

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
October 7, 2010

MEETING HELD IN THE GRACE GOUVEIA BUILDING

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

Members Absent: None.

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

WORK SESSION

Chair Anne Howard called the Work Session to order at 6:30 P.M.

MINUTES: September 16, 2010 – *Robert Littlefield moved to approve the language as written, Tom Roberts seconded and it was so voted, 5-0.*

PENDING DECISIONS:

FY11-22 **238 Bradford Street (Residential 3 Zone), The Provincetown Theater Foundation –**
Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case. Anne Howard read the decision. *David Nicolau moved to approve the language as written, Robert Littlefield seconded and it was so voted, 5-0.*

FY11-23 **142 Commercial Street (Town Commercial Center Zone), Chris Beasley on behalf of Karen Edlund –**
Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case. Tom Roberts read the decision. *Robert Littlefield moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 5-0.*

FY11-25 **14 Howland Street (Residential 3 Zone), Peter F. Fine –**
Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case. Elisabeth Verde read the decision. *Robert Littlefield moved to approve the language as amended, Tom Roberts seconded and it was so voted, 5-0.*

- FY11-26** **335 Commercial Street (Town Commercial Center Zone), Robert Valois on behalf of Diarmuid O’Neill –**
 Anne Howard, Elisabeth Verde, Robert Littlefield and Tom Roberts sat on the case. Robert Littlefield read the decision. *Elisabeth Verde moved to approve the language as written, Tom Roberts seconded and it was so voted, 4-0.*
- FY11-27** **124 Commercial Street (Town Commercial Center Zone), James Martin –**
 Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case. David Nicolau read the decision. *Elisabeth Verde moved to approve the language as written, Tom Roberts seconded and it was so voted, 5-0.*
- FY11-28** **124 Commercial Street (Town Commercial Center Zone), James Martin –**
 Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case. David Nicolau read the decision. *Robert Littlefield moved to approve the language as written, Tom Roberts seconded and it was so voted, 5-0.*

The Board reviewed the decision for 90 Shank Painter Road and signed the plans.

Chair Anne Howard adjourned the Work Session at 7:00 P.M.

PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 7:00 P.M.

POSTPONED CASES:

- FY11-20** **284B Commercial Street (Town Commercial Center Zone), Fred Ambrose of Ambrose Homes, Inc. on behalf of Ralph Santora (continued September 16, 2010) –**
 The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the construction of two dormers up and along pre-existing, non-conforming lot lines. The Board will hear the two applications together.
- FY11-21** **284B Commercial Street (Town Commercial Center Zone), Fred Ambrose of Ambrose Homes, Inc. on behalf of Ralph Santora (continued from September 16, 2010) –**
 The applicant seeks a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for a deviation in building scale for the construction of two dormers, the smaller of which will allow adequate headroom at the top of a stairway. Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on both cases.
Presentation: Ralph Santora appeared to discuss the case. He presented his

justification for seeking a deviation in building scale.

Board Discussion: The Board questioned Mr. Santora.

FY11-20 *Tom Roberts moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the construction of two dormers up and along pre-existing, non-conforming lot lines at the property located at 284B Commercial Street (TCC), Elisabeth Verde seconded and it was so voted, 5-0.* Anne Howard will write the decision.

FY11-21 *David Nicolau moved to grant a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for a deviation in building scale for the construction of two dormers, the smaller of which will allow adequate headroom at the top of a stairway at the property located at 284B Commercial Street (TCC), Elisabeth Verde seconded and it was so voted, 5-0.* Anne Howard will write the decision.

FY11-24 **8 Fishburn Court (Residential 3 Zone), Deborah Paine, Inc. on behalf of Russell Friedman and Wayne Briggs** (continued from September 16, 2010) – The applicants seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to partially demolish, reconstruct and extend a pre-existing, non-conforming setback by adding a second story. Anne Howard recused herself because of a conflict of interest. Amy Germain stated that she had made a site visit and had listened to a recording of the presentation of this case at the Public Hearing held on September 16, 2010 and was available to sit on the case. Both the applicant and the Board agreed to her being seated. Robert Littlefield, Elisabeth Verde, Amy Germain, David Nicolau and Tom Roberts also sat on the case. Robert Littlefield reminded that audience that the public portion of the case was closed.

