

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS**

**MEETING MINUTES OF
August 4, 2011**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Anne Howard, Robert Littlefield, Amy Germain, David Nicolau (departed at 7:25 P.M.), Tom Roberts, Harriet Gordon and Joe Vasta.

Members Absent: Elisabeth Verde (excused).

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

WORK SESSION

Chair Anne Howard called the Work Session to order at 6:00 P.M.

MINUTES: July 21, 2011 – *Amy Germain moved to approve the language as written, David Nicolau seconded and it was so voted, 5-0.*

PENDING DECISIONS:

FY11-92 **698 Commercial Street (*Residential 1 Zone*), Attorney Christopher J. Snow on behalf of 698 Commercial Street Realty Trust, LLC –**
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Amy Germain read the decision. *David Nicolau moved to approve the language as amended, Robert Littlefield seconded and it was so voted, 5-0.*

FY12-03 **276 Commercial Street (*Town Commercial Center Zone*), Cabot's Candy of Cape Cod –**
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Amy Germain read the decision. *David Nicolau moved to approve the language as written, Tom Roberts seconded and it was so voted, 5-0.*

FY11-89 **19-35 Race Point Road (*Residential 3 Zone*), Edward Malone of Community Housing Resource, Inc. -**
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. The decision has not been written because of the late submission of revised plans. The case will be continued.
Amy Germain moved to continue Case #FY11-89 to the August 25, 2011 Public

Hearing, Robert Littlefield seconded and it was so voted, 5-0.

Presentation: The Board granted Mr. Malone's request to explain the revised plans. The revision concerns the three 'pods' of the largest structure (Building 6-8-10) which have now been separated. Building 8 has been totally re-designed, saving a large oak tree as a result. All buildings in the project will then conform to building scale and no scale relief will be needed. Some re-grading needs to be done in the handicapped parking area in order to comply with ADA requirements. There will be less lot coverage as a result of the revision.

Board Discussion: The Board briefly questioned Mr. Malone.

CONTINUED CASE:

FY11-90 **19-35 Race Point Road (Residential 3 Zone), Edward Malone of Community Housing Resource, Inc.** *(continued from July 21, 2011 Public Hearing)-*

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. Mr. Malone requested a continuance to the August 25, 2011 Public Hearing.

David Nicolau moved to grant the request to continue Case #FY11-90 to the August 25, 2011 Public Hearing, Amy Germain seconded and it was so voted, 5-0.

POSTPONED CASE:

FY11-93 **131A Commercial Street (Town Commercial Center Zone), Attorney E. James Veara on behalf of Jay Charles Anderson** *(postponed from July 21, 2011 Public Hearing) –*

The applicant seeks an Appeal of the Building Commissioner's decision under Article 5, Section 5223. Amy Germain sought advice from the State Ethics Committee as to whether she had a conflict of interest as she is an abutter to an abutter. The Board of Selectmen determined that she was able to sit on the case. Joe Vasta has also spoken to the State Ethics Committee and as a result has filed a disclosure form pursuant to M.G.L. c. 268B. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Joe Vasta sat on the case.

Presentation: Attorney E. James Veara appeared to present the appeal. In April, the applicant had requested an enforcement order related to the presence of multiple boat racks and a box trailer located at Flyer's Boat Shop, which abuts his property. In Attorney Veara's opinion, those items are structures and enforcement was sought in regard to the issue of yard setbacks, specifically the side line setback adjacent to the applicant's property. The applicant contends that the boat racks are encroaching into the setback area. The applicant also questioned the issue of lot coverage and the Harborfront setback distances and asked for zoning enforcement. The Building Commissioner ruled that the boat racks did not constitute structures under the definition stated in the Zoning By-Laws. Attorney Veara argued that even though the racks are not affixed to the ground, they are structures. The weight of the boats on the racks negates the need to affix the racks

to the ground. The property owner's Chapter 91 license shows the location of the boat racks as fixed. Under the terms of the Chapter 91 license, if those racks are moved, permission must be sought from the Commonwealth.

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

Board Discussion: The Board questioned Attorney Veara. Robert O'Malley joined the discussion.

David Nicolau moved to uphold the Building Commissioner's decision under Article 5, Section 5223 of the Zoning By-Laws regarding the property located at 131A Commercial Street (TCC), Amy Germain seconded and it was so voted, 4-1 (Robert Littlefield opposed). Robert Littlefield will write the decision.

Chair Anne Howard adjourned the Work Session at 7:25 P.M.

PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 7:33 P.M. There were six members of the Zoning Board of Appeals present and two absent.

NEW CASES:

- 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. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.
Presentation: Hera Navassardian appeared to present the application. The applicant seeks a non-permanent seasonal canopy to cover outdoor merchandise on display.
Public Comment: Gail Behrik and Tim Therhault spoke in favor of the application. There were 17 letters in support of the application in the file.
Board Discussion: The Board questioned Ms. Navassardian.
Robert Littlefield moved to grant 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 at the property located at 205-209 Commercial Street, Tom Roberts seconded and it was so voted, 5-0. Tom Roberts will write the decision.
- 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. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.
Presentation: Beau Babineau and Colin Brown appeared to present the

application. The roof deck will be placed on a structure that was previously renovated. The plans for that renovation show the location of a 'future' roof deck. Part of a railing on a rear corner is a few inches into the side yard setback, which makes it non-conforming. However, on the other side of the deck, the railing was moved back from the edge of the roof to reduce the visual impact from Pleasant Street, tying it into the gable wall instead of bringing it out onto the roof and making a return. If the railing on the rear corner were moved back to a conforming position, the square footage would be reduced and the roof deck would be 'too small'.

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

Board Discussion: The Board questioned Mr. Babineau and Mr. Brown.

Tom Roberts moved to grant 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 at the property located at 36 Pleasant Street (Res 3), Robert Littlefield seconded and it was so voted, 5-0. Anne Howard will write the decision.

NEXT MEETING: The next meeting will take place on August 25, 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 8:00 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 25, 2011.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2011
Anne Howard, Chair