

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
April 30, 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.

Others Present: Ilana M. Quirk, Esq., from Kopelman & Paige, Michael Jacobs, from MHJ Consulting and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair Patrick Eeley called the Work Session to order at 6:02 P.M.

PENDING DECISIONS:

2009-13 306 Commercial Street, Unit #3, (Town Commercial Center Zone), Elisabeth and Carlos Verde, Tails in the Air, LLC –
Patrick Eeley, Robert Littlefield, Amy Germain, Anne Howard and Peter Bez sat on the case. Patrick Eeley read the decision. *Amy Germain moved to approve the language as written, Anne Howard seconded and it was so voted, 4-0-1 (Robert Littlefield abstaining).*

Patrick Eeley postponed the Work Session at 6:10 P.M.

PUBLIC HEARING

Chair Patrick Eeley called the Public Hearing to order at 6:10 P.M. and read the Public Hearing notice. There were five members of the Zoning Board of Appeals present and one absent.

CONTINUED CASES:

2009-11 83 Shank painter Road (GC Zone), CHR 83 SPR, LLC (continued from April 2, 2009) –
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 apartment, including two handicapped-accessible units, 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 discuss the application.
Board Discussion: Attorney Ilana Quirk presented a list of specific issues, based upon discussions of the application at a previous hearing, that she wanted the Board to discuss with the applicant.

- Identity of the Applicant – The applicant needs to clarify this issue. Mr. Malone sent a letter indicating that the correct identity of the applicant is Community Housing Resources, Inc. and 83 SPR, LLC.

- Long-term Affordability Issue – The Project Eligibility Determination (in the application at Tab 4) states that the comprehensive permit cannot require more than 25% affordability. The understanding was that the project was going to be 100% affordable and there is a CPC grant which will require the greater restriction. According to Attorney Quirk, there should be a long-term affordability restriction. The applicant was going to go back to MHP concerning that issue. Mr. Malone spoke to the issue and after discussion with MHP, he is reasonably confident that there will be a resolution that would allow 5 existing units to remain deed-restricted at 50% affordability, and the other 10 at 60% affordability. Mr. Jacobs briefly spoke to this issue and said that there will be further conversations with MHP to come up with a formula that is consistent with the requirements of the CPC grant if the comprehensive permit is approved. Attorney Quirk recommended that the applicant go back to MHP and negotiate a specific restriction and bring that back to the Board for review. She added that the issue about the percentage of affordable units relates to the financing of the project, as the intent of the applicant was for 100% affordability.
- Permanent Restriction on Rental Tenure – The applicant agreed to this requirement and the restriction must be negotiated. The restriction should limit the number of units (15) and bedrooms (15). Counsels will work with each other in regard to this issue. According to Attorney Quirk, this will be a separate restriction, which will be recorded, so the applicant does not have the ability to back later for an amendment to change the units from rental to ownership. The applicant agreed to this and both attorneys will cooperate in drafting a restriction. It will be a condition of the approval of the application, but will be recorded separately from the decision.
- Height and Volume of the Structure – The height and volume issues must be reviewed. The Board must determine that the plans provided are sufficient for determination of scale issues and whether peer review is required. Attorney Quirk recommended a separate restriction that there will be no future increase in scale. Attorney Freeman did not agree with that recommendation. The Board discussed the issue with Mr. Malone. Attorney Quirk will draft a condition in regard to this and the Board can consider and discuss it with the applicant.
- Drainage/Pavement/Open Space/Green Area Issues – The applicant had indicated a willingness to use pervious materials for the rear parking lot. Attorney Freeman represented that the applicant reserved the right to give that restriction. This issue was discussed with the applicant. Mr. Malone stated a willingness to stay with the existing shells or to use pervious material. Attorney Quirk stated that there is a standard restriction concerning this issue and she will circulate that to the Board and Attorney Freeman.
- Sidewalks – The Board should review what sidewalks are in existence and if any new ones are required. The Board discussed this with the applicant. There are no sidewalks existing on Shank Painter Road at this time, but the applicant would be willing to cooperate with the Town if it moved forward to install sidewalks on Shank Painter Road. Attorney Quirk will draft a condition and Mr. Malone will find out whether he has sufficient rights to grant it, or if he doesn't, if the owner of the other part of the property might assent to it.
- Preference for Local Residents – This condition was agreed to at the previous hearing.
- Input from All Departments - The applicant had agreed to meet with all department heads and ask for input. The applicant had submitted letters from DPW, the Health Agent and the Fire Department commenting on the project. There is no curb cut issue to bring before the BOS. There was no comment yet from the Police Department about traffic or security issues. David Gardner will follow up on that issue and ask the Chief to comment on the project. There is no confirmation yet from the Conservation Commission that there are no wetlands in the area. There was already a letter from the Planning Board approving of the project. The property is not located in the Historic District. The Assessor has done the scale calculations and the applicant is asking for a deviation from the building scale in its application. The letter from Jane Evans, Health Agent, outlined the flow determination for both existing and proposed flow, which demonstrated that there is no increase in flow proposed. Both septic systems at the premises were inspected and both were functioning as intended. The letter from David Guertin, from the DPW, asserted that his department had reviewed the application and that they took no issue for those aspects of the project that the department would be concerned with, such as drainage, water and wastewater. If the Title V system were to fail, the applicant would be compelled to hook up to the municipal sewer system and Mr. Guertin assured the Board that there was sufficient reserve

capacity in the area to support that. Finally, the letter from Warren G. Alexander, the Deputy Fire Chief, stated that the department was pleased to hear of the conversion of the fire protection sprinkler system to provide full surveillance of all new units and that the Fire Department found no other considerations required.

