



Town of Provincetown
Zoning Board of Appeals
Town Hall, Provincetown, MA 02657

October 1, 2020

Findings and Decision of the Zoning Board of Appeals

Case Number: ZBA 20-68
Applicant: Tri-T, LLC
Owner: 2 Commercial Street Realty Trust
Property Address: 4 Commercial Street
Assessor's ID: 5-1-5-G
Deed Reference: Certificate 186831, Document 1097191
Zoning District: Residential District 1 (Res1)
Board Members: Jeremy Callahan
Robert Nee
Peter H. Okun
Steven Latasa-Nicks
Daniel Wagner

I. Introduction

The Applicant is petitioning the Zoning Board of Appeals for a Variance from Article 2 Section 2560, Dimensional Schedule (Min. Front Yard), of the Town of Provincetown Zoning By-Laws (the Zoning By-Laws) to decrease the minimum front yard setback required for a proposed single-family dwelling located at 4 Commercial Street (Res1 Zone).

II. Decision

The Zoning Board of Appeals denied the application, by a vote of 0 in favor, 5 opposed, and 0 abstaining.

III. General Findings

1. The Property is located at 4 Commercial Street, Provincetown, Massachusetts, is known by the Assessor's Office as Parcel ID: 5-1-5-G, and is recorded with the Barnstable County Land Court as Certificate 186831, Document 1097191.
2. The Property is located on the north side of Commercial Street within the Residential District 1 (Res1) zoning district, which according to Section 2120 of the Zoning Bylaw, the purpose of the Res1 zoning district is "to provide for less dense residential development in the town's outlying areas."
3. The minimum front yard setback required in the Res1 zoning district is 30 ft.
4. The Property is a vacant lot that was once part of a 3.55-acre parcel that was divided into 9 lots pursuant to an Approval Not Required ("ANR") Plan. The Property has sufficient frontage and lot area.
5. The Applicant is proposing to construct a single-family residential building on the Property.
6. The proposed building was initially designed to be located 15.1± ft. from the front property boundary on Commercial Street (plan dated March 30, 2020).
7. A revised plan showed the building located 20.4± ft. from the front property boundary on Commercial Street (plan dated June 15, 2020).
8. The Board held four public hearings on this matter; May 21, 2020, June 18, 2020, July 16, 2020, and September 3, 2020. The Applicant provided a Time Extension Agreement Waiver of Time Constraints dated August 6, 2020. Note that the hearing was held virtually in accordance with Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, March 23, 2020 Order imposing strict limitation on the number of people that may gather in one place, and Chapter 53 of the Acts of 2020. Attorney Lester J. Murphy represented the Applicant and was joined by Clifford Schorer and Tom Tannariello in presenting and discussing the Project and the Board provided an opportunity for all those attending the public hearing to be heard.
9. There was one letter from a neighbor dated May 14, 2020 expressing concerns with the project.
10. The Town Planner submitted a report dated May 19, 2020 and letter dated July 8, 2020.
11. Town Counsel submitted a letter dated August 6, 2020.
12. The Applicant or his Representative submitted items that included: letter from Clifford Schorer (undated) received June 2, 2020; Estimate Retaining Walls LT 7 dated August 16, 2012; Estimate 761 from Cape Cod Excavating, Inc. dated June 14, 2020; letter from Lester J. Murphy dated July 10, 2020; letter from Clifford Schorer dated July 14, 2020; 4 Commercial Street – Response to Town Planner's Report (undated); and letter from Lester J. Murphy (undated) received August 18, 2020.
13. The applicant submitted a project narrative with the application, as well as plans, exhibits and renderings of the Project and the Board members had sufficient time to review these prior to each hearing. Plans included:
 - a. Plan entitled "Site Plan" prepared for Tri-T, LLC, prepared by Warwick & Associates, Inc. at a scale of 1" = 10' dated March 30, 2020, certified by Gary S. Labrie, PLS No. 40039 in 1 sheet (18x24).
 - b. Plan entitled "Site Plan" prepared for Tri-T, LLC, prepared by Warwick & Associates, Inc. at a scale of 1" = 10' dated June 15, certified by Gary S. Labrie, PLS No. 40039 in 1 sheet (18x24).

- c. Architectural Plan Set entitled “4 Commercial Street Provincetown, Massachusetts” prepared by Ted Smith Architect, LLC, at a scale of 3/16” = 1’ dated March 19, 2020, uncertified, in 7 sheets (11x17) labeled A1.0; A1.1; A1.2; A1.3; A2.1; A2.2; and A2.3.
- d. Plan entitled “Building Offsets to Commercial Street” prepared for Tri-T, LLC, prepared by Warwick & Associates, Inc. at a scale of 1” = 20’ dated May 5, 2020, certified by Gary S. Labrie, PLS No. 40039 in 1 sheet (8.5x11-reduced).
- e. Photocopied image of a plan showing Lot 1 “Gate House” located at 1 Pilgrims Landing (Assessor’s Parcel ID: 5-1-5-A) with dimensions to the rear property boundary abutting Province Lands Road.

