

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
December 20, 2007

MEETING HELD IN TOWN HALL

Members Present: Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato.

Members Absent: Peter Page (unexcused).

Others Present: Russ Braun (Acting Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair Patrick Eleey called the Work Session to order at 6:49 P.M.

PENDING DECISIONS:

2007-58 **89 Franklin Street Extension (*Residential 3 Zone*), Doug Dolezal and Greg Welch -**
Patrick Eleey, Peter Page, Elisabeth Verde, Robert Littlefield and Keith Amato sat on the case. Patrick Eleey read the decision. *Keith Amato moved to accept the language as written, Elisabeth Verde seconded and it was so voted, 4-0.*

MINUTES: December 6, 2007 – Amy Germain moved to approve the language as written, Robert Littlefield seconded and it was so voted, 3-0-2 (Elisabeth Verde and Keith Amato abstaining).

POSTPONED OLD CASES:

2007-53 **15 Conant Street, Unit #3 (*Residential 3 Zone*), Jerome Carlson –**
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend up and along a pre-existing, non-conforming east (rear) and south (side) setbacks. (Remove an existing one-story structure and replace with a two-story structure in the same footprint). This case is postponed until the January 3, 2008 hearing.

2007-68 **89 Franklin Street (*Residential 3 Zone*), Doug Dolezal and Greg Welch -**
The applicant seeks a Special Permit under Article 3, Section 3110 and Section 3340E of the Zoning By-Laws to change a pre-existing, non-conforming structure and increase scale units above the neighborhood average (proposed two-family dwelling and accessory buildings). The applicant is requesting a postponement until the January 3, 2008 hearing.

2007-69 **89 Franklin Street (*Residential 3 Zone*), Doug Dolezal and Greg Welch -**
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to change a pre-existing, non-conforming structure and increase scale units above the neighborhood average (proposed two-family dwelling). The applicant is requesting a postponement until the January 3, 2008 hearing.

POSTPONED NEW CASES:

2007-73 **781 Commercial Street (*Residential 1 Zone*), Long Point Condominium Association -**
The applicant seeks an appeal of the Building Commissioner's decision of October 31, 2007 under Article 5, Section 5223 of the Zoning By-Laws. The applicant has requested a postponement until the January 17, 2008 hearing.

Gary Wold, an abutter to 89 Franklin Street, addressed the Board concerning the possibility of postponing Cases # 2007-68 and 2007-69 on behalf of the abutters. He informed the Board that he has appeared at three consecutive hearings in order to voice his opinion concerning these applications and each time they have been postponed. And further, he won't be able to attend the January 3, 2008 hearing. He had prepared a statement for that evening that the Board offered to read into the record. Mr. Wold said that he would prefer to send a letter instead to be read into the record on January 3, 2008.

Chair Patrick Eeley adjourned the Work Session at 6:55 P.M.

PUBLIC HEARING

Chair Patrick Eeley convened the Public Hearing at 7:02 P.M. There were five members of the Zoning Board of Appeals present and one absent.

POSTPONED OLD CASES:

2007-62 **27 Pleasant Street (Residential 3 Zone), Richard Salvador on behalf of Mark Waldrop and Jeffrey Libby –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a pre-existing, non-conforming structure by adding a 20" section of block foundation to a one-story cottage within the side yard setbacks. Chair Patrick Eeley announced that he would be recusing himself from this case because of a conflict of interest. The applicant was not present and the case will be delayed until the end of the agenda.

NEW CASES:

2007-70 **35B Franklin Street (Residential 3 Zone), Vernon Brown, Trustee of Baldwin Hill Realty Trust -**

The applicant requests a Special Permit under Article 3, Section 3440E of the Zoning By-Laws for a deviation in building scale to expand/construct a structure that exceeds the maximum allowed scale. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case. **Presentation:** Attorney Lester J. Murphy, David Nicolau and Vernon Brown appeared to present the application. The applicant seeks to add a dormer on the second floor, and an addition to the rear of, the main portion of an existing dwelling and is also proposing additions running off of that structure and connected to it. There will be three proposed portions of the existing dwelling that will be connected by a concrete extension, which is part of the foundation of the buildings. And even though these portions may appear to be separate structures on the proposed building plans, they will all be considered one structure for zoning purposes, according to the Building Commissioner, because they will be connected by that concrete extension. Each of the three portions, as proposed, is well below the neighborhood and the allowed scale, yet taken together, as one structure, their scale exceeds the neighborhood and allowed scale.

Public Comment: None. In the file, there were four letters expressing concern about several issues, including parking at the site, paving of the driveway in order to reduce vehicular noise in the neighborhood, the loss of trees on the property and the potential increase in noise from the addition of more cars in the neighborhood as well as a petition in favor of the project signed by three individuals.