Presentation: Deborah Paine appeared to discuss the application. She submitted a site plan showing the parking at the premises, as requested by the Board. She submitted a letter from the local and the district Fire Chiefs affirming that they had no public safety concerns about fire or other rescue vehicles accessing the properties on Fishburn Court in case of an emergency and a letter from Attorney Lester J. Murphy outlining the applicable criteria for seeking a Special Permit under Article 3, Section 3110 in this case. Attorney Murphy's letter was accompanied by a copy of an 1869 deed addressing the property's accessibility issues previously raised by abutters. Ms. Paine further explained how the proposed structures would visually fit in with other buildings in the area by showing a computer-generated model of both superimposed over a Google map of the neighborhood.

Board Discussion: The Board briefly questioned Ms. Paine.

David Nicolau moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to partially demolish, reconstruct and extend a pre-existing, non-conforming setback by adding a second story at the property located at 8 Fishburn Court (Res 3) under the Goldhirsh v. McNear ruling, Tom Roberts seconded and it was so voted, 4-1 (Elisabeth Verde opposed).

NEW CASES:

FY11-29 **4 Dyer Street (*Town Commercial Center and Residential 3 Zones*), Lester J. Murphy, Jr., Attorney, on behalf of Dawn L. McCall and Gail P. Williams** – The applicants see a Special Permit under Article 2, Section 2450, G14, footnote 2 of the Zoning By-Laws for the installation of a 63 square foot shed in the rear yard. Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and David Nicolau sat on the case.

Presentation: Attorney Lester J. Murphy and Gail Williams appeared to present the application. The shed is 7' by 9' by approximately 7' and has a double door in the front, but no windows or doors on the side or rear. It has a stockade fence around the three sides facing abutters. The shed currently sits too close to the rear yard setback, but will be moved and located on a parcel of land (17' by 31') in the backyard purchased from an abutter specifically for this purpose. After being moved, the shed will meet all of the size, setback and building separation requirements as outlined in Section 2450, G14, footnote 2. It will be more than 20' away from the nearest structure on the lot. Attorney Murphy argued that the presence of the shed in its new location will not be more detrimental to the neighborhood.

Public Comment: None. There were 6 letters in the file in support of the application.

Board Discussion: The Board questioned Attorney Murphy and Ms. Williams and a question about the exact measurements of the shed was raised. Attorney Murphy stated that he will have the engineer, Chet Lay, write a letter certifying the height of the shed.

David Nicolau moved to grant a Special Permit under Article 2, Section 2450, G14, footnote 2 of the Zoning By-Laws for the installation of a 63 square foot shed in the rear yard at the property located at 4 Dyer Street (TCC and Res 3) subject to certification of the dimensions of the shed, Elisabeth Verde seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY11-30 **35B Court Street (*Residential 3 Zone*), Richard Tedesco** –

The applicant seeks a Special Permit under Article 2, Section 2450, G14 of the Zoning By-Laws for the location of a 96 square foot garden shed within the setbacks. Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and David Nicolau sat on the case.

Presentation: Richard Tedesco appeared to present the application. The applicant sought to renovate an existing dilapidated shed on his property in 2006. During the remodeling project, after a complaint by an abutter, he was informed that the shed had been inadvertently moved to a non-conforming location when the septic system was installed. He seeks to move the shed to a location in compliance with the setback requirements of 3' from the rear yard setback and 5' from the side yard setback. The shed measures 8' by 12' by 9'.

Public Comment: Rich Waldo, on behalf of Elizabeth and Charles Welsh, abutters, spoke in opposition to the application. There were 5 letters in favor and 1 letter in opposition to the application in the file.

Board Discussion: The Board questioned Mr. Tedesco.

Elisabeth Verde moved to grant a Special Permit under Article 2, Section 2450, G14 of the Zoning By-Laws for the location of a 96 square foot garden shed within the setbacks at the property located at 35B Court Street (Res 3), Robert Littlefield seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY11-31 167 Commercial Street, Unit #7 (Town Commercial Center Zone), Ruth Gilbert –

The applicant seeks a Special Permit under Article 4, Section 4170 of the Zoning By-Laws for a change in use from commercial to residential. Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and Tom Roberts sat on the case.

Presentation: Ruth Gilbert appeared to present the application. The applicant is retiring and would like to convert her professional office to a residential unit. This change will increase the chances of selling the unit as there are drawbacks to its utility as a retail or professional office space because of its size and location. The applicant will seek 34 gallons of flow from the Board of Selectmen in order to comply with the septic requirements for a one-bedroom residential unit.

Public Comment: Sue Harrison, who spoke for the condominium association of which the unit is a part, and Attorney Christopher J. Snow spoke in favor of the application. There were 4 letters in support of the application in the file.

Board Discussion: The Board questioned Ms. Gilbert.

