

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
February 4, 2010

MEETING HELD IN THE GRACE GOUVEIA BUILDING

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

Members Absent: None.

Others Present: Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair Patrick Eleey called the Work Session to order at 6:45 P.M.

The Board interviewed two applicants for seats on the Board: Tom Roberts and David Nicolau.

Patrick Eleey moved to approve the application of Tom Roberts for a seat on the Zoning Board of Appeals, Anne Howard seconded and it was so voted, 5-0.

Patrick Eleey moved to approve the application of David Nicolau for a seat on the Zoning Board of Appeals, Anne Howard seconded and it was so voted, 5-0.

PENDING DECISIONS:

2010-04 **205-209 Commercial Street (Town Commercial Center Zone), Robin B. Reid, Esq. on behalf of Aquarium Wharf Realty Trust –**

Patrick Eleey, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Anne Howard read the decision. *Patrick Eleey moved to grant a Special Permit under Article 2, Section 2440, B5, of the Zoning By-Laws for the service of alcoholic beverages, Robert Littlefield seconded and it was so voted, 4-0-1 (Elisabeth Verde abstaining).*

Chair Patrick Eleey adjourned the Work Session at 7:00 P.M.

PUBLIC HEARING

Chair Patrick Eeley called the Public Hearing to order at 7:00 P.M. There were five members of the Zoning Board of Appeals present and none absent.

NEW CASES:

- 2010-01** **170 Commercial Street (Town Commercial Center Zone), No Ordinary Joe, Inc., Scott J. Lattime, President –**
The applicant seeks a Special Permit under Article 2, Section 2440, B8, of the Zoning By-Laws to relocate a business from 148 Commercial Street to 170 Commercial Street, to increase the food service permit to fast food and to request flex seating. Patrick Eeley recused himself because of a conflict of interest. Vice-Chair Anne Howard explained that since only four members of the Board were seated and a unanimous decision would be required in order to grant a Special Permit, the applicant had a choice to proceed with the present Board or postpone until a five-member Board was seated. The applicant chose to proceed with the hearing of the application. Anne Howard, Elisabeth Verde, Robert Littlefield and Amy Germain sat on the case.
Presentation: Greg Russo, Scott Latime and David Nicolau appeared to present the application. The applicant seeks to move his business to a larger building and expand its operation after 13 years at its present locale. The flex-seating being proposed consists of placing 40 seats outside on the patio and 10 seats inside during the summer months, and 20 seats inside for the winter months. According to the applicant, congestion, which previously occurred while receiving deliveries at the existing Commercial Street location, would be alleviated at the new one because of a parking area located behind the new building. The proposed exterior lighting will be kept to a minimum because of residential abutting properties. The business employs eight year-round employees and more jobs will be created as a result of the expansion, pursuant to the stated goals of the Local Comprehensive Plan.
Public Comment: Adam Schoenhardt spoke in favor of the application. There were 13 letters in favor of the application.
Board Discussion: The Board questioned Mr. Russo, Mr. Lattime and Mr. Nicolau.
Robert Littlefield moved to grant a Special Permit under Article 2, Section 2440, B8, of the Zoning By-Laws to relocate a business from 148 Commercial Street to 170 Commercial Street, to increase the food service permit to fast food and to request flex-seating at the property located at 170 Commercial Street (TCC), Amy Germain seconded and it was so voted, 4-0. Anne Howard will write the decision.
- 2010-02** **27 Conant Street (Residential 3 Zone), Neal Kimball, of Neal Kimball Designs, on behalf of Brad Howarth –**
The applicant seeks a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for a deviation from building scale requirements to construct a 10'8" x 15 ½' two-story addition on the south elevation. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Presentation: Neal Kimball, Michael Cooper and Hakan Sjoo appeared to present the application. The applicant seeks to extend the building to create more functional living space on the first and second floors. The footprint of the house will be increased. The existing scale is 70.31 scale units. The maximum allowable is 73.55 s.u. The proposal is for 85.58 s.u. Mr. Kimball stated that there will be no hazard, congestion or environmental degradation created as a result of the project.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board questioned Mr. Kimball concerning how the project was in keeping with the goals of the LCP and requested clarification concerning a stated 'boundary agreement' that appears on the field card for the property. The Board also requested that the applicant submit plans that were not stamped 'Preliminary'.
The applicant requested a continuance until the March 4, 2010 hearing.
Patrick Eeley moved to grant the request for a continuance of Case #1020-02, Amy Germain seconded and it was so voted, 5-0.
- 2010-05** **205-209 Commercial Street (Town Commercial Center Zone), Robin B. Reid, Esq. on behalf of**

