

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
October 4, 2007

MEETING HELD IN TOWN HALL

Members Present: Patrick Eeley, Peter Page, Elisabeth Verde, Robert Littlefield and Keith Amato.

Members Absent: Amy Germain (excused).

Others Present: Matt Mulvey (Building Commissioner), Maxine Notaro (Permit Coordinator), Jonathan Silverstein (Town Counsel) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair Patrick Eeley called the Work Session to order at 6:10 P.M.

PENDING CASES:

2007-46 **1 Tremont Street (*Town Commercial Center Zone*), Robin B. Reid, Esq. on behalf of Tremont Nominee Trust -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for an extension of a pre-existing, non-conforming structure up and along non-conforming dimensions. The applicant requested a continuance until the November 1, 2007 hearing because their revised plans were not yet completed.

2007-52 **175 Bradford Street Extension (*Residential 3 Zone*), E. James Veara, Esq. on behalf of Galeforce Village Condominium Trust -**

The applicant seeks an appeal of the Building Commissioner's decision under Article 5, Section 5330 of the Zoning By-Laws. The applicant requested a continuance until the November 1, 2007 hearing.

PENDING DECISIONS:

2007-51 **175 Bradford Street Extension (*Residential 3 Zone*), Robin B. Reid, Esq. on behalf of Victor DePoalo -**

Patrick Eeley, Peter Page, Elisabeth Verde, Robert Littlefield and Amy Germain sat on the case. Patrick Eeley read the decision. *Elisabeth Verde moved to accept the language as written, Peter Page seconded and it was so voted, 4-0.*

2007-56 **10 Commercial Street, Unit #11 (*Residential 1 Zone*), Mario Russo and Frank Gilligan -**

Peter Page, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case. Patrick Eeley read the decision. *Robert Littlefield moved to accept the language as written, Peter Page seconded and it was so voted, 4-0.*

PENDING CASES:

2007-45 **2 Harbour Drive, Lot 9 (*Residential 1 Zone*), Attorney Brian J. Wall on behalf of The Applicants (27 abutters) -**

The applicants seek an appeal of the Building Commissioner's decision under Article 5, Section 5223 of the Zoning By-Laws at the property located at 2 Harbour Drive, Lot 9. Patrick Eeley, Peter Page, Elisabeth Verde, Robert Littlefield and Keith Amato sat on the case.

Presentation: Attorney E. James Veara addressed the Board, informing them that he had that day received new information, as had the Board, from the applicants. He argued that the new information submitted should not be considered by the Board, as the public portion of the hearing had already been closed. Attorney Brian J. Wall countered that it was his understanding that he had reserved the right, at

the previous hearing, to provide more information to the Board. It was also his understanding that the Board, at that previous hearing, had questions concerning his clients' objections to the scale of the structure on the site. Thus he was submitting new information to shed light on his clients' interpretation of how the Town had calculated the scale of that structure, as well as providing engineering support for their analysis, in response to the Board's queries. Further, Attorney Wall stated that the Board had the authority to re-open the public portion of the hearing to accept new evidence if it so chose.

Board Discussion: The Board requested an opinion concerning the issue of whether new information could be accepted from the applicant and whether the public portion of the hearing could be re-opened from Attorney Jonathan Silverstein, Town Counsel. He stated that the Board does have the authority to judge whether the new information would be useful and thus re-open the public portion of the hearing. If this were to occur, proper procedure would need to be followed and Attorney Veara would need to be given time to rebut the new information. The Board discussed the issue and decided not to consider the new information because it was not part of the original application. Chair Patrick Eeley read the Building Commissioner's letter to Attorney Wall explaining his actions in regard to the re-instatement of the Building Permit for the structure on the site written in response to Attorney Wall's request that the building scale by-law had been violated and that the Building Permit for the structure was invalid.

Peter Page moved to uphold the Building Commissioner's decision and deny the appeal, Robert Littlefield seconded and it was so voted, 5-0. Patrick Eeley will write the decision.

Chair Patrick Eeley postponed the Work Session at 7:04 P.M.

PUBLIC HEARING

Chair Patrick Eeley called the Public Hearing to order at 7:04 P.M. There were 5 members of the Zoning Board of Appeals present and 1 absent.

CONTINUED CASES:

2007-54 **206-208 Commercial Street (Town Commercial Center Zone), Hal Winard -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the placement of eleven (11) "fast food" seats. Patrick Eeley, Peter Page, Elisabeth Verde, Robert Littlefield and Keith Amato sat on the case.

Presentation: Hal Winard appeared to present the application. The chairs and tables in question are outside on the patio area.

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

Board Discussion: The Board questioned Mr. Winard. The Board requested a seating plan from the applicant.