Board Discussion: The Board questioned Attorney Murphy and Mr. Nicolau. The Board decided that they would like to do a site visit individually before rendering a decision and will continue the case until the January 17, 2008 hearing.

Amy Germain moved to continue Case #2007-70 until the January 17, 2008 hearing, Elisabeth Verde seconded and it was so voted, 4-1 (Keith Amato opposed).

2007-74 **35B Franklin Street (Residential 3 Zone), Vernon Brown, Trustee of Baldwin Hill Realty Trust -**

The applicant seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a pre-existing, non-conforming two-family dwelling to construct a dormer up and along existing non-conforming setbacks. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case.

Presentation: Attorney Lester J. Murphy, David Nicolau and Vernon Brown appeared to present the application. The applicant seeks to add a dormer to the main portion of the house and requested that the Board consider this application under the Goldhirsh v. McNear ruling.

Board Discussion: The Board questioned Attorney Murphy and David Nicolau.

Robert Littlefield moved to consider as a finding under the Goldhirsh v. McNear ruling, Elisabeth Verde seconded and it was so voted, 4-1 (Amy Germain opposed).

Elisabeth Verde moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a pre-existing, non-conforming two-family dwelling to construct a dormer up and along existing non-conforming setbacks at the property located at 35B Pleasant Street (Res 3) as a finding under the Goldhirsh v. McNear ruling, Robert Littlefield seconded and it was so voted, 4-1 (Amy Germain opposed).

2007-71

12A Pleasant Street (Residential 3 Zone), Michael Matrullo -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a bathroom addition up and along pre-existing, non-conforming setbacks. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case.

Presentation: Attorney Lester J. Murphy appeared to present the application. The applicant seeks to add a bathroom to the second floor of the existing structure. He is proposing to add a second floor area above the first floor bathroom and bedroom in order to accommodate the second bathroom. Attorney Murphy would like the Board to consider this as a finding under Goldhirsh.

Public Comment: None. There was one letter in the file signed by six individuals acknowledging the project and one letter in favor of the application.

Board Discussion: The Board questioned Attorney Murphy.

Elisabeth Verde moved to consider as a finding under the Goldhirsh v. McNear ruling, Patrick Eleey seconded and it was so voted 4-1 (Amy Germain opposed).

Patrick Eleey moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a bathroom addition up and along pre-existing, non-conforming setbacks at the property located at 12A Pleasant Street as a finding under the Goldhirsh v. McNear ruling, Robert Littlefield seconded and it was so voted, 4-1 (Amy Germain opposed).

2007-72

10 Garfield Street (Residential 1 Zone), Frank Deschaine, Deschaine Construction on behalf of Gerry Spiniello and Deanne Sommer -

The applicants seek a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to alter and extend a pre-existing, non-conforming structure for the construction of a 10' x 10' loft up and along the front and side yard setbacks and for a deviation in scale. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case.

Presentation: Frank Deschaine appeared to present the application. The applicants seek to construct a shed dormer, creating a widow's walk/sitting/reading/viewing area, in order to make an awkward and uncomfortable loft space usable.

Public Comment: None. There were two letters against the application, one from abutters who was concerned that it would block their right-of-way to the beach.

Board Discussion: The Board questioned Mr. Deschaine.

Amy Germain moved to grant a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to alter and extend a pre-existing, non-conforming structure for the construction of a 10' x 10' loft up and along the front and side yard setbacks and for a deviation in scale at the property located at 10 Garfield Street (Res 1), Robert Littlefield seconded and it was so voted, 5-0. Patrick Eleey will write the decision.

2007-75

179 Commercial Street (Town Commercial Center), Raife Menold –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for an increase in use from a seasonal restaurant to a year-round restaurant. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case.

Presentation: Raife Menold and James McNulty appeared to present the application.

Public Comment: None. There was one letter in opposition in the file. There was a memo from the Licensing Board stating that, according to the Provincetown Police Department, there had been no noise complaints in regard to the restaurant.

Board Discussion: The Board questioned Mr. Menold and Mr. McNulty.

Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for an increase in use from a seasonal restaurant to a year-round restaurant at the property located at 179 Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 5-0. Amy Germain will write the decision.

2007-62 27 Pleasant Street (Residential 3 Zone), Richard Salvador on behalf of Mark Waldrop and Jeffrey Libby –

This case is postponed until the January 3, 2008 hearing as the applicant did not appear.

The Board briefly discussed the Goldhirsh v. McNear ruling.

NEXT MEETING:

The next meeting will be on January 3, 2008 and will be held in the Judge Welsh Hearing Room. It will consist of a Work Session at 6:45 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT:

Robert Littlefield moved to adjourn the hearing 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 January 3, 2008.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini