

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
November 17, 2011**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Anne Howard, Robert Littlefield (arrived at 6:45 P.M.), Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta.

Members Absent: Elisabeth Verde (excused) and David Nicolau (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 6:30 P.M.

MINUTES: November 3, 2011 – *Amy Germain moved to approve the language as written, Tom Roberts seconded and it was so voted, 5-0.*

PENDING DECISIONS:

- FY12-09** **32 Bradford Street (Residential 3 Zone), Robert Valois on behalf of Enco Realty Trust** –
Anne Howard, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case. Amy Germain read the decision. *Tom Roberts moved to accept the language as written, Harriet Gordon seconded and it was so voted, 5-0.*
- FY12-15** **4 Kiley Court (Residential 3 Zone), Zachary Luster** –
Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Joe Vasta sat on the case. Tom Roberts read the decision. *Amy Germain moved to accept the language as written, Harriet Gordon seconded and it was so voted, 4-0.*
- FY12-17** **12 Center Street (Town Commercial Center Zone), Gary Reinhardt on behalf of Howard Burchman** –
Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Harriet Gordon sat on the case. Harriet Gordon read the decision. *Tom Roberts moved to accept the language as written, Anne Howard seconded and it was so voted, 4-0.*

Chair Anne Howard postponed the Work Session at 6:59 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:

FY12-19 269 Commercial Street (Town Commercial Center Zone), Lester J. Murphy, Jr., Attorney, on behalf of El Mundo, LLC -
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. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.
Presentation: Attorney Lester J. Murphy appeared to present the application. He stated that it had just come to his and the applicant's attention that Phyllis Schlosberg, an abutter, was going to object to the application and had hired Attorney Christopher J. Snow to represent her. This is a potential conflict of interest for Attorney Murphy as he is currently representing Ms. Schlosberg in another legal matter. Both he and the applicant do not feel comfortable going forward with the case in light of this information. He is requesting a continuance of the case to the December 1, 2011 Public Hearing in order that the applicant can retain new counsel. Attorney Snow raised several points on behalf of his client: that the case has already been continued once for the purpose of submitting new plans, that his client has paid him to contact the Department of Community Development on numerous occasions to ask if new plans have been submitted and that new plans were just submitted to the Board that evening. He is also unable to attend the December 1, 2011 Public Hearing and requests that the case be heard at the December 15, 2011 Public Hearing instead. The applicant agreed to the request and agreed to waive the time constraints.
Amy Germain moved to accept the request for a continuance of Case No. FY12-19 to the December 15, 2011 Public Hearing with the understanding that the applicant has waived all time constraints, Robert Littlefield seconded and it was so voted, 5-0.

FY12-20 247 Commercial Street (Town Commercial Center Zone), Richard F. Murray, DMD, on behalf of Crown and Anchor, Inc. –
The applicant seeks a Special Permit under Article 2, Section 3420 of the Zoning By-Laws for the removal of the one-year restriction on Case #FY11-59 (outside display of caricatures and the like to provide and advertise display of entertainment options) and request that the Special Permit have no calendar restrictions. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.
Presentation: Rick Murray appeared to present the application. Mr. Murray requests that condition one and the calendar restriction in condition 2 be removed in the Findings of the Board's decision in Case #FY11-59. He is open 11 months

out of the year and would like to display the signs advertising entertainment options at the site for 11 months as well. No one has complained to him about the signs and there have been no police reports filed regarding the signs.

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

Board Discussion: The Board briefly discussed the request.

Amy Germain moved to grant a Special Permit under Article 2, Section 3420 of the Zoning By-Laws for the removal of the one-year restriction on Case #FY11-59 (outside display of caricatures and the like to provide and advertise display of entertainment options) and request that the Special Permit have no calendar restrictions at the property located at 247 Commercial Street (TCC), with the following conditions: the Permit shall expire on February 28, 2015; 8 signs only shall be displayed; the signs shall measure no larger than 2' by 3'; the signs shall be situated 20' from the street or as indicated on the site plan; and the signs shall be securely fastened and stabilized to the satisfaction of the Building Commissioner, Anne Howard seconded and it was so voted, 5-0. Amy Germain will write the decision.

FY12-21 887 Commercial Street (Residential 1 Zone), Lester J. Murphy, Attorney, on behalf of Stephen I. Ross and Virginia C. Ross –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the alteration and extension to a lawful pre-existing, non-conforming deck within the side yard setbacks.

FY12-22 887 Commercial Street (Residential 1 Zone), Lester J. Murphy, Attorney, on behalf of Stephen I. Ross and Virginia C. Ross –

The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for the construction of a screened porch on the south elevation. The two cases will be heard together. Amy Germain recused herself because of a conflict of interest. Anne Howard, Robert Littlefield, Tom Roberts, Harriet Gordon and Joe Vasta sat on both cases.

Presentation: Attorney Lester J. Murphy and Ginny Ross appeared to present the application. The porch that is the subject of this application already exists.

