

**TOWN OF PROVINCETOWN**  
**ZONING BOARD OF APPEALS**

**MEETING MINUTES OF**  
**April 2, 2009**

**MEETING HELD IN THE GRACE GOUVEIA BUILDING**

**Members Present:** Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain, Anne Howard and Peter Bez.

**Members Absent:** None.

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

**40B WORKSHOP**

Chair Patrick Eleey called the 40B Workshop to order at 6:32 P.M.

40B Technical Assistance:

Ilana M. Quirk, Esq., from Kopelman & Paige, and Michael Jacobs, from MHJ Consulting, appeared to discuss M.G.L. c. 40B with the Board. Chapter 40B was created as a way to expedite the local permitting process for affordable housing projects, allowing an override of local by-laws, but not State laws. The first step in the process is that the developer puts together an information package and submits it to a subsidizing agency, such as the Massachusetts Housing Partnership. There are three requirements that an applicant must meet in order to obtain project eligibility. The first is that they have to be a non-profit corporation, a public agency, or a limited dividend organization. The second is that the applicant must have site control, such as outright ownership, a Purchase and Sale Agreement, a ground lease or a developer designation. The third is a project eligibility letter that the project is fundable by a subsidizing agency, such as a direct subsidy, a tax-exempt bond, a grant, a low interest loan, or an indirect subsidy, such as technical assistance provided by a state agency provided to an applicant. The project can consist of either 20 or 25% low income housing depending upon the target population.

Once the Town receives an information packet about the project, it has 30 days to comment to the subsidizing agency. The information is very preliminary at this stage. The developer is limited on what can be charged to the project for land. It cannot be based on the new density that is created through the 40B, but it has to be based on what can be done under existing zoning by-laws. The State does not want the developer to reap profits from the enhanced land value. The subsidizing agency does an appraisal of the land based on the existing land value.

When the project is ready to move forward, the subsidizing agency must confirm that the project still meets the basic criteria that they used to evaluate it initially. They also must verify the profit through the cost certification process. State agencies have formulated guidelines for this process in the last several years in order to narrow potential abuses by developers. There are now detailed guidelines as to what is allowed as profit and what is not. That is important because a Board may want to condition a project after reviewing it, but it cannot condition it to the point that the project becomes uneconomical to the developer.

The submission requirements for the Board to consider include determining whether the information provided is sufficient. The Board cannot reject a request for a permit because of inadequate information. It must keep the process open until the information is complete and all public testimony heard. The Board is supposed to open a hearing within 30 days of the receipt of an application. As soon as the public hearing is opened, the Board has 180 days within which to complete the hearing process unless the applicant gives it a written extension. Once the public hearing process is complete, the Board has 40 days to render a decision, which can also be extended by written agreement of the applicant.

The applicant has the right to appeal a decision by the Board, however there are circumstances under which a denial

cannot be appealed:

- if a community has already reached its 10% threshold of subsidized housing inventory;
- if 1½% of land zoned residential/commercial/industrial is affordable housing;
- if there have been affordable housing projects comprising .3 of 1% of the land, or 10 acres, whichever is greater, commenced in any one calendar year;
- if the Town has made recent progress towards the 10% threshold, *i.e.* 2% or 41 units;
- if a large project was brought before the Board, 6% of total of the Town's year round units or 124 units, the Board can deny; and
- if the applicant has submitted a related application to the Board within the last 12 months.

The scope of the Board's hearing process involves collecting evidence, hearing public testimony, mitigating project impacts and making sure the project is consistent with local needs, such as protecting health or safety, protecting the environs, promoting better site and building design and protecting open space. Another part of the process is that if there are aspects of the application that Town staff cannot handle, such as traffic or drainage issues or peer review, then the Board has the right to hire, and ask the applicant to pay for, outside consultants. A financial statement review can be requested if the developer maintains, at the end of the hearing process when conditions are being applied to the project, that the conditions make the project uneconomical. A financial consultant can be brought in at that point to advise the Board. Some of the conditions that could render a project uneconomical for a developer include:

- incurring public infrastructure improvements not imposed on unsubsidized projects;
- addressing pre-existing matters;
- addressing impacts attributable to the project out of proportion to the impact caused by the project; or
- reducing the number of units, unless there is evidence of local concerns.

The Zoning Board should be getting recommendations, information and evaluations from other Town Boards and Commissions. It behooves the Zoning Board to get out the project information to other Town Boards and Commission for input within 7 days. It can grant a waiver from a local by-law with which another Board or Commission may disagree.

When the review process has been completed and the permit is granted, it is a master permit and subsumes all other local permits and approvals issued by other Boards.

Chair Patrick Eeley adjourned the Workshop at 7:05 P.M.

## PUBLIC MEETING

Chair Patrick Eeley called the Public Meeting to order at 7:05 P.M. There were six members of the Zoning Board of Appeals present and none absent.

### NEW CASES:

#### **2009-11 83 Shank painter Road (GC Zone), CHR 83 SPR, LLC –**

The applicant seeks a Comprehensive Permit under M.G.L. c. 40B, s. 21 to renovate an existing structure on a 14,000 square foot lot to reconfigure its floor plans to convert its existing fifteen bedrooms to twelve efficiency apartments, and three one-bedroom apartments, including one handicapped-accessible apartment, all to be operated as permanently affordable rental housing. The structure presently includes a commercial use as a portion of the first floor and basement, which will be separated through condominium conversion, designated as Unit A of the condominium as a separately-owned space with commercial use. The rest of the structure will be designated as Unit B of the condominium, consisting of all of the fifteen affordable units. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

**Presentation:** Ted Malone and Attorney Peter Freeman appeared to present the application. Mr. Malone has already presented the project to the Planning Board as if it were a Site Plan Review. This project has received an eligibility letter from the Massachusetts Housing Partnership. The MHP submitted the project to the Board of Selectmen, who reviewed the project and issued their comments back to MHP, allowing the project to move forward and be heard by the Zoning Board.

Mr. Malone intends to convert the existing fifteen bedroom building, where every two units shared a bath and shared kitchen facilities, into twelve efficiency apartments, three one-bedroom apartments, all with their own kitchen facilities and bathrooms, and one handicapped-accessible unit. The entire building has been converted into two condominium units, Unit A and Unit B, the latter being the commercial space, which has already been conveyed out of the property.

There will be no increase in the lot coverage. The applicant is proposing to add dormers the top floor. The height and volume of the building will remain the same. The scale is being increased. Mr. Malone reminded the Board that the authorization for the increase in scale would be included in the Comprehensive Permit if granted. The parking requirement has been met with the provision for eleven proposed parking spaces, where eight are required, in the rear of the building. Not all of the units will be deed-restricted, per the requirements of the MHP. There will be an increase in the existing planting areas around the perimeter of the property, especially in the rear of the building where planting beds are being proposed.

**Public Comment:** None. There were 14 letters in favor of and 1 in opposition to the project and a letter from the Planning Board endorsing it.

**Board Discussion:** The Board questioned Mr. Malone and Attorney Freeman. After much preliminary discussion, the Board will continue the case until the next hearing. It requested that the applicant submit site plans with existing elevations and a site plan showing exterior dimensions.

*Anne Howard moved to continue Case #2009-11 until the Zoning Board of Appeals hearing to be held on April 30, 2009 at 6:00 P.M., Robert Littlefield seconded and it was so voted, 5-0.*

**2009-12**      **306 Commercial Street, Unit #3, (Town Commercial Center Zone), Elisabeth and Carlos Verde, Tails in the Air, LLC –**  
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter a pre-existing, non-conforming structure on a pre-existing, non-conforming lot by adding a fourth dwelling unit and, under Article 4, Section 4170 of the Zoning By-Laws to change the use from commercial to residential.

**2009-13**      **306 Commercial Street, Unit #3, (Town Commercial Center Zone), Elisabeth and Carlos Verde, Tails in the Air, LLC –**  
The applicant seeks a Parking Variance under Article 2, Section 2471 of the Zoning By-Laws for an additional residential dwelling unit without providing on-site parking. These two applications will be heard together. Elisabeth Verde recused herself because of a conflict of interest and left the room. Patrick Eeley, Robert Littlefield, Amy Germain, Anne Howard and Peter Bez sat on the case.  
**Presentation:** Carlos Verde appeared to present the applications. The applicants tried to run a business at the premises, but it was not profitable. The location of the unit, which is set back from Commercial Street, hampered business. The applicants tried in many different ways to attract customers to the premises. They are requesting a Special Permit to change the use to a residential unit in order to give themselves more options for making the unit profitable.  
**Public Comment:** None. There were 12 letters in support of the application and none in opposition.  
**Board Discussion:** The Board questioned Mr. Verde.

