

TOWN OF PROVINCETOWN

ZONING BOARD OF APPEALS

MEETING MINUTES OF

June 4, 2009

MEETING HELD IN THE GRACE GOUVEIA BUILDING

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

Members Absent: None.

Others Present: Ilana M. Quirk, Esq., (Town Counsel), David Gardner (Assistant Town Manager), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair Patrick Eleey called the Work Session to order at 6:04 P.M.

CONTINUED 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. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Patrick Eleey read a letter from the Fire Chief, Mike Trovato, with the findings of the Fire Department Board of Engineers after a review of this project. The Fire Department Board's review resulted in several concessions by the applicants regarding road elevations, widths and turning radii.

Presentation: Joe Longo, from Horsley Witten Group, Inc., Jan Brodie, of TCB, and Attorney Kate Mitchell, representing the applicant. David Bennett, of Bennett Environmental, who was hired by the Town as a consultant, was also present. Mr. Bennett has completed a LSP peer review of public record documents concerning the waste site clean-up relative to the Remedial Response performance Standard dictated under the Massachusetts Contingency Plan process as regulated under 310CMR 40.0000. Mr. Bennett appeared to present a summary of his findings to the Board concerning his review of the MCP and make recommendations to the Board relative to any implications associated with the pollution that had been cleaned up at the property, such as potential exposures that the Town may realize as a result of the proposed development of the property for affordable housing under a 40B Comprehensive Permit. He reviewed the Notice of Activity and Use Limitation that is recorded against the property, which states what activities are allowed and present no significant risk to health, safety, public welfare or the environment for any foreseeable period of time and what activities are inconsistent with the objective of the AUL, which if implemented may result in a significant risk of harm to health, safety, public welfare or the environment. The document also states that you can't undertake any activity that will disturb or expose the contaminated soil underneath the clay barrier without taking certain precautions to avoid exposure risks. If you do any activity that disturbs or exposes the contaminated soil, there are procedures to manage the risks by retaining an LSP to oversee the construction activities and to implement and monitor a health and safety plan and to create a soil management plan. He reviewed the site development plan that showed the specific areas of AUL. Mr. Bennett stated that the conceptual development plan shows that the area of the AUL will be disturbed by construction activities, the erection of two buildings, an access road way and parking area construction. The two issues that are outstanding in regard to this topic is how the Town wants to treat expenses and performance under the AUL once the project begins and to be cognizant of the possibility of how to address contamination outside the area such as might occur as a result of the installation of underground utilities or water

service. Mr. Longo joined the discussion and informed the Board that a soil management plan and a health and safety plan have been completed for the project. Mr. Bennett suggested that since the AUL requires performance obligations that will be triggered by the project and since that work is under TCB's control, that the Town should assign the compliance liability to TCB and their agents for the duration of the lease period. Attorney Quirk interjected that this condition would be part of the long-term ground lease between TCB and the Town. In that lease, TCB will indemnify the Town against any costs, legal fees, penalties or fines associated with violations of the AUL.

Board Discussion: The Board questioned Mr. Bennett, Mr. Longo and Ms. Brodie regarding Mr. Bennett's report. The Board then discussed a site monitoring plan to be implemented by TCB, as recommended by Mr. Bennett. This also would be a condition of the ground lease according to Attorney Quirk. The Board questioned and discussed with Mr. Bennett and Ms. Brodie the contaminants that are located beneath the cap and how much of a threat to public health they might pose, including how much exposure over what period of time would cause harm to humans. Mr. Bennett informed the Board that he will complete his report and submit it to the Board within a week.

The Board then discussed a letter submitted by the Cape Cod Commission, which contained an evaluation of the project relative to the intent and purposes of the Cape Cod Commission Act and the overall goals of the 2009 Regional Policy Plan. The CCC staff made comments on the following issues: affordable housing, natural resources, community character, transportation and water resources. Also included in the letter was further technical assistance in the areas of transportation, water resources and environmental remediation. The Board discussed the traffic issue and the CCC's transportation ideas, including its recommendation of interconnects to provide vehicle and/or pedestrian access to adjacent properties without the need to enter Shank Painter Road, and the idea of accessing the project from Province Road. The Board questioned Mr. Longo and Ms. Brodie about the concerns raised by the CCC. The Board was most concerned about the access issue and requested that the applicant devise a conceptual drawing showing the relocation of the driveway to the south of its present proposed location, closer to Province Road.

Public Comment: Chuck Silva spoke of his concerns regarding the commercial units and the adequacy of the parking spaces assigned to those units.

Board Discussion: The Board also briefly discussed the AECOM Water report. This report was a summary of a review of the permitting plans, prepared by Horsley and Witten and submitted by the applicant, for the proposed sewer collection and pumping system. These comments did not pertain to the revised plans submitted by the applicant to the ZBA. The applicant had, since that report, revised the project's plans, addressing the concerns raised by this review. David Gardner will contact AECOM Water and submit the revised plans to them for their review. Attorney Quirk told the Board that she would draft a preliminary decision for the Board's next hearing based on the discussions of its concerns with the applicant.

The Board then discussed the waivers from the Zoning By-Laws and other relief sought by the applicant, with the recommendations of the Planning Board in mind.

Elisabeth Verde moved to grant a waiver from Article 2, Section 2440, footnote 8, of the Zoning By-Laws, Permitted Principal Uses, to allow more than six dwelling units on one lot in the General Commercial Zone, Robert Littlefield seconded and it was so voted, 5-0.

Elisabeth Verde moved to grant a waiver from Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws, regarding setbacks, Robert Littlefield seconded and it was so voted, 5-0.

Elisabeth Verde moved to grant a waiver from Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws, regarding the number of building stories, Robert Littlefield seconded and it was so voted, 5-0.

Elisabeth Verde moved to grant a waiver from Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws, regarding building height, Robert Littlefield seconded and it was so voted, 5-0.

The Board tabled the request for a waiver from Article 3, Section 3220 of the Zoning By-Laws, concerning General Sign Regulations.

Elisabeth Verde moved to grant a waiver from Article 3, Sections 3300, Design Standards, and 3340,

Building Scale, of the Zoning By-Laws, Robert Littlefield seconded and it was so voted, 4-1 (Elisabeth Verde opposed).

The Board tabled the request for a waiver from Article 4, Sections 4000, Commercial Business and Industrial Development, 4050, Plan Review, 4051, Procedure, 4052, Consideration, and 4053, Design Standards.

The Board tabled the request for a waiver from Article 4, Section 4100, Dwelling Units and Commercial Accommodations.

In regard to the request for a waiver from the Growth Management By-Law, David Gardner suggested that the Board adhere to the Planning Board's recommendation in waiving the process, but not waiving the gallons, reminding it that the recent Town Meeting amended the Growth Management By-Law to accommodate this project by adding gallons to the affordable housing category.

The Board briefly addressed the request of the applicant to waive Town fees. This is a policy of the Board of Selectmen and not a waiver that can be granted by the Zoning Board of Appeals. Attorney Mitchell assured the Board that her client would withdraw that request.

The Board will continue this case until the June 11, 2009 hearing. The applicant will submit a conceptual design per the request of the Board before this hearing. ***Patrick Eeley moved to continue the case until the June 11, 2009 hearing at 6:45 P.M., Elisabeth Verde seconded and it was so voted, 5-0.***

2009-30 50 Bradford Street (General Commercial Zone), Evangelos Lambrou –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to request an increase in seating (13 indoor seats existing and 90 outdoor seats proposed) pending the approval of an Economic Development Permit for additional seating. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. This case is continued until the June 18, 2009 hearing.

Patrick Eeley adjourned the Work Session at 8:50 P.M.

PUBLIC HEARING

Patrick Eeley called the Public Hearing to order at 8:50 P.M. There were five members of the Zoning Board of Appeals present and none absent.