- Fee Waivers – Attorney Quirk recommended that the applicant document each fee that applies to the project, or could apply, for which a waiver is sought, and to ask each relevant department to comment on the waiver request. The Board discussed this issue. It is the Town’s policy to waive all fees for comprehensive permits. The applicant’s payment of the Town’s legal fees was discussed. The applicant has agreed to escrow \$1,500 towards payment of those fees incurred. Attorney Quirk estimated that the legal fees will be between \$3,000 and \$4,000. She informed the Board that to the extent that the “non-general representation” fees exceed \$1,500, the Board can document them and make the determination as to whether it would like to impose payment of those fees as a condition of getting a building permit.
- Study/Report Waivers – The applicant is seeking a waiver from a Development Impact Statement, a Traffic Impact Study and a Financial Impact Study.
- General Waivers – Attorney Quirk explained what these were and indicated that she does not recommend granting them. Attorney Freeman agreed with her opinion.
- Deadlines for Performance in Bringing the Units to Occupancy – Attorney Quirk would like a timeline from the applicant. Attorney Freeman argued against setting a deadline. Mr. Malone indicated that he would like the project to move as quickly as possible because of the debt that he is carrying.

Attorney Quirk recommended that the missing information be obtained by the Board before the next hearing. The Board discussed whether further peer review was needed. David Gardner informed the Board that the Housing Council will be hearing the application. Attorney Quirk will draft a boilerplate decision for the next hearing. She would like to have it ready for review by the applicant and the Board a week ahead of time. The Board briefly discussed the payment of legal fees. The applicant agreed to escrow the \$1,500 right away and agreed to revisit the issue with the Board when the final number has been determined.

Anne Howard moved to continue Case # 2009-11 to the June 4, 2009 at 6:00 P.M. and the June 18, 2009 hearing at 6:00 P.M., Patrick Eeley seconded and it was so voted, 5-0.

2009-17 359 Commercial Street (Town Commercial Center), Lester J. Murphy, Attorney on behalf of ATL Holdings, LLC, Todd W. Colpitts, Senior Vice-President –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the re-establishment of a 100-seat restaurant at the site of a former 156-seat restaurant and to seek permission to increase the seating by 40 seats pending the approval of an Economic Development Permit for the addition 20 seats. This case is continued until the May 21, 2009 hearing.

Chair Patrick Eeley postponed the Public Hearing at 7:43 P.M.

WORK SESSION

Chair Patrick Eeley reconvened the Work Session to order at 7:43 P.M.

PENDING 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. –

Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Patrick Eeley read the decision. *Anne Howard moved to approve the language as written, Robert Littlefield seconded and it was so voted, 5-0.*

Patrick Eeley postponed the Work Session at 7:50 P.M.

PUBLIC HEARING

Chair Patrick Eeley reconvened the Public Hearing to order at 7:50 P.M.

NEW CASES:

2009-20 90 Shank Painter Road (General Commercial Zone), The Community Builders, Inc. on behalf of the Town of Provincetown –

The applicant under M.G.L. c. 40B, section 21, seeks the approval of a Comprehensive Permit to construct six buildings on a vacant 2.5 acre site for the development of a 50-unit, mixed-income, residential rental complex to consist of twenty-five one-bedroom units, twenty-one two-bedroom units and four three-bedroom units and approximately 2500 square feet of commercial/retail usage.

Presentation: Jan Brodie, of The Community Builders, Inc., Sean Redfern, of Durkee, Brown, Viveiros, Werenfels, Architects, Justin Lamoureux, P.E., from Horsley Witten Group, and Attorney Kate Mitchell appeared to present the application. Ms. Brodie showed a Powerpoint presentation about the project. The Community Builders, Inc. is a non-profit affordable housing developer. Ms. Brodie began by showing the Board completed projects that the company has developed, including one in Chatham and one on Martha's Vineyard. The existing Shank Painter Road site contains 2.57 acres. There will be 50 units built in 6 buildings; 25 one-bedroom, 21 two-bedrooms and 4 three-bedroom units, with a total of 74 bedrooms. 41 units will be deed-restricted in perpetuity. TCB's formula was based upon information derived from a "needs assessment" study done by the Town. There will be 8 units at below 30% of Area Median Income category, but the majority of the units will fall into the 31-60% of AMI category (\$35,000-\$45,000 income tier) and 9 units will be unrestricted (but no higher than 80% of AMI). There will be 25 parking spaces on site and the intention is to provide space for resident bicycles. Access will be from Shank Painter Road; however, there is a proposed emergency access from Province Road. The whole site will be handicapped accessible. The selection for rental units will be through a lottery system. TCB is applying for tax credits as part of the funding for the project. Mr. Redfern explained the design elements of the units to the Board. Along with the 6 buildings on site, there will be a small maintenance shed towards the back of the site and 3 commercial units, one of which will be the management office, along Shank Painter Road. There is a laundry facility on site that will serve the entire development. The proposed landscaping will be with native plantings. Mr. Lamoureux spoke to the Board about the engineering aspects of the project. A large quantity of fill, approximately 10-15,000 cubic yards, will be brought in order to raise the level of the site, in order to make the entire site ADA compliant. The runoff from the site, as well as neighboring parcels, will be handled by the bio-retention system, which will treat the water and recharge the ground water on site. The DPW asked for a looped water main on site, which has been complied with. The sewer works by gravity and the effluent will travel down to the on-site pump station, where it then has to be lifted 5-10 feet into the sewer system. The DPW engineer has peer-reviewed this system. There will also be a generator located on site in case of electrical outages.

Public Comment: Chuck Silva voiced his concerns about access to the site, the increase in traffic on Shank Painter Road, the presence of the commercial units on site in light of existing vacant commercial sites on Shank Painter Road, the inadequate amount of parking spaces on site, the monitoring of the remediated area on site and the type of fill to be used at the site. Russ Braun, the Building Commissioner, asked if the storm water system had been peer-reviewed and commented to the architect on the incidence of high winds in the area in light of the entrance-connector decks located between the buildings. Hank DelMonico, a direct abutter, was concerned about the increase in traffic, parking issues and whether the developer was intending on installing sidewalks on Shank Painter Road. Police Chief Jaran wrote a letter expressing his concerns about the increase in traffic and his concern about adequate street lighting at the entrance and exit to the site and in the interior parking areas of the site.

Board Discussion: The Board questioned Ms. Brodie, Mr. Redfern, Mr. Lamoureux and Attorney Mitchell. Attorney Quirk advised the Board that they should discuss whether they should require peer review for such issues as traffic, parking and drainage and that they should obtain a report from the individual who peer-reviewed the sewer system. The Board is allowed to call for peer review, if necessary, when technical assistance is needed in reviewing a project. In that case, the applicant would place an amount of money in escrow for the purpose of hiring consultants to advise the Board. The rules for using that escrow would be very strict and only apply to examining the issues of the project that

hadn't been peer-reviewed already. The Board would need to discuss that issue with the applicant. Attorney Quirk recommended that the Cape Cod Commission be consulted about what kind of qualified individuals they might be able to provide the Board. She recommended that David Gardner research what kind of peer review, especially in regard to traffic, parking, drainage and confirmation of the sewage review, can be done in-house and report back to the Board at the next hearing. Mr. Gardner indicated that the Town has already contacted a traffic expert from, the Commission who would be willing to speak to the Board in regard to the project. If in-house peer review is not available, Attorney Quirk continued, than a list can be compiled in advance as to who the peer-review specialists are for those issues and estimates for their services. If she received the information before the next hearing on May 7, 2009, she could work up the tasks for any potential contracts for any matter of concern to the Board. The Board would then continue the case until the June 4, 2009 hearing when they will have received comments from all department heads in regard to the project and the peer review information in order to move forward with their application review.

Patrick Eeley moved to continue Case # 2009-20 until the May 7, 2009 hearing at 7:00 P.M. for the purpose of investigating the peer review situation, Robert Littlefield seconded and it was so voted, 5-0.

Chair Patrick Eeley adjourned the Public Hearing at 9:35 P.M.

WORK SESSION

Chair Patrick Eeley reconvened the Work Session to order at 9:35 P.M.

PENDING DECISIONS:

- 2009-15** **277A Commercial Street (Town Commercial Center), Lucy Butler, Kite Store, Inc. –**
Patrick Eeley, Elisabeth Verde, Amy Germain, Anne Howard and Peter Bez sat on the case. Anne Howard read the decision. ***Patrick Eeley moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 4-0-1 (Robert Littlefield abstaining).***
- 2009-16** **31 Duncan Lane (Residential 1 Zone), Daniel J. Silva on behalf of Chris Enos -**
Patrick Eeley, Elisabeth Verde, Amy Germain, Anne Howard and Peter Bez sat on the case. Anne Howard read the decision. ***Amy Germain moved to approve the language as written, Anne Howard seconded and it was so voted, 4-0-1 (Robert Littlefield abstaining).***
- 2009-18** **15 Montello Street (Residential 3 Zone), Christine Dipree –**
Patrick Eeley, Robert Littlefield, Amy Germain, Anne Howard and Peter Bez sat on the case. The reading of this decision was postponed.

MINUTES: April 16, 2009 – Patrick Eeley moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 4-0-1 (Robert Littlefield abstaining).

NEXT MEETING: The next meeting will take place on May 7, 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 10:00 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 May 7, 2009.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2009
Patrick Eeley, Chair