Aquarium Wharf Realty Trust –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of alcoholic beverages. Elisabeth Verde recused herself because of a conflict of interest. Chair Patrick Eeley explained that since only four members of the Board were seated and a unanimous decision would be required in order to grant a Special Permit, the applicant had a choice to proceed with the present Board or postpone until a five member Board was seated. The applicant chose to proceed with the hearing of the application. Patrick Eeley, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Attorney Robin B. Reid and Ben deRuyter appeared to present the application. The applicant seeks to complement the business of his tenants by serving alcohol on the premises. Attorney Reid argued that the social, economic and other benefits outweigh any adverse effects such as hazard, congestion and environmental degradation.

Public Comment: None. There was one letter from an abutter that did not object to the project.

Board Discussion: The Board questioned Attorney Reid and Mr. deRuyter.

Patrick Eeley moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of alcoholic beverages at the property located at 205-209 Commercial Street (TCC), on the condition that there be no amplified music without a Special Permit, Robert Littlefield seconded and it was so voted, 4-0. Patrick Eeley will write the decision. The applicant will submit a revised floor plan showing the correct number of seats to be located on the deck.

- 2010-06** **4 Mozart Avenue, #4 (Residential 3 Zone), Christopher Daley –**
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a porch along a pre-existing, non-conforming front yard setback.
- 2010-07** **4 Mozart Avenue, #4 (Residential 3 Zone), Christopher Daley –**
The applicant seeks a Special Permit under Article 3, Section 3340 of the Zoning By-Laws to construct a porch along a pre-existing, non-conforming front yard setback. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on both cases.
Presentation: Adam Schoenhardt and Chris Daley appeared to present the applications. The applicant seeks to renovate the building on the property, including increasing the scale. The proposed renovation includes the addition of a back porch and an enclosed front porch to the building in order to increase living space. Part of the additions will not be visible from the street. Mr. Schoenhardt argued that the renovation is in keeping with the character of the community. The existing scale is 153.70 s.u. The neighborhood average scale is 97.55 s.u. The allowable scale is 112.19 s.u. The proposed increase is 20.19 s.u., one-half of which is taken up with the porch, for a total of 173.99 s.u.
Public Comment: None. There was one letter in favor of the application.
Board Discussion: The Board questioned Mr. Schoenhardt and Mr. Daley.
- 2010-06** *Patrick Eleey moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a porch along a pre-existing, non-conforming front yard setback at the property located at 4 Mozart Avenue, #4 (RES 3), Robert Littlefield seconded and it was so voted, 5-0.*
- 2010-07** *Patrick Eleey moved to grant a Special Permit under Article 3, Section 3340 of the Zoning By-Laws to construct a porch along a pre-existing, non-conforming front yard setback at the property located at 4 Mozart Avenue, #4 (RES 3), Robert Littlefield seconded and it was so voted, 5-0.* Elisabeth Verde will write the decisions.
- 2010-08** **49 Harry Kemp Way (Residential B Zone), Robin B. Reid, Esq. on behalf of Outer Cape Health Services, Inc. -**
The applicant seeks a Special Permit under Article 3, Section 3340 of the Zoning Bylaw to construct an addition. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Presentation: Attorney Robin B. Reid, Alan Hall and George Berg appeared to present the application. The applicant seeks to expand its facilities in order to meet the needs of its patients. The applicant's request is in keeping with the objectives of the LCP, specifically under Chapter 7, and is actually referred to on page 116. The economic and social viability of a community health center is important to the citizens of the Provincetown. In addition, the economic benefits are consistent with Chapter 5 of the LCP. If allowed to expand, Outer Cape can hire more employees to provide a better standard of health care to its patients. Pursuant to Article 3, Section 3340E, 2, this building, by necessity, must be large and the location on Harry Kemp Way is suited for that larger scale use, as it is able to handle potential traffic volumes. The structure is non-conforming in regard to scale. The neighborhood average is 103.84 s.u. and the allowable is 129.8 s.u. The existing scale is 328.8 s.u.. The proposed scale is 443.96 s.u.
Public Comment: Matt Abar and Marianne Clements, both employees of Outer Cape, spoke in favor of the application. There were 2 letters from abutters in support of the application.
Board Discussion: The Board questioned Attorney Reid, Mr. Hall and Mr. Berg.
Amy Germain moved to grant a Special Permit under Article 3, Section 3340 of the Zoning By-Laws to construct an addition at the property located at 49 Harry Kemp Way (RES B), Robert Littlefield seconded and it was so voted, 5-0. Anne Howard will write the decision.
- 2010-09** **34 Commercial Street (Residential 2 Zone), Sally Rudicel and Rosemarie Gschwendther -**
The applicant seeks a Special Permit under Article 3, Section 3340 of the Zoning Bylaw to construct a second floor addition. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Presentation: Attorney Lester J. Murphy, Sally Rudicel and Rosemarie Gschwendther appeared to present the application. The applicants seek to build an addition on the second floor of the structure over the first floor study. The addition will consist of a master bedroom, bathroom and closet. The footprint of the structure will remain the same. The addition will not overhang into any setbacks. The proposed

structure will be in keeping with the character of the neighborhood. The neighborhood average is 81.77 s.u. and the maximum allowed is 94.04 s.u. The existing structure is 98.30 s.u. and the proposed scale would be 116.44 s.u. There are eight structures in the neighborhood that exceed the scale of the proposed structure, thirteen that exceed the maximum allowable scale and eleven that are over 100 s.u. Attorney Murphy explained how the addition would be in keeping with the objectives of the LCP, including being consistent with the architecture of the existing structure, being harmonious and compatible with its site and existing and surrounding buildings and maintaining the historic character of the neighborhood. He also added that the addition would not cause any adverse effects such as congestion, hazard or environmental degradation.

Public Comment: None. There were 4 letters in support of the application.

Board Discussion: The Board questioned Attorney Murphy, Ms. Rudicel and Ms. Gschwendther.

Elisabeth Verde moved to grant a Special Permit under Article 3, Section 3340 of the Zoning Bylaws to construct a second floor addition at the property located at 34 Commercial Street (RES 2), Robert Littlefield seconded and it was so voted, 4-0-1 (Anne Howard abstaining). Patrick Eeley will write the decision.

2010-10 **338 Commercial Street (Town Commercial Center Zone), Sanette Groenewald -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning Bylaws for the service of alcoholic beverages, to consist of wine and malt. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Sanette Groenewald appeared to present the application. She seeks to increase her business by serving beer and wine on the premises.

Public Comment: Elyssa Cohen spoke in favor of the application. There were 11 letters in support of the application in the file.

Board Discussion: The Board questioned Ms. Groenewald.

Amy Germain moved to grant a Special Permit for the service of alcoholic beverage, to consist of wine and malt at the property located at 338 Commercial Street (TCC), with the condition that the hours of operation are 11:00 A.M to 10:00 P.M. and that all state liquor laws are followed, Patrick Eeley seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

MINUTES: January 21, 2010 – Anne Howard moved to approve the language as amended, Patrick Eeley seconded and it was so voted, 4-0-1 (Elisabeth Verde abstaining).

NEXT MEETING: The next meeting will take place on March 4, 2010. It will consist of a Work Session at 6:30 P.M. and 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 March 4, 2010.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2010

Patrick Eeley, Chair