NEW CASES:

2009-32 5 Ryder Street (Ryder Street Parking Lot) (Town Commercial Center), Andy Pollack, d/b/a Provincetown Farmer's Market –

The applicant seeks a Special Permit under Article 2, Section 2440, E3f and Article 3, Section 3420 of the Zoning By-Laws to operate a seasonal outdoor farmer's market. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Andy Pollack appeared to present the application. The Provincetown Farmer's Market began operating on Macmillan Wharf, but has since moved to the Ryder Street Parking Lot. As the lot was owned by the Town, the Board of Selectmen had given permission to the Market to operate in this new location and determined its dates of operation. However, running a seasonal farmer's market is not an allowed use by right in the Town Commercial Center Zone, so the applicant seeks a Special Permit under the category of All Other Recreational Uses under Permitted Principal Uses in order to continue its operation. Mr. Pollack stated that the size of the Market will remain the same and will operate within the bounds of the parking lot.

Public Comment: None. There were 19 letters in support of and none in opposition to the application. The applicant waived the reading of the letters in support.

Board Discussion: The Board questioned Mr. Pollack. David Gardner requested that the Board consider the Market as a seasonal market, operating on a weekly basis. He also requested that the Board's approval be contingent upon the Board of Selectmen, as has been their custom, determining the dates of

its operation every year.

Patrick Eleey moved to grant a Special Permit under Article 2, Section 2440, E3f of the Zoning By-Laws to operate a seasonal outdoor farmer's market at the property located at 5 Ryder Street (Ryder Street Parking Lot) (TCC) contingent upon its schedule of operation being determined by the Board of Selectmen, which shall be subject to renewal after a period of three years, Elisabeth Verde seconded and it was so voted, 5-0.

Elisabeth Verde moved to grant a Special Permit under Article 3, Section 3420, of the Zoning By-Laws to allow outside display in conjunction with the Special Permit granted under Article 2, Section 2440, E3f of the Zoning By-Laws, which shall be subject to renewal after a period of three years, Amy Germain seconded and it was so voted, 5-0. Elisabeth Verde will write the decision.

FINDING OF FACT: The outdoor display will consist of seasonal produce, plants or food-related items, with the exception that local non-profit organizations will be allowed to display items at the Market.

CONTINUED 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 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 Eleey, 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. The applicant submitted revised plans showing revised dimensions and existing elevations, the latter as had been requested by the Board. He also submitted an amendment to the project eligibility letter from the Massachusetts Housing Partnership. Mr. Malone explained the new plans to the Board.

Board Discussion: The Board questioned Mr. Malone and Attorney Freeman about the new material. Attorney Quirk had submitted a draft decision to the Board and she then proceeded to discuss the decision with the Board. As this discussion progressed, both Mr. Malone and Attorney Freeman requested changes in the language of the draft decision.

The Board chose to vote on the following Threshold Determinations:

Jurisdictional Requirements: *Amy Germain moved that the Board vote to find that the Applicant satisfied the jurisdictional prerequisites under 760 CMR 31 for the requested permit, Anne Howard seconded and it was so voted, 5-0.*

Consistency with Statutory and Regulatory Needs: *Patrick Eleey moved that the Board found that the Town had not satisfied its low and moderate income housing needs under M.G. L. c. 40B., Robert Littlefield seconded and it was so voted, 5-0.*

Findings of Fact and Conditions of Approval: The Board and Attorney Quirk discussed the thirty-eight sections of the Findings and Conditions with Mr. Malone and Attorney Freeman. Attorney Quirk noted all changes made in the language, by agreement of both parties and their attorneys, as a result of the prolonged discussion. She informed the Board that she and Attorney Freeman would work, at a later date, on any contested language that had not been agreed upon by both parties at the hearing that night. She will then revise the draft decision and submit it to the Board before its next hearing. The Board will discuss the requested waivers in Exhibit B at the next hearing when the revised decision is discussed. *Patrick Eleey moved to continue Case #2009-11 to June 11, 2009 at 6:45 P.M., Elisabeth Verde seconded and it was so voted, 5-0.*

Anne Howard moved to postpone the remainder of the agenda until the June 11, 2009 hearing at 6:45 P.M., Amy Germain seconded and it was so voted, 5-0.

NEXT MEETING: The next meeting will take place on June 11, 2009. It will consist of Public Hearing at 6:45 P.M.

ADJOURNMENT: *Amy Germain moved to adjourn at 11:15 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 June __, 2009.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2009

Patrick Eleey, Chair