Attorney Murphy stated that the applicants apologize for their error and requested that the Board hear the case as if the porch did not exist. Before the applicants purchased the property, the original deck, located on the easterly side, was extended by wrapping it around and along the southerly end of the building. The porch as it exists will have to be cut back in such a way as to comply with the setbacks on the southerly side and will have to be entirely re-built to be compliant with the State Building Code and Zoning by-Law requirements. The proposed porch will measure 9' by 17.4'. The structure now is non-conforming as to scale. The scale of the existing structure, including the porch, is 11,150 cu. ft. The scale prior to the construction of the porch was 9,220 cu. ft. The proposed porch addition would be 1,580 cu. ft., for a total of 10,800 cu. ft. The percentage of scale increase is 17.14%. The neighborhood average scale is 6,685 cu. ft. The maximum allowed building scale is 8,357 cu. ft. The amount of scale deviation sought is 2,443 cu. ft. Attorney Murphy argued that the social, economic or other benefits to the neighborhood and Town outweigh any adverse effects, such as

hazard, congestion or environmental degradation. An economic benefit for the Town is that the increase in size of the building will increase the assessed value of it and generate more tax dollars while not increasing the need for Town services for the property. A social benefit is that the porch will make the building more livable and comfortable for the applicants, improving their quality of life. The neighborhood is a mix of small and large buildings and the porch will not deviate from the character of the neighborhood. The porch satisfies criteria 1 of Article 2, Section 2640E, in that it is in keeping with Section 1, 1.2, Goal 1, Policy B, Goal 3, and Policy B and Section 4, 4.2, Goal 2, Policy A and Policy B of the Local Comprehensive Plan. It also satisfies the criteria 5 of Article 2, Section 2640E.

Public Comment: Shari Kadison spoke in favor of the application. Attorney Kristin Gaynor, representing Judith Guillot, an abutter, spoke in opposition to the application. In the file, there was 1 letter of no objection to the project, 9 letters in support of the application, and Attorney Gaynor's letter in opposition to the application.

FY12-21 **Board of Discussion:** The Board questioned Attorney Murphy and Ms. Ross. *Tom Roberts moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the alteration and extension to a lawful pre-existing, non-conforming deck within the side yard setbacks at the property located at 887 Commercial Street (Res 1), Robert Littlefield seconded and it was so voted, 5-0.* Tom Roberts will write the decision.

FY12-22 *Tom Roberts moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for the construction of a screened porch on the south elevation at the property located at 887 Commercial Street (Res 1), Robert Littlefield seconded and it was so voted, 5-0.* Tom Roberts will write the decision.

FY12-23 **366 Commercial Street (Town Commercial Center Zone), Kaye McFadden on behalf of Francine D'Olimpio –**
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a roof deck up and along pre-existing, non-conforming front and sideline setbacks. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.
Presentation: Kaye McFadden, Francine D'Olimpio and Rebecca Matarazzi appeared to present the application. The applicants seek to build a deck over an existing rubber roof and extend a railing system to the edge of the Commercial Street side of the building.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board questioned Ms. McFadden, Ms. D'Olimpio and Ms. Matarazzi.
Amy Germain moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a roof deck up and along pre-existing, non-conforming front and sideline setbacks at the property located at 366 Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY12-24 89 Commercial Street (Residential 3 Zone), Scott Grady on behalf of Ronald Chapman –

The applicant seeks a Special Permit under Article 2, Section 2540 and Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along the pre-existing, non-conforming front setbacks on the northwest elevation and to construct a 3' by 14' living room addition and deck extension up and along the pre-existing, non-conforming rear setbacks on the southeast elevation (Harborfront) setbacks. The Board will hear both cases together.

FY12-25 89 Commercial Street (Residential 3 Zone), Scott Grady on behalf of Ronald Chapman –

The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to construct a dormer on the northwest elevation and to construct a 3' by 14' living room addition and deck extension on the rear, southeast elevation (Harborfront). Harriet Gordon recused herself because of a conflict of interest. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on both cases.

Presentation: Scott Grady appeared to present the application. The project will not result in an increase in the footprint of the structure, will not decrease the green space, will not increase the units and will not increase the pre-existing non-conformancies. The dormer, which will create cross-ventilation and habitable space, will sit on top of the house and will not increase any non-conformancies. The proposed bump-out in the rear of the house will correct a structural indentation, making that area flush with the rest of the façade of the structure. Lastly, the applicant seeks to use the structure of an existing pergola to extend a walkway deck by 6' to create usable outdoor space at the living level of the house.

Public Comment: Emily Flax and Greg Craig, both abutters, spoke against the application. There was 1 letter in the file in opposition to the project.

Board Discussion: The Board questioned Mr. Grady. The Board was concerned about the increase in scale of a structure that is already large for the neighborhood. The proposed project will have a scale of 34,215 cu. ft. in a neighborhood where the average building scale is 19,910 cu. ft. Mr. Grady requested to withdraw Cases #FY12-24 and FY12-25 without prejudice.

Robert Littlefield moved to accept the request to withdraw Case #FY12-24 without prejudice, Tom Roberts seconded and it was so voted, 5-0.

Robert Littlefield moved to accept the request to withdraw Case #FY12-25 without prejudice, Tom Roberts seconded and it was so voted, 4-1. (Amy Germain opposed).

Chair Anne Howard adjourned the Public Hearing at 9:15 P.M.

WORK SESSION

Chair Anne Howard reconvened the Work Session at 9:15 P.M.

The Board finished signing decisions and plans.

NEXT MEETING: The next meeting will take place on December 1, 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 December 1, 2011.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2011
Anne Howard, Chair