters submitted regarding the application and questioned Attorney Snow and Mr. Thomas. Chair Anne Howard recognized Attorney Robin B. Reid, who represents unit owners at Bay Colony Condominium. She is concerned about the unintended ambiguity of the language on the site plan labeling the areas of dancing and amplified music that are being requested by the applicant, specifically the words “entire Whaler’s Lounge”. She is requesting that the language be clarified to state that the area described as “the entire Whaler’s Lounge” does not include the exterior deck area. The applicant agreed to change the language to clarify what area is to be used for live entertainment, including amplified music and theatrical shows.

Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to provide the following forms of entertainment: Movies, pool tables, karaoke, dancing by patrons and live entertainment, including amplified music and theatrical shows at the property located at 698 Commercial Street (Res 1) with the following conditions: live entertainment, including amplified music and theatrical shows, is to be located entirely within the building as shown on the revised plan AO.3, dated 12/7/10, drawn by Utile Architecture, the Special Permit will expire on December 31, 2012, all doors and windows will remain closed during the hours when live entertainment, including amplified music and theatrical shows, is provided, no outdoor entertainment will be allowed, the word “entire” will be deleted from revised plan AO.3, dated 12/07/10, drawn by Utile Architecture and security will be provided during live entertainment, including amplified music and theatrical shows, David Nicolau seconded and it was so voted, 5-0. Amy Germain will write the decision.

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

Presentation: Ted Malone appeared to present the application. He submitted the revised 3D site plans. There is only one building that exceeds the neighborhood building scale average. It is comprised of three sections that are constructed specifically for single level apartment living for aging and/or disabled individuals. The building encompasses a change in elevation from 45 to 28 or 30. The three smaller sections are joined by an atrium stairway that provides for a second means

of egress for several units. The design grew out of a desire to provide single level apartment living for an aging population. Mr. Malone argued that the proposed building successfully integrates with its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and does not affect the natural light to, and views from, neighboring structures. The proposed building is in keeping the goals and objectives of the Local Comprehensive Plan. The construction of the buildings respects the traditions and character of historic architecture, the buildings are consistent with traditional Provincetown and Cape Cod architectural styles and utilize traditional building materials, which preserves historic and community character. The affordable housing offered is consistent with the affordable goals of the LCP. The project fulfills two of the six criteria for deviating from building scale and the benefits of the project outlined above outweigh any detriments to the neighborhood.

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

Board Discussion: The Board questioned Mr. Malone about making the building smaller as the sense of the Board was that the building was too large and requested that he return with plans for a smaller building.

David Nicolau moved to continue Case #FY11-90 to the August 4, 2011 Public Hearing, Tom Roberts seconded and it was so voted, 5-0.

NEXT MEETING: The next meeting will take place on August 4, 2011. It will consist of a Work Session at 6:00 P.M. followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Amy Germain 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 August 4, 2011.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2011

Anne Howard, Chair