

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
September 15, 2011**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Anne Howard, Robert Littlefield, Amy Germain, David Nicolau, Tom Roberts, Harriet Gordon and Joe Vasta.

Members Absent: Elisabeth Verde (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 6:45 P.M.

MINUTES: August 25, 2011 – Amy Germain moved to approve the language as written, Robert Littlefield seconded and it was so voted, 7-0.

PENDING DECISIONS:

FY11-90 19-35 Race Point Road (*Residential 3 Zone*), Edward Malone of Community Housing Resource, Inc. (*continued from August 4, 2011*) -
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. David Nicolau read the decision. ***Amy Germain moved to approve the language as written, Robert Littlefield seconded and it was so voted, 5-0.***

FY12-06 356 Commercial Street (*Town Commercial Center Zone*), Town of Provincetown/Provincetown Public Library –
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Harriet Gordon sat on the case. Harriet Gordon read the decision. ***Robert Littlefield moved to approve the language as written, David Nicolau 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 seven members of the Zoning Board of Appeals present and one absent.

CONTINUED CASE:

FY12-07 **214 Commercial Street, Town Commercial Center Zone), Mark Cortale on behalf of Extraordinary Talent Productions, LLC** (*continued from August 25, 2011*) –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of caricatures, and the like, to promote and advertise entertainment options. David Nicolau exited the room. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Ben deRuyter and Mark Cortale appeared to discuss the application. A revised plan was presented showing the ticket booth removed and the five signs and postcard stand remaining and located not more than 4' from the building so as not to block the public way.

Board Discussion: The Board briefly questioned Mr. deRuyter and Mr. Cortale. *Amy Germain moved to approve a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of caricatures, and the like, to promote and advertise entertainment options at the property located at 214 Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 5-0.* Anne Howard will write the decision.

NEW CASES:

FY12-09 **32 Bradford Street (Residential 3 Zone), Robert Valois on behalf of Enco Realty Trust** –

The applicant seeks a Special Permit under Article 2, Section 2550 and Article 3, Section 3115 and 3110 of the Zoning By-Laws for the demolition and reconstruction of a pre-existing, non-conforming structure within the existing footprint up and along pre-existing, non-conforming side and rear yard setbacks and the dimensional requirements of distance between existing structures.

FY12-10 **32 Bradford Street (Residential 3 Zone), Robert Valois on behalf of Enco Realty Trust** –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for a deviation in building scale for the demolition and reconstruction in the existing footprint raising the ridge 9' 0" and adding a front porch.

The applicant has requested a postponement for Cases #FY12-09 and #FY12-10 until the October 6, 2011 Public Hearing.

Tom Roberts moved to approve the request to postpone Cases #FY12-09 and FY12-10 until the October 6, 2011 Public Hearing, Amy Germain seconded and it was so voted, 7-0.

FY12-08 **12 Winslow Street (Residential 3 Zone), Town of Provincetown** –

The applicant seeks a Special Permit under Article 2 Section 2440, D3, of the Zoning By-Laws for change of use from existing School to Municipal offices. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau, and Harriet Gordon sat on the case.

Presentation: David Gardner, Assistant Town Manager, appeared to present the application. The Town seeks to move the offices of the Council on Aging, the

Recreation Department and the Department of Public Works to the building which until recently was the Veterans Memorial Elementary School. This move has been approved by Town Meeting vote. There will be no change to the parking space requirements.

Public Comment: Katherine Fair, an abutter, had several questions regarding the change of use and how it would affect the traffic on Winslow Street. Howard Weiner, a resident of Winslow Street, had the same concerns as Ms. Fair. Chris Hottle, the Director of the Council on Aging spoke in favor of the application. David Guertin, Director of the DPW, spoke in favor of the application. There was 1 letter of no concern and 2 letters in favor of the application.

Board Discussion: The Board questioned Mr. Gardner.

Amy Germain moved to grant a Special Permit under Article 2 Section 2440, D3, of the Zoning By-Laws for change of use from existing School to Municipal offices at the property located at 12 Winslow Street (Res 3), Harriet Gordon seconded and it was so voted, 5-0. Amy Germain will write the decision.

FY12-11

54 Mayflower Avenue (Residential 1, Zone), Lester J. Murphy, Jr., Attorney, on behalf of Jay Jakubowski and Shawn Nightingale –

The applicant seeks a Special Permit under Article 2, Section 2560 and Article 3, Section 3110 of the Zoning By-Laws to extend the pre-existing, non-conformancy of the structure with an addition in excess of the maximum allowable building height. The building was constructed in 1980, prior to the adoption of the dimensional schedule. Anne Howard recused herself because of a conflict of interest. David Nicolau filed an appearance of conflict with the Town Clerk, but as the conflict no longer exists, he stated that he would be able to render a fair and impartial decision. Robert Littlefield chaired the presentation. Robert Littlefield, Amy Germain, David Nicolau, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Attorney Lester J. Murphy and Bill Kwaak appeared to present the application. The applicant seeks to put an addition, measuring 21' by 20', on the existing structure. Attorney Murphy explained that the house no longer meets the needs of the applicants who are close to retirement and want to live year round in the house. The existing flat-roofed structure is non-conforming as to its height, as it is in excess of the 23' limit allowed in the By-Law. The height of the addition will also exceed 23' and the height of the existing structure, however, it will appear lower than the existing structure because the grade upon which it will be sited is lower. The addition will feature a home office, an expanded master suite, two enlarged guest bedrooms with new bathrooms to service them and a garage on the ground floor. The addition is architecturally compatible with the existing structure and there has been an effort in the design of the structure to reduce its visual impact from neighboring properties and from Route 6. Thus the addition is sited to the rear of the structure, as far away from neighboring properties as possible. According to Attorney Murphy, the impact of the addition on visibility in the area is minimal. There was a virtual presentation of images of what the addition would look like from various viewpoints during seasons when the foliage exists and doesn't exist. Attorney Murphy argued that there would be no detrimental effects as a result of this expansion and that the non-conformancy will

not be substantially more detrimental than the non-conformancy that now exists. He also stated that if the Board grants the Special Permit under Article 3, Section 3110, allowing the construction of an addition at greater than 23', then the applicants would not need to seek relief under Article 2, Section 2560, Dimensional Schedule. He also requested that the Board hear the case under the *Goldhirsh v. McNear* ruling.

Public Comment: None. There were 5 letters in favor, written when the case was originally presented to the Board in January of 2011, and updates of those same letters.

Board Discussion: The Board questioned Attorney Murphy and Mr. Kwaak. *Harriet Gordon moved to hear the case under the Goldhirsh v. McNear ruling, Robert Littlefield seconded and it was so voted, 5-0. Harriet Gordon moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend the pre-existing, non-conformancy of the structure with an addition in excess of the maximum allowable building height at the property at 54 Mayflower Avenue (Res1) under the Goldhirsh v. McNear ruling, Tom Roberts seconded and it was so voted, 5-0.*

FY12-12 **54 Mayflower Avenue (Residential 1 Zone), Lester J. Murphy, Jr., Attorney, on behalf of Jay Jakubowski and Shawn Nightingale –**

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. Robert Littlefield, Amy Germain, David Nicolau, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Attorney Lester J. Murphy and Bill Kwaak appeared to present the application. The scale of the existing building is 18,690 cubic feet, the scale of the proposed addition is 12,000 cu. ft., for a total of 30,690 cu. ft. The neighborhood average is 13,092 cu. ft. and the maximum allowable scale is 16,365 cu. ft. The percentage increase in volume is 60% over the maximum allowed. The building of the addition will bring economic benefits to the Town, according to Attorney Murphy, by providing jobs for construction workers and increasing tax revenue. The social benefits will accrue to the owners of the house by making it more "livable" for themselves and their guests, and will also provide much needed office space for their businesses. According to Attorney Murphy, it is a social benefit to encourage more year round, owner-occupied residences. He claimed that these social and economic benefits outweigh any adverse effects such as hazard, congestion or environmental degradation. The project satisfies subsections #1 and #5 of Article 2, Section 2640E of the Zoning By-Laws and is in keeping with the goals of Section 1, Goal 1, Policy B and Section 4, Goal 2 and Policy A of the Local Comprehensive Plan.

Public Comment: None. The same 5 letters as presented in the above case.

Board Discussion: The Board questioned Attorney Murphy and Mr. Kwaak. *Robert Littlefield 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 54 Mayflower Avenue (Res 1), Tom Roberts seconded and it was so voted, 5-0.* Robert Littlefield will write the decision.

FY12-13 **170 Bradford Street, Residential 3 Zone, Robin B. Reid, Esq. on behalf of Marcus Builders, LLC –**

The applicant seeks a Special Permit under Article 3, Section 3110 and Section 3115 of the Zoning By-Laws to remove and re-construct a pre-existing, non-conforming structure. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts will sit on both cases. Maxine Notaro stated that she no longer has a financial interest in this property and has consulted with the State Ethics Committee who advised her that given she no longer has a financial interest that there is no conflict of interest in either reviewing the application or being present when the application is being heard by the ZBA.

Presentation: Attorney Robin B. Reid and Victor DePoalo appeared to present the application. Attorney Reid explained that the structure will be demolished and reconstructed within two years and the use of the premises will be re-established within one year of the demolition, pursuant to Article 3, Section 3115. However, the proposed structure will not be built exactly within the same footprint and will be greater in building scale than the demolished structure. The Board can approve the latter change if the applicant is also granted a Special Permit under Article 3, Section 3110. The porch on the proposed plan is no longer a part of the project. The non-conformancies are the front and side yard setbacks. The non-conformancy in the front will remain when the building is reconstructed, however the non-conforming side yard setback will become conforming. The proposed structure will have a reduced mass from the Bradford Street side as the two one-and-a-half story additions on each side of the main structure will each become one story. The increase in mass and building scale will occur in the back of the building, however both the east and west side of the building have large privet hedges that block the view of the back of the building. Attorney Reid contended that the proposed alteration will not be substantially more detrimental to the neighborhood than the existing non-conforming structure.

Public Comment: Jeff York, an abutter, speaking for himself and on behalf of his condominium association, and Mark Juare, speaking for himself and on behalf of his condominium association at 22 Pearl Street, spoke in favor of the application. There were letters from 6 abutters and 4 non-abutters in favor of the application and from 2 abutters not in favor of the application.

Board Discussion: The Board questioned Attorney Reid and Mr. DePoalo. Attorney Reid was granted permission to present the next application

FY-12-14 **170 Bradford Street, Residential 3 Zone, Robin B. Reid, Esq. on behalf of Marcus Builders, LLC –**

The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to rebuild the structure and increase the livable square footage in accordance with attached plans. The existing structure is 24,800 cu. ft. and the proposal is to add 5,082 cu. ft., for a total of 29,880 cu. ft. The neighborhood average is 15,177 cu. ft. The allowable building scale is 17,454 cu. ft. Attorney Reid pointed out that many properties in the neighborhood have multiple buildings on them and three properties within the building scale circle

catch the cottages on those properties and not the bigger, main houses. The largest structure in the neighborhood is 34,520 cu. ft. The structures that exceed the neighborhood average are located on either side of the property on Bradford Street. The project satisfies subsections #5 and #6 of Article 2, Section 2640E of the Zoning By-Laws as the proposed building or addition successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures. And, as the property is located in the Provincetown Historic District, the addition is consistent with the Historic District Guidelines and approval of the deviation would further the purpose and intent of the By-Law. Attorney Reid argued that the benefit to the neighborhood or Town is in the reconstruction of a structure that has been in a dilapidated state for a long time and that there are no adverse effects such as hazard, congestion or environmental degradation.

Board Discussion: The Board questioned Attorney Reid and Mr. DePoalo. The Board requested the applicant submit plans that do not show the porch, but do show the location of the parking spaces on the property. The Board was concerned about the proposed increase in building scale and suggested that the applicant consider a design with a smaller scale. The applicant requested a continuance to the October 6, 2011 Public Hearing.

Robert Littlefield moved to grant the request to continue Cases #FY12-13 and FY12-14 to the October 6, 2011 Public Hearing, Anne Howard seconded and it was so voted, 5-0.

Chair Anne Howard adjourned the Public Hearing at 9:45 P.M.

WORK SESSION

Chair Anne Howard reconvened the Work Session at 9:45 P.M.

The Board finished signing plans and discussed the upcoming ZBA schedule.

NEXT MEETING: The next meeting will take place on October 6, 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 10:00 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 October 6, 2011.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2011
Anne Howard, Chair