Elisabeth Verde moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the placement of eleven (11) "fast food" seats for the property located at 206-208 Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

NEW CASES:

2007-57 **21 Bradford Street Extension (Residential 1 Zone), WK Red Clay, LLC -**

The applicant seeks a modification of the Special Permit in Case #2007-18 under Article 3, Section 3110 of the Zoning By-Laws to reflect the revised location of extended and altered pre-existing, non-conforming multi-family use and structures.

Presentation: Attorney Lester J. Murphy, Jim Watkins and Dave Krohn appeared to present the application. The plans for the project at the site were revised based on issues of concern to the Fire Chief and the Board of Fire Engineers. The location of some dwelling units were changed, but the number of units is staying the same. The new site plan submitted by the applicant supercedes the previous site plan approved in Case #2007-18.

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

Board Discussion: The Board questioned Attorney Murphy, Mr. Watkins and Mr. Krohn.

Peter Page moved to approve a Special Permit in Case #2007-18 under Article 3, Section 3110 of the Zoning By-Laws to extend and alter a pre-existing, non-conforming multi-family use and structures at the property located at 21 Bradford Street Extension (Res 1), Elisabeth Verde seconded and it was so voted, 5-0. Patrick Eeley will write the decision.

2007-58 **89 Franklin Street Extension (Residential 3 Zone), Doug Dolezal and Greg Welch -**
The applicants seek a Variance under Article 2, Section 2560 of the Zoning By-Laws for the placement of two single-family buildings on an 8,627 square foot lot. Patrick Eeley, Peter Page, Elisabeth Verde, Robert Littlefield and Keith Amato sat on the case.

Presentation: Doug Dolezal, Greg Welch and Ginny Binder appeared to present the application. The applicants argued that a Variance should be granted by the Board because there is a hardship due to the shape and topography of the site. There is very little buildable space on the lot. According to Ms. Binder, the applicants could apply for a Special Permit to build on the site with minimal scale unit increases, the result of which would be to intensify the existing non-conformancies, increase the footprint substantially and continue the problem of hazard and congestion at the corner of Franklin Street Extension and Pleasant Street. The Variance, if granted, would significantly reduce the existing non-conformancies on the site, replacing them with one new non-conformancy, that being the inadequacy of the size of the lot for two single-family dwellings.

Public Comment: Joe DeMartino, an abutter, spoke in favor of the application. Gary Wold, Dennis Rhodes and Robert Payson all spoke in opposition to the project. There was a petition in the file signed by 23 neighbors in opposition to the project. There were 9 letters in favor of the project.

Board Discussion: The Board questioned Mr. Binder, Mr. Dolezal and Mr. Welch.

Robert Littlefield moved to deny the request for a Variance in Case # 2007-58, Elisabeth Verde seconded and it was so voted, 3-2 (Peter Page and Keith Amato against). Peter Page will write the decision.

Chair Patrick Eeley adjourned the Public Hearing at 8:35 P.M.

WORK SESSION

Chair Patrick Eeley re-convened the Work Session at 8:40 P.M.

ADMINISTRATIVE AMENDMENT:

Ted Malone – Modification to a Comprehensive Permit for 122 Bradford Street Extension

Patrick Eeley, Peter Page, Robert Littlefield and Keith Amato sat on the case.

Presentation: Ted Malone appeared to discuss the request. The Board, in February of 2007, approved a minor modification to a Comprehensive Permit issued in May of 2003 in Case #2003-018. The revision consisted of a change in the unit and bedroom mix at the property located at 122 Bradford Street. The Board subsequently issued a modified Comprehensive Permit to Mr. Malone in February of 2007, but not in a form adequate for recording at the Barnstable County Registry of Deeds. Mr. Malone is now before the Board to request that it ratify and sign a the Modified Comprehensive Permit in a recordable form.

Robert Littlefield moved to consider the request as an Administrative Amendment, Peter Page seconded and it was so voted, 4-0.

Robert Littlefield moved to accept the Modified Comprehensive Permit, in a recordable form for the Barnstable County Registry of Deeds, of the written decision dated February 15, 2007, which was a revision of the Comprehensive Permit granted in Case #2003-018, approved May 1, 2003, as an Administrative Amendment, Peter Page seconded and it was so voted, 4-0.

PENDING DECISIONS:

2007-55 **149A Commercial Street (Residential 3 Zone), Robert Valois on behalf of Laura Rood -**
Peter Page, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case. Keith Amato read the decision. *Patrick Eeley moved to accept the language as written, Elisabeth Verde seconded and it was so voted, 4-0.*

MINUTES: September 6, 2007 – Regular and Executive Session – Patrick Eeley moved to approve the language as written, Peter Page seconded and it was so voted, 5-0.

MINUTES: September 20, 2007 – Patrick Eeley moved to approve the language as written, Peter Page seconded and it was so voted, 5-0.

NEXT MEETING:

The next meeting will be on October 18, 2007 and will be held in the Judge Welsh Hearing Room. It will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT:

Keith Amato 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 October 18, 2007.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini