

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
November 3, 2011**

**MEETING HELD IN THE JUDGE WELSH ROOM**

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

**Members Absent:** Elisabeth Verde (excused) and Robert Littlefield (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 6:45 P.M.

**MINUTES: October 20, 2011** – *Tom Roberts moved to approve the language as written, David Nicolau seconded and it was so voted, 5-0.*

**PENDING DECISIONS:**

**FY12-16**      **336 Commercial Street (*Town Commercial Center Zone*), Diane Dicarlo and Jeanne Leszcynski –**  
Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case. Anne Howard read the decision. *Tom Roberts moved to approve the language as written, Joe Vasta seconded and it was so voted, 3-0.*

**FY12-18**      **28 Commercial Street (*Residential 2 Zone*), John Hopkins on behalf of Eric Price and Carl Bazil –**  
Anne Howard, Robert Littlefield, Tom Roberts and Joe Vasta sat on the case. Tom Roberts read the decision. *Anne Howard moved to approve the language as written, Joe Vasta seconded and it was so voted, 3-0.*

Chair Anne Howard adjourned the Work Session at 6:55 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 two absent.

### POSTPONED CASES:

**FY12-09**     **32 Bradford Street (Residential 3 Zone), Robert Valois on behalf of Enco Realty Trust** (*postponed from October 20, 2011*) –

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. David Nicolau recused himself because of a conflict of interest. Anne Howard, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.

**Presentation:** Robert Valois and Lenny Enos appeared to present the application. A Special Permit was granted in 2008 for proposed renovations to this property, including raising the height of the structure by 1'. The applicant now seeks to demolish the structure and to re-build in the same footprint with a 3' increase in height. The increase in height is a result of bringing the ceiling heights into conformity with the State Building Code. There are two areas to be enclosed; an area beneath a deck on the west side and an area in the vicinity of a shed on the east side, the latter to which a second floor will also be added. Mr. Valois read from the 2008 ZBA decision that the Board found that the proposed alteration to the structure will not be more substantially detrimental to the neighborhood than the existing non-conformancy and determined that the social, economic or other benefits of the proposal to the Town or the neighborhood outweighed any adverse effects, such as hazard, congestion or environmental degradation. In addition, the proposed changes align with Chapter 1, Section 1.2, Goal 3, Policy B of the Local Comprehensive Plan.

**Public Comment:** Rick Murray spoke in favor of the application. There was 1 letter in the file in support of the application.

**Board Discussion:** The Board questioned Mr. Valois and Mr. Enos.

*Tom Roberts moved to grant 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 at the property located at 32 Bradford Street (Res 3), Joe Vasta seconded and it was so voted, 5-0.* Amy Germain will write the decision.

**FY12-10**     **32 Bradford Street (Residential 3 Zone), Robert Valois on behalf of Enco Realty Trust** (*postponed from October 20, 2011*) –

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 withdrawal because the revised proposal does not deviate from building scale.

***Amy Germain moved to grant the request to withdraw Case #FY12-10, Harriet Gordon seconded and it was so voted, 5-0.***

**FY12-15      4 Kiley Court (Residential 3 Zone), Zachary Luster (continued from October 20, 2011) –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the outdoor service of food and alcoholic beverages. Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Joe Vasta sat on the case.

**Presentation:** Zachary Luster appeared to discuss the application. Mr. Luster submitted written changes to his previous proposal, including locating two exterior signs informing customers that there will be no seating allowed after 8:30 P.M., however if diners were not finished with their meals at 10:00 P.M., they would be asked to move inside the restaurant, and that gazebo seating would be offered between May 25<sup>th</sup> and September 30<sup>th</sup>, the installation of seven angled shades measuring 1.5' to encircle the gazebo, the planting of four pencil pine trees to surround the gazebo, locating a designated smoking section in the patio, the erection of a 4.5' bamboo fence to surround the existing interior fence to muffle noise, and the location of all 4 tables, or 10 seats, entirely within the gazebo.