IV. Applicable Law and Decision Criteria:

1. Massachusetts General Laws Chapter 40A, Section 10 (Variances):

The permit granting authority shall have the power after public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

2. Section 5222 of the Zoning By-Law:

To hear and decide appeals or petitions for variances from the terms of this By-Law, including variances for use, with respect particular land or structures. Such variance shall be granted only in cases where the Board of Appeals finds all of the following:

- a. *A literal enforcement of the provisions of this By-Law would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.*
- b. *The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located.*
- c. *Desirable relief may be granted without either:*
 - 1) *substantial detriment to the public good; or*
 - 2) *nullifying or substantially derogating from the intent or purpose of this By-Law.*

V. Specific Findings:

The Zoning Board of Appeals (ZBA) hereby finds the following:

1. That this decision is based on the applicable law and decision criteria outlined above and excludes: any prior decisions of ZBA, including the Point Street decision presented and referenced by the Applicant; the Memorandum of Understanding presented and referenced by the Applicant; and the Declaration of Restrictions presented and referenced by the Applicant as these do not have any impact on the decision whether to grant a variance or not under Section 5222 of the Zoning By-Law.
2. That the Property located at 4 Commercial Street does not appear to have unique circumstances for the neighborhood due to soil or topography where the Property is located within the Res1 zoning district along with Telegraph Hill, Paynes Hill, Harbor Hill, and Creek Round Hill, which have similar soils and topography.
3. That the vacant Property located at 4 Commercial Street was created by the landowner as a conforming lot with sufficient frontage and lot area, such that the owner of the Property at the time of the ANR Plan had the opportunity to divide the original parcel in a way to make all lots buildable for dwellings of a desired size, and that the inability to construct a larger building within the parcel was created by the landowner.
4. That 4 Commercial Street is located on the north side of Commercial street and buildings located on five of the abutting properties located on the north side of Commercial Street, including: 6 Commercial (built 2019) is set back over 31.2± ft.; 8A Commercial (built 1984) is set back 36.6± ft.; 8B Commercial (built 1984) is set back 32± ft.; 8D Commercial (built 1935) is set back 29.8± ft.; and 2 Commercial Street (built in 1957) is set back over 50± ft; all generally comply with the front yard setback from the building to the northern boundary of Commercial Street.
5. That the intent or purpose of the Res1 zoning district is to provide for less dense residential development in the town's outlying areas and that the front yard setback is a component of maintaining the appearance or feeling of less density.
6. Therefore, based on the above (Sections III through V), the ZBA finds that a literal enforcement of the provisions of this By-Law would not involve a substantial hardship, financial or otherwise, to the petitioner or appellant. The ZBA further finds that there is no hardship owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures. Finally, the ZBA finds that relief may not be granted without either substantial detriment to the public good; or nullifying or substantially derogating from the intent or purpose of this By-Law.

VI. VoteZBA 20-65:

Motion by Steven Latasa-Nicks to grant a Variance pursuant to the Zoning By-Laws Article 5, Section 5222 Laws where the Board of Appeals finds all of the following: that a literal enforcement of the provisions of this By-Law would involve a substantial hardship, financial or otherwise, to the petitioner; that the hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located; and that desirable relief may be granted without either substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this By-Law for the property located at 4 Commercial Street. The Motion was seconded by Robert Nee.

VOTE: By 0 in favor, 5 opposed, and 0 abstaining the Zoning Board of Appeals denied this application.

SIGNED BY:

DATE OF FILING:

A copy of the application in this matter, bearing the stamp of this Board, the signatures of the sitting members or the designee, and the date of this decision, will be on file in the Provincetown Department of Community Development. The applicant is hereby put on notice that any deviation from the above referenced application shall invalidate this Decision and shall require further review by this Board. Furthermore, the Decision issued hereunder shall not be valid until recorded at the Registry of Deeds in Barnstable as provided in the Provincetown Zoning By-Law and G.L. ch. 40A.

Important: Any appeal from the decision of the Zoning Board of Appeals can be made only to the Court and must be made pursuant to MGL ch. 40A, § 17, as amended, and must be filed within twenty (20) days after the date of filing of the decision with the Town Clerk.

Note: or as such timeframes are suspended and extended pursuant to Section 17 of Chapter 53 of the Acts of 2020.