

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
March 19, 2009

MEETING HELD IN THE GRACE GOUVEIA BUILDING

Members Present: Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard.

Members Absent: Peter Bez (excused).

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

WORK SESSION

Chair Patrick Eeley called the Work Session to order at 6:37 P.M.

Assistant Town Manager David Gardner, spoke to the Board about the Massachusetts Housing Partnership, an organization that provides technical assistance to local Zoning Boards of Appeal in the review of permit applications for Comprehensive Permits pursuant to M.G.L. c. 40B and the regulations promulgated thereunder at 760 CMR 56.00. The MHP awards up to \$15,000.00 to municipalities to engage qualified third-party consultants to work with the ZBA to assist in the review and permitting process for development projects applying for Chapter 40B Comprehensive Permits. He would like to know if the Board would like to avail themselves of this resource and if so, he will begin the application process. He also informed the Board that Paul Ruchinskas from the Cape Cod Commission has offered his services to the Board as a Chapter 40B consultant as well.

Anne Howard moved to authorize David Gardner to apply, on behalf of the Zoning Board of Appeals, to the Massachusetts Housing Partnership for a grant to engage a third-party consultant to assist them in the review and permitting process for upcoming development projects applying for Chapter 40B Comprehensive Permits, Patrick Eeley seconded and it was so voted, 4-0.

The Board discussed scheduling an extra ZBA Hearing for April 30, 2009 at 6:00 P.M. to discuss the project at 90 Shank Painter Road.

Anne Howard moved to approve the scheduling of a ZBA Hearing on April 30, 2009, with a Work Session at 6:00 P.M. and a Public Hearing at 7:00 P.M., Amy Germain seconded and it was so voted, 4-0.

MINUTES: March 5, 2009 – *Amy Germain moved to approve the language as amended, Patrick Eeley seconded and it was so voted, 4-0.*

PENDING DECISIONS:

2009-05 **143 Bradford Street (Town Commercial Center Zone), Anathan Benson II, LLC** – Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Anne Howard read the decision. *Amy Germain moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 4-0.*

2009-04 **206 Commercial Street (Town Commercial Center Zone), Steven Allen Couch** – Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Amy Germain read the decision. *Anne Howard moved to approve the language as written, Patrick Eeley seconded and it was so voted, 4-0.*

Chair Patrick Eeley postponed the Work Session at 7:00 P.M.

PUBLIC MEETING

Chair Patrick Eleey called the Public Meeting to order at 7:00 P.M. There were five members of the Zoning Board of Appeals present and one absent.

NEW CASES:

- 2009-06** **234 Commercial Street (Town Commercial Center), Kerry Filberto, d/b/a Cortile Gallery –**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of artwork, including paintings and sculpture. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Presentation: Kerry and Anthony Filberto appeared to present the application. Cortile Gallery is located at Union Square and set back from Commercial Street and the applicant seeks to display artwork in the courtyard in order to attract customers to the premises.
Public Comment: Maria Kuliopulos, the owner of the property spoke of her concerns about the application and submitted a letter from her attorney regarding the protocol for the display of artworks. Ric Ide, Ronnie Siegal, Liz Angelino, and Terese Nelson spoke in favor of the application. There were two letters in favor of the application.
Board Discussion: The Board questioned Mr. and Ms. Filberto.
Robert Littlefield moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of artwork, including paintings and sculpture, at the property located at 234 Commercial Street (TCC), Amy Germain seconded and it was so voted, 5-0. Robert Littlefield will write the decision.
- 2009-07** **30 Harry Kemp Way (Residential B Zone), William N. Rogers, II, P.E. & P.L.S. on behalf of KA-HUR Enterprises, Inc. –**
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure along the non-conforming rear dimension to construct a covered walkway to connect an existing warehouse to a proposed refrigerated storage unit on an existing foundation. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Presentation: Attorney Lester J. Murphy and Gary Locke appeared to present the application. The property was recently purchased by Shane and Adrienne Burhoe, who are in the business of providing ice to local businesses. They seek to refrigerate, bag and load ice at the premises. Attorney Murphy stated that it is a lawful use of the property according to the Building Commissioner. He reminded the Board that the premises have been used for manufacturing and commercial storage purposes since 1987. The applicants are proposing to construct a one-story building, 8' in height, 14' in width and 40' in length, with a nearly flat roof on a portion of an existing concrete wall foundation. The structure will be refrigerated and house a compressor in order to provide for the storage of ice. It will be connected to an existing, larger structure on the northwest corner via a covered wood-frame walkway measuring 16' in length. He asserted that the proposed renovation of the site will improve a property that was in a state of decline and will not be detrimental to the neighborhood. The building is no higher than other structures in the neighborhood. There will be no increase in exterior lighting. The compressor has a low decibel level of noise associated with its operation. The proposed structure will also be insulated in order to help reduce any noise generated by the compressor. The business only possesses one truck and the loading of ice on that truck will not generate much noise nor create additional traffic in the neighborhood.
- 2009-08** **30 Harry Kemp Way (Residential B Zone), William N. Rogers, II, P.E. & P.L.S. on behalf of KA-HUR Enterprises, Inc. –**
The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale for a proposed refrigerated storage unit and connecting walkway to a pre-existing, non-conforming structure (warehouse building). Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Presentation: Attorney Lester J. Murphy and Gary Locke appeared to present the application. The neighborhood building scale average is 62.08 scale units. The maximum allowable scale is 77.6 s.u. The existing scale is 88.40 s.u. and 37.73 s.u. will be added for a total of 128.13 s.u., 50.53 s.u. above the maximum allowed. Attorney Murphy argued that the building scale of the proposed new building is not

out of proportion to other structures in the neighborhood. He pointed out that the building scale for this neighborhood is skewed and explained his reasoning, citing examples of structures in the Harry Kemp Way neighborhood that were larger than the proposed one. He argued that the social and economic benefits to the Town outweigh any adverse affects such as hazard, congestion or environmental degradation. According to Attorney Murphy, there is a great need in Town in the summer for ice and the business services many businesses customers in Town and explained further how the project was in keeping with several of the objectives of the Local Comprehensive Plan. Lastly, he addressed the compressor noise issue.

Public Comment: Todd Wagar, Dave Dutra, Alma Welsh, Lenny Enos and Steve Roderick spoke in favor of the application. John Huss and Jane Donoghue, speaking on behalf of Donna Cooper, spoke against the application. Tracy Smith had questions about the maintenance of Aunt Sukey's Way, Dan Lynch had concerns about the potential expansion of the business and Lynne Martin had questions about a potential increase in noise, traffic issues and surface runoff from the property. Elton Silver commented about the low decibel level of the compressor. Another abutter questioned the legality of the use of the property. Carole Brown, on behalf of the condominium unit owners at 23 Harry Kemp Way, voiced concerns about noise from the compressor and a generator, if one were to be located on site. There were 11 letters in favor and 8 against the application, 3 of which question the legality of the proposed use of the property.

Board Discussion: The Board questioned Attorney Murphy and Mr. Locke. There will be no generator on site, no retail sale of ice and the refrigerant to be used is ozone-safe. The hours of operation of the business will be 8:00 A.M to 7:00 P.M.

2009-07:

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure along the non-conforming rear dimension to construct a covered walkway to connect an existing warehouse to a proposed refrigerated storage unit on an existing foundation at the property located at 30 Harry Kemp Way (Res B) with the following conditions:

- *The hours of operation shall be limited to 8:00 A.M. to 7:00 P.M., seven days a week.*
- *There shall be no retail sale of ice on the premises.*
- *The noise level at the premises shall not exceed 75 decibels within a radius of 25' from the location of the compressor.*
- *There shall be no generator located on the site.*
- *There shall be no changes or additions to the exterior lighting.*
- *No trucks shall be allowed to idle at the site.*

Anne Howard seconded and it was so voted, 5-0. Patrick Eleey will write the decision.

2009-08:

Patrick Eeley moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale for a proposed refrigerated storage unit and connecting walkway to a pre-existing, non-conforming structure (warehouse building) at the property located at 30 Harry Kemp Way (Res B) with the same conditions as stated for Special Permit #2009-07, Amy Germain seconded and it was so voted, 5-0. Patrick Eeley will write the decision.

2009-09

24 Pearl Street (Residential 3 Zone), Fine Arts Work Center in Provincetown, Inc. –

The applicant seeks a Special Permit and/or Variance, whichever the Zoning Board of Appeals deems appropriate, for the renovation of a pre-existing, non-conforming structure and installation of a lift with reference to Article 3, Section 3110, Article 5, Section 5222 and Article 2, Section 2560 of the Zoning By-Laws. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Margaret Murphy, Executive Director of FAWC, John Freeman, architect and John Hopkins, of Augustus Construction, appeared to present the application. The applicant seeks to install a new foundation under a pre-existing, non-conforming structure, rebuild administrative offices on the first floor and install a lift. The impetus for the renovation is a concern about the stability and safety of the existing building. It is approximately one hundred years old and is deteriorating and does not adequately support its current uses. The proposed lift will make the second floor of the structure handicapped accessible and is a requirement for the grant that will be funding the project.

2009-10

24 Pearl Street (Residential 3 Zone), Fine Arts Work Center in Provincetown, Inc. –

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale for the construction of a lift. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Margaret Murphy, Executive Director of FAWC, John Freeman, architect and John Hopkins, from Augustus Construction, appeared to present the application. The existing scale is 930 scale units. The allowed scale is 94.33 s.u. The buildings on site are old industrial buildings and have never conformed to the neighborhood building scale. The proposed addition is 7.5 s.u., with a resulting scale of 937.5 s.u. The increase in scale is due to the installation of the lift and the widening of the second floor walkways at the premises. Ms. Murphy argued that the social, economic and cultural benefits to the Town outweigh any adverse effects such as hazard, congestion or environmental degradation. The renovations will not disrupt the character of the neighborhood and satisfy several of the objectives of the Local Comprehensive Plan.

Public Comment: Tom Thompson spoke in favor of the application. There were 18 letters in favor and none in opposition to the project.

Board Discussion: The Board discussed the issue of whether this application is for a Special Permit or a Variance.

Amy Germain moved to consider application #2009-09 as a request for a Special Permit, Anne Howard seconded and it was so voted, 4-1 (Patrick Eeley opposed).

The Board questioned Ms. Murphy, Mr. Freeman and Mr. Hopkins.

2009-09:

Patrick Eeley moved to grant a Special Permit for the renovation of a pre-existing, non-conforming structure and installation of a lift with reference to Article 3, Section 3110 and Article 2, Section 2560 of the Zoning By-Laws at the property located at 24 Pearl Street (Res 3) with the following conditions:

- *The ‘green-scape’ plan, referred to on plan dated October of 1988, will be followed wherein trees and shrubs shall be planted subsequent to construction.*
- *A parking mitigation plan shall be followed, ensuring the accessibility of Fishburn Court to emergency vehicles.*
- *The exterior illumination plan shall follow the ‘Dark Sky’ protocols in order to minimize light pollution.*

Amy Germain seconded and it was so voted, 5-0. Amy Germain will write the decision.

2009-10:

Patrick Eeley moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws

for a deviation in building scale for the construction of a lift at the property located at 24 Pearl Street (Res 3) with the same conditions as Special Permit #2009-09, Anne Howard seconded and it was so voted, 5-0.
Amy Germain will write the decision.

Chair Patrick Eleey adjourned the Public Hearing at 10:53 P.M.

WORK SESSION

Chair Patrick Eleey reconvened the Work Session at 10:53 P.M.

PENDING DECISIONS:

2009-03 **47C Commercial Street (Residential 2 Zone), David S. Martin –**
Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Patrick Eleey read the decision. *Anne Howard moved to approve the language as written, Robert Littlefield seconded and it was so voted, 5-0.*

NEXT MEETING: The next meeting will take place on April 2, 2009. It will consist of Chapter 40B Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M. and a regular Work Session after the Public Hearing.

ADJOURNMENT: *Amy Germain moved to adjourn at 11:00 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 April 2, 2009.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2009
Patrick Eleey, Chair