**Board Discussion:** The Board questioned Mr. Luster.

***David Nicolau moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the outdoor service of food and alcoholic beverages at the property located at 4 Kiley Court (Res 3) with the changes submitted by the applicant and with the added conditions that the exterior seating area will only be open Friday, Saturday, Sunday and Monday holidays, including the fourth of July when it does not fall on a Monday, that the Special Permit will expire on December 31, 2012, that the bus station be located inside the restaurant, that there be no outside music and that the proposed bamboo shades around the gazebo hang vertically instead of at an angle, Amy Germain seconded.***

The Board briefly discussed the issues in the case.

***The motion was so voted, 5-0.*** Tom Roberts will write the decision.

**FY12-17      12 Center Street (Town Commercial Center Zone), Gary Reinhardt on behalf of Howard Burchman –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second story addition to an existing single-family cottage up and along pre-existing, non-conforming rear and sideline setbacks. Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Harriet Gordon sat on the case.

**Presentation:** Gary Reinhardt, Howard Burchman and Robert Valois appeared to present the application. Mr. Reinhardt submitted a revised, certified plot plan with parking. Attorney Christopher J. Snow rose to clarify a procedural point of order. Attorney Snow, who represents Jim Schreyer, an abutter to the project, stated that the plot plan submitted to the Board had not been available to the public for

review and that a request to withdraw or postpone this case had been submitted to the Permit Coordinator the evening before at an Historic District Commission Public Hearing. Attorney Snow alleged that the impression, possibly misleading, given to the public was that the ZBA case would be postponed, especially in light of the fact that the HDC case was initially postponed. However, the HDC case did move forward and the application was denied. He believed that the ZBA case should not go forward and that if the Board did choose to proceed, it would do so at its own peril and be proceeding on a 'flawed course'. Permit Coordinator Maxine Notaro clarified that the HDC did not publicly state that the ZBA case would be postponed and the request was only shown to Attorney Snow because he asked her if the ZBA case was going to be postponed. She told him that she had just received the applicant's request that the ZBA case would possibly be postponed and she was not clear what was going to happen. Ms. Notaro also related the events of the HDC Public Hearing and said that the applicant had decided earlier today that he would not proceed with the postponement. The Board discussed the plans submitted by the applicant. The Board discussed the issues raised by Attorney Snow. The Board took Attorney Snow's argument under advisement and chose to proceed with the hearing of the case.

**Presentation:** Mr. Reinhardt explained that the proposed renovations are to a single family structure. There are two structures on the property: a guesthouse and a single family cottage in the rear. The renovation of the cottage will include adding a second story with a slight increase in the footprint. The lot coverage will only increase by .4%. The non-conforming flat roof will change from to a mansard to match the guesthouse and other roofs in the neighborhood. The side yard and rear yard setback non-conformancies will remain. Mr. Reinhardt then requested that the Board hear the case under the *Goldhirsh v. McNear* ruling. ***David Nicolau moved to not hear the case under the Goldhirsh v. McNear ruling, Amy Germain seconded and it was so voted, 5-0.***

**Public Comment:** Attorney Snow, on behalf of Mr. Schreyer, spoke against the application. There were 6 letters in support and 1 letter in opposition to the application in the file.

**Board Discussion:** The Board questioned Mr. Reinhardt and Mr. Burchman. Robert Valois joined the discussion. Mr. Reinhardt explained that the project would benefit the Town and the neighborhood because an ugly cottage would be replaced by an attractive cottage that is harmonious with the architectural style of the neighborhood. In addition, one of the non-conformancies would be eliminated in that the flat roof is being converted to a mansard roof. The Town will be an indirect beneficiary of the increase in the rental revenue.

***David Nicolau moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second story addition to an existing single-family cottage up and along pre-existing, non-conforming rear and sideline setbacks at the property located at 12 Center Street (TCC) contingent upon HDC approval of the plan drawn by Robert Valois, dated 8/12/11, Amy Germain seconded and it was so voted, 5-0.*** Harriet Gordon will write the decision.

**FY12-19**      **269 Commercial Street (Town Commercial Center Zone), Lester J. Murphy, Jr., Attorney, on behalf of El Mundo, LLC (postponed to November 17, 2011) -**  
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the outdoor service of food and alcoholic beverages and outdoor seating for 20 patrons in the rear (waterfront) portion of the property on a flex-seating basis.

**NEXT MEETING:** The next meeting will take place on November 17, 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 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 November 17, 2011.

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2011  
Anne Howard, Chair