***2009-12 - Patrick Eeley moved to approve a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter a pre-existing, non-conforming structure on a pre-existing, non-conforming lot by adding a fourth dwelling unit and, under Article 4, Section 4170 of the Zoning By-Laws to change the use from commercial to residential at the property located at 306 Commercial Street, Unit #3 (TCC), Amy Germain seconded and it was so voted, 5-0.***

***2009-13 – Patrick Eeley moved to approve a Parking Variance under Article 2, Section 2471 of the Zoning By-Laws for an additional residential dwelling unit without providing on-site parking at the property located at 306 Commercial Street, Unit #3 (TCC), Robert Littlefield seconded and it was so voted, 5-0.***

Patrick Eeley will write the two decisions.

**2009-14**      **The Pavilion located at the end of MacMillan Pier (Harborfront Overlay/Town Commercial Center Zone), Town of Provincetown, d/b/a Provincetown Public Pier Corp. –**  
The applicant seeks a Special Permit under Article 2, Section 2460 and 2315 D3 & E3f of the Zoning By-Laws for Waterfront Special Permit Use for small-scale events. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.  
**Presentation:** Rex McKinsey, Harbormaster, appeared to present the application. He is requesting a Special Permit to expire in three years. The Pier Corp. held many successful events last summer in the Pavilion. There were no noise complaints made to the police from past events and Mr. McKinsey stated that the same conditions will be observed.  
**Public Comment:** None. There were no letters in the file.  
**Board Discussion:** The Board briefly questioned Mr. McKinsey.  
***Robert Littlefield moved to approve a Special Permit under Article 2, Section 2460 and 2315 D3 & E3f of the Zoning By-Laws for Waterfront Special Permit Use for small-scale events at the property located at the Pavilion at the end of MacMillan Pier (Harborfront Overlay/TCC), Anne Howard seconded and it was so voted, 5-0. Patrick Eeley will write the decision.***

Chair Patrick Eeley adjourned the Public Hearing at 9:47 P.M.

## WORK SESSION

Chair Patrick Eeley called the Work Session to order at 9:47 P.M.

**MINUTES: March 19, 2009** – *Amy Germain moved to approve the language as written, Patrick Eleey seconded and it was so voted, 5-0-1 (Peter Bez abstaining).*

**PENDING DECISIONS:**

- 2009-06**      **234 Commercial Street (Town Commercial Center), Kerry Filberto, d/b/a Cortile Gallery** – Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Robert Littlefield read the decision. *Patrick Eleey moved to approve the language as written, Amy Germain seconded and it was so voted, 5-0-1 (Peter Bez abstaining).*
- 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.** – Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Patrick Eleey read the decision. *Elisabeth Verde moved to approve the language as written, Anne Howard seconded and it was so voted, 5-0-1 (Peter Bez abstaining).*
- 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.** – Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Patrick Eleey read the decision. *Elisabeth Verde moved to approve the language as written, Amy Germain seconded and it was so voted, 5-0-1 (Peter Bez abstaining).*
- 2009-09**      **24 Pearl Street (Residential 3 Zone), Fine Arts Work Center in Provincetown, Inc.** – Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Amy Germain read the decision. *Patrick Eleey moved to approve the language as written, Anne Howard seconded and it was so voted, 5-0-1 (Peter Bez abstaining).*
- 2009-10**      **24 Pearl Street (Residential 3 Zone), Fine Arts Work Center in Provincetown, Inc.** – Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Amy Germain read the decision. *Patrick Eleey moved to approve the language as written, Anne Howard seconded and it was so voted, 5-0-1 (Peter Bez abstaining).*

**NEXT MEETING:** The next meeting will take place on April 16, 2009. It will consist of Work Session at 6:45 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Amy Germain moved to adjourn at 10:10 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 16, 2009.

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2009  
Patrick Eleey, Chair