

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
May 6, 2010

MEETING HELD IN THE GRACE GOUVEIA BUILDING

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

Members Absent: None.

Others Present: Russell 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 6:00 P.M. David Nicolau recused himself because of a conflict of interest related to the topic to be discussed during the Executive Session.

Chair Patrick Eeley moved to go into Executive Session pursuant to M.G.L. c. 39, s. 23B, Clause 3, to discuss strategy with respect to litigation and to convene in Open Session thereafter. He then took a roll call vote of the Zoning Board members present: Robert Littlefield: Yes; Elisabeth Verde: Yes; Amy Germain: Yes; Anne Howard: Yes; and Tom Roberts: Yes.

Chair Patrick Eeley moved to reconvene the Open Work Session at 6:10 P.M.

David Gardner briefly discussed the project eligibility letter submitted by Community Housing Resources for a 40B development known as Stable Path at the property located on Race Point Road. The Board discussed the issue.

PENDING DECISIONS:

- 2010-12 **4 Atwood Avenue (*Residential 2, Zone*), Lester J. Murphy, Jr., Attorney, on behalf of G. Bruce Head, III –**
Robert Littlefield, Elisabeth Verde, Amy Germain, David Nicolau and Tom Roberts sat on the case. Robert Littlefield read the decision. *Elisabeth Verde moved to approve the language as written, David Nicolau seconded and it was so voted, 5-0.*
- 2010-25 **29 Alden Street, Unit #6 (*Residential 3 Zone*), Richard Flores, d/b/a Riptide Building Company –**
Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and David Nicolau sat on the case. Elisabeth Verde read the decision. *David Nicolau moved*

to approve the language as written, Robert Littlefield seconded and it was so voted, 5-0.

2010-23 12 Cottage Street (*Residential 3 Zone*), John Reis, John Reis, Inc., d/b/a Golden Hammer, on behalf of Laurie Liss – Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Tom Roberts sat on the case. Patrick Eeley read the decision. *Amy Germain moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 5-0.*

2010-22 1 Harbour Drive (*Residential 1 Zone*), William N. Rogers, II, P.E. & P.L.S. on behalf of Bay Harbour, LLC I – Robert Littlefield, Elisabeth Verde, Amy Germain and Tom Roberts sat on the case. Tom Roberts read the decision. *Elisabeth Verde moved to approve the language as written, Robert Littlefield seconded and it was so voted, 4-0.*

MINUTES: April 15, 2010 – *Patrick Eeley moved to approve the language as amended, Robert Littlefield seconded and it was so voted, 5-0-1 (Amy Germain abstaining).*

ADMINISTRATIVE AMENDMENT:

2010-01 170 Commercial Street (*Town Commercial Center Zone*), No Ordinary Joe, Inc., Scott J. Lattime, President (*continued*) - 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 and to increase the food service permit to fast food and to request flex seating. Patrick Eeley and David Nicolau recused themselves because of conflicts of interest.
Presentation: Greg Russo appeared to discuss a revised site plan. The site plan showed the location of proposed trash and recycling bins and a revised flex-seating plan for the off season.
Board Discussion: The Board questioned Mr. Russo.
Robert Littlefield moved to approve the off season revised seating plan showing the location of the garbage cans and recycling bins, Elisabeth Verde seconded and it was so voted, 4-0.

Chair Patrick Eeley postponed 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 seven members of the Zoning Board of Appeals present and none absent.

CONTINUED CASE:

2010-13 4 Atwood Avenue (*Residential 2, Zone*), Lester J. Murphy, Jr., Attorney, on behalf of G. Bruce Head, III –

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale for alterations and an addition to the principal structure. Robert Littlefield, Elisabeth Verde, Amy Germain, David Nicolau and Tom Roberts sat on the case.

Presentation: Attorney Lester J. Murphy and Ron Slowek appeared to discuss the application. A parking plan delineating the three parking spaces on the site was submitted, as well as the proposed and existing elevations for the left side of the main structure. The Assessor's Office, in consultation with the Building Commissioner, has revised the scale calculations. The revised scale calculations show a proposed increase now of only 10.33 scale units, not 18.89 s.u. as was previously presented. Attorney Murphy also submitted the deed restriction as requested by the Board.

Board Discussion: The Board questioned Attorney Murphy and Mr. Slowek. The Board requested that the applicant try to reduce the scale of the project. Attorney Murphy agreed to make the effort if the Board would be willing to consider it. He requested a continuance until the June 3, 2010 Public Hearing, and signed a waiver of the time constraints on behalf of the applicant.

David Nicolau moved to accept the request to continue Case #2010-13 until the June 3, 2010 Public Hearing, Tom Roberts seconded and it was so voted, 5-0.

NEW CASES:

2010-24 25 Conwell Street (*Residential RB Zone*), Robert Evans of A & E Architects, Inc., on behalf of 21 Conwell Realty Trust –

The applicant seeks a Variance from the sign regulations under Article 3, Section 3230 of the Zoning By-Laws for an existing retail hardware store. David Nicolau recused himself because of a conflict of interest. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Alison Alessi and Jeff Rogers appeared to present the application. The applicant seeks to erect a sign measuring 24 square feet. The existing sign at the location measures 16' square feet and pre-dates the sign regulations.

According to Ms. Alessi, the proposed sign would create a more Cape Cod, Main Street feel to Conwell Street.

Public Comment: None. There was 1 letter in the file in support of the application.

Board Discussion: The Board questioned Ms. Alessi and Mr. Rogers.

Anne Howard moved to grant a Variance from the sign regulations under Article 3, Section 3230 of the Zoning By-Laws for an existing retail hardware store at the property located at 25 Conwell Street (RB) on the condition that the applicant's submission of revised plans showing the correct height of the proposed sign with the bottom of the proposed sign being at the same height as the bottom of the existing sign, Robert Littlefield seconded and it was so voted, 5-0. Anne Howard will write the decision.

- 2010-26 **8 Fishburn Court (*Residential 3 Zone*), Deborah Paine, Inc., on behalf of Russell A. Friedman and Wayne E. Briggs –**
 The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove, reconstruct and extend a pre-existing, non-conforming structure up and along the non-conforming side yard setback. This case has been withdrawn.
- 2010-27 **773 Commercial Street (*Residential 1 Zone*), Mark P. Kinnane of Cape Associates, Inc., on behalf of Lisa Corrin –**
 The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct an addition on an existing deck up and along a pre-existing, non-conforming side yard dimension. David Nicolau recused himself because of a conflict of interest. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Presentation: Mark Kinnane appeared to present the application. The applicant seeks to bump an addition out along and on top of an existing deck
Public Comment: None. There were no letters in the file.
Board Discussion: The Board questioned Mr. Kinnane.
Patrick Eleey moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct an addition on an existing deck up and along a pre-existing, non-conforming side yard dimension at the property located at 773 Commercial Street (Res 1), Elisabeth Verde seconded and it was so voted, 5-0. Patrick Eleey will write the decision.
- 2010-28 **333R Commercial Street (*Town Commercial Center Zone*), William N. Rogers, II, P.E. & P.L.S. –**
 The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to reconstruct a previously existing structure, including non-conformancies, dimensional or otherwise. The new structure will be modified by extending the structure up and along the non-conforming west side dimension by creating additional living space on the second and third floors within the footprint of the previously existing third floor covered deck area. The south end of the third floor will only be built out above the second floor by 9” for structural reasons, resulting in the west side of the build-out extending along the non-conforming west side line by 9”. Elisabeth Verde has filled out a disclosure form as she is an abutter to the property. She offered to not sit on the case, but the applicant had no issue with her being seated. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Presentation: Gary Locke, Attorneys Lester J. Murphy and Karen DePalma, Rick Pozzo and Neal Kimball appeared to present the application. This project was authorized as a renovation by the Board in 2008. After construction commenced on the building, it was found to be structurally unsound. In addition, the structure was made weaker by several of winter storms that brought high winds and heavy rains. One of the walls of the building fell onto an abutting property. Because the building then became a public safety issue, the Building Commissioner approved its demolition. The proposed plans for the building have not changed, however the

project is no longer a renovation, but a reconstruction. The previous Special Permit was not sufficient to authorize the work that was now required to reconstruct the structure. The proposed use of the building is both commercial and residential. The building will be rebuilt in the same footprint, however the lot coverage will increase due to Building Code compliance elements, including decks and stairways for emergency egress purposes and handicap accessible compliance.

Public Comment: None. There were no letters in the file.

Board Discussion: The Board questioned Mr. Locke, Attorneys Murphy and DePalma, Mr. Pozzo and Mr. Kimball.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to reconstruct a previously existing structure, including non-conformancies, dimensional or otherwise. The new structure will be modified by extending the structure up and along the non-conforming west side dimension by creating additional living space on the second and third floors within the footprint of the previously existing third floor covered deck area. The south end of the third floor will only be built out above the second floor by 9" for structural reasons, resulting in the west side of the build-out extending along the non-conforming west side line by 9" at the property located at 333R Commercial Street (TCC), Patrick Eleey seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

Chair Patrick Eleey adjourned the Public Hearing and reconvened the Work Session at 9:00 P.M.

WORK SESSION

ADMINISTRATIVE AMENDMENT:

Eric Hamnquist appeared to request an extension for the expiration of the Special Permit for seating on a patio granted in Case #2009-04 for the property located at 206 Commercial Street. The Permit expired on March 31, 2010 and Mr. Hamnquist, the new proprietor of the restaurant on the premises, was unaware of the expiration date. He needs the extension in order to be able to open his new business at the site. The Board discussed the extension.

Patrick Eleey moved to extend the Special Permit granted in Case #2009-04 to June 30, 2010, Amy Germain seconded and it was so voted, 5-0.

NEXT MEETING: The next meeting will take place on May 20, 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 9:10 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 May 20, 2010.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2010
Patrick Eeley, Chair