Amy Germain moved to grant a Special Permit under Article 4, Section 4170 of the Zoning By-Laws for a change in use from commercial to residential at the property located at 167 Commercial Street (TCC) contingent upon the approval of EDC gallons, Robert Littlefield seconded and it was so voted, 5-0. Tom Roberts will write the decision.

FY11-32 698 Commercial Street (Residential 1 Zone), Christopher J. Snow, Esq. on behalf of 698 Commercial Street Realty Trust –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to flex 152 seats of its 375 licensed seats to include the service and consumption of food and beverages. Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and Tom Roberts sat on the case.

Presentation: Attorney Christopher J. Snow, Robert Thomas and Jerry Hall appeared to present the application. The applicant seeks to renovate the Cape Inn and flex 152 of its 375 licensed seats. 105 seats are in the interior, 152 seats are in the lounge area and 118 seats are in the pool area. The project includes the re-design of the Harbor and Snail Road frontages of the property and the removal of the asphalt that paves those areas. The motivation for moving the 152 seats to the exterior of the property is to enhance those areas, to take advantage of the Bay scenery and to attract more customers. With an increase in customers, the business can extend its season and hire more employees. The project, Attorney Snow argued, supports the objectives cited in Chapter 5, Section 5.2, Economic Development, Goal 1, Policy A, B, C and Goal 3, Policy A of the Local Comprehensive Plan.

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

Board Discussion: The Board questioned Attorney Snow, Mr. Thomas and Mr. Hall.

Tom Roberts moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to flex 152 seats of its 375 licensed seats to include the service and consumption of food and beverages at the property located at 698 Commercial Street (Res 1), Robert Littlefield seconded and it was so voted, 5-0. Amy Germain will write the decision.

FY11-33 61 Harry Kemp Way (Residential B Zone), William N. Rogers, II, P.E. & P.L.S. on behalf of Thomas G. Tannariello –

The applicant seeks a Special Permit under Article 2, Section 2450, G12 of the Zoning By-Laws to install an in-ground 12' x 24' fiberglass shell swimming pool with wood deck and 4-foot minimum high fencing. Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and David Nicolau sat on the case.

Presentation: Gary Locke appeared to present the application. The applicant seeks to install a swimming pool on the southeast portion of the property. The pool will be framed by a 4' wide deck and a fence that surrounds the entire backyard. The water to fill the pool will be trucked in.

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

Board Discussion: The Board questioned Mr. Locke.

David Nicolau moved to grant a Special Permit under Article 2, Section 2450, G12 of the Zoning By-Laws to install an in-ground 12' x 24' fiberglass shell swimming pool with wood deck and 4-foot minimum high fencing at the property located at 61 Harry Kemp Way (Res B), Elisabeth Verde seconded and it was so voted, 4-1 (Amy Germain opposed). David Nicolau will write the decision.

FY11-34 61B Commercial Street (Residential 2 Zone), Deborah Paine, Inc. on behalf of Elise M. Cozzi –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for a change in the roofline and to construct dormers up and along pre-existing, non-conforming sideline setbacks and for a reduction in dwelling units from three to two. Anne Howard and Tom Roberts recused themselves because of conflicts of interest. Vice Chair Robert Littlefield explained to the applicant's agent, Deb Paine, that since there were only four members of the Board seated on the case that a unanimous decision would be needed in order to grant a Special Permit. The applicant had the choice of proceeding with four members or postponing until a full, five-member Board could be seated. The applicant chose to proceed. Elisabeth Verde, Amy Germain and David Nicolau also sat on the case.

Presentation: Deb Paine appeared to present the application. Ms. Paine requested that the case be heard under the *Goldhirsh v. McNear* ruling.

David Nicolau moved to hear Case #FY11-34 under the Goldhirsh v. McNear ruling, Elisabeth Verde seconded and it was so voted, 4-0.

The applicant seeks to raise the roof on the structure as high as the abutting

structure at 59 Commercial Street, approximately 25'. The pitch of the gable will change from a 7 pitch to a 13 pitch. A dormer is proposed for both the east and the west sides of the structure. The three-family dwelling will be reduced to a two-family, decreasing the density on the lot. There will be no change in the footprint of the structure. The project, Ms. Paine argued, supports the objectives set forth in Chapter 1 Section 1.2, Goal 1, Policy B, Goal 2, Goal 3, Chapter 4, Section 4.2, Goal 1, Policy A and Goal 2 of the LCP.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for a change in the roofline and to construct dormers up and along pre-existing, non-conforming sideline setbacks and for a reduction in dwelling units from three to two at the property located at 61B Commercial Street (Res 2) under the Goldhirsh v. McNear ruling, David Nicolau seconded and it was so voted, 4-0.

FY11-35

21 Bradford Street Extension (Residential 1 Zone), WK Red Clay, LLC –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for a modification of a Special Permit granted in Case 2007-18 with a revision granted in Case 2007-57 to re-orient the location of six previously approved dwelling units. (Present use of premises is Multi-family Dwellings and 5 Commercial Tennis Courts and proposed use of premises is Multi-family Dwellings with two Private Tennis Courts). David Nicolau recused himself because of a conflict of interest. Amy Germain disclosed that she is a member of the tennis club at the premises. She had contacted the State Ethics Committee, but had not yet received a response concerning whether that fact constitutes a conflict of interest. She stated that she could render a neutral decision based on the facts and the circumstances of the case. The applicant's agent, Attorney Lester J. Murphy, requested that Ms. Germain not be seated on the case because there was a potential for a conflict of interest and because the applicant claims that Ms. Germain has made comments opposing the termination of the tennis court business. Chair Anne Howard then explained to Attorney Murphy that since there were only four members of the Board seated that a unanimous decision would be needed in order to grant a Special Permit. The applicant had the choice of proceeding with four members or postponing until a full, five-member Board could be seated. The applicant chose to proceed. Anne Howard, Elisabeth Verde, Robert Littlefield, and Tom Roberts sat on the case.

Presentation: Attorney Lester J. Murphy, Dave Krohn, Jim Watkins and Reggie Donoghue appeared to present the application. The applicants seek to modify the previous Special Permit because the commercial tennis business is no longer economically viable and the applicant seeks to privatize it. In addition, the real estate market has been weak and not all units built in Phase 1 have sold. As a result of that, the applicants redesigned Phase 2 in the hopes that money lost on Phase 1 could be recouped. The original plan was for four structures, one of which was a re-build of a tennis clubhouse, six dwelling units, eight bedrooms and four operational tennis courts, one of which was to be removed. The revised project proposes to convert the four commercial tennis courts to two private tennis courts to be owned by the condominium association, to maintain the same four

structures, but to convert the clubhouse to a residential unit, to maintain the same six dwelling units and to take the 250 gallons per tennis court and reallocate those gallons in order to increase the number of bedrooms. The total bedrooms proposed for Phase 2 is seventeen, an increase of nine. Mr. Watkins claimed that the revised project, by getting rid of the commercial aspect, would be more in compliance with the residential character of the Res 1 Zoning District, will be better for the neighbors and the neighborhood, will reduce traffic and noise, will reduce the number of people on the site, will reduce the fencing on the property, which is better for wildlife in the area, and will allow the east end tennis club to become stronger and more viable because there will be no competition, will increase the long term tax base and will create construction and construction-related jobs for the next few years.

Public Comment: Carol Carlson, a member of the tennis club at the site, expressed her regret that the public courts will be closing. There were 2 letters from unit owners on the property in support of the application.

Board Discussion: The Board questioned Attorney Murphy, Mr. Krohn, Mr. Watkins and Mr. Donoghue.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for a modification of a Special Permit granted in Case 2007-18 with a revision granted in Case 2007-57 to re-orient the location of six previously approved dwelling units at the property located at 21 Bradford Street Extension (Res 1), Tom Roberts seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

ADMINISTRATIVE AMENDMENT:

FY11-18 260 Commercial Street (Town Commercial Center Zone), Town Manager of the Board of Selectmen for the Town of Provincetown -

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to designate the Town Hall Auditorium as a venue for public entertainment. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Chair Anne Howard explained to the Board that the language in the decision for the Special Permit may have inadvertently restricted the role of the BOS, which writes the rental policy for the public use of Town Hall, by incorporating, instead of attaching, Specific Finding #3 into the decision. The change would make it easier for the BOS to amend these policies in the future. The Board discussed the issue.

David Nicolau moved to make an Administrative Amendment to change the language in Specific Finding #3 of the Special Permit decision from stating that the regulations for the public use of Town Hall that are set by the Board of Selectmen are incorporated herein, to read that the regulations for the public use of Town Hall that are set by the BOS are attached, Tom Roberts seconded and it was so voted, 4-1 (Amy Germain opposed).

NEXT MEETING: The next meeting will take place on November 4, 2010. It will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Elisabeth Verde moved to adjourn at 10:30 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 November 4, 2010.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2010
Anne Howard, Chair