

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
June 18, 2009

MEETING HELD IN THE GRACE GOUVEIA BUILDING

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

Members Absent: None.

Others Present: Ilana M. Quirk, Esq., (Town Counsel), David Gardner (Assistant Town Manager), Russ 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 6:04 P.M.

CONTINUED CASES:

2009-11 83 Shank Painter Road (General Commercial Zone), CHR 83 SPR, LLC (continued from June 11, 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 draft decision dated June 12, 2009.

Public Comment: None. Chair Patrick Eeley closed the public hearing on the application.

Discussion: Attorney Quirk and the Board discussed the revised draft decision dated June 12, 2009 with the applicant. The discussions and/or revisions under the draft decision heading, FINDINGS OF FACT AND CONDITIONS OF APPROVAL, involved the subjects of Monitoring, Water Conservation, Access Ways, Affordability, Lighting, Fees (The Board designated Amy Germain to write a letter to the Board of Selectmen concerning the ZBA's opinion on the waiver of fees) and Plan Endorsement.

The discussion then moved to the Waivers that the applicant is requesting:

Number V. Any other requirement waiver. *Patrick Eeley moved to deny this relief, without prejudice to the Applicant returning in the future to seek a waiver of any specifically identified provision it believes is necessary, Amy Germain seconded and it was so voted, 5-0.*

Number VI. Fees. *Anne Howard moved to grant relief from the requirement to pay fees for any regulatory review or for any permits related to the development of this project, including but not limited to, fees for building permits applicable to the affordable units, and septic system installation permits, except as otherwise specifically directed in the Decision above, Patrick Eeley seconded and it was so voted, 4-1 (Amy Germain opposed).*

Anne Howard moved to grant only the waivers detailed above and furthermore, to deny any waiver

not expressly granted above, Robert Littlefield seconded and it was so voted, 5-0.

Number VI. MOTIONS:

MOTION: Anne Howard moved and Robert Littlefield seconded that the Board vote to adopt the Findings and Conditions set forth above. The Motion was voted: 5-0.

MOTION: Amy Germain moved and Anne Howard seconded that the Board vote to find that the potential impacts that the Project would cause, if subjected to the conditions required hereunder, would not endanger the health and safety of the occupants or public and would be consistent with local needs. The Motion was voted: 5-0.

MOTION: Robert Littlefield moved and Elisabeth Verde seconded that the Board vote to find that the Project as conditioned and with the waivers set forth above meets the requirements for a comprehensive permit under G.L. c. 40B. The Motion was voted: 5-0.

MOTION: Elisabeth Verde moved and Patrick Eleey seconded that the Board vote to grant as conditioned and waived above, the requested comprehensive permit, but only in full compliance with all of the conditions set forth herein. The Board voted: 5-0.

90 Shank Painter Road (General Commercial Zone), The Community Builders, Inc. on behalf of the Town of Provincetown (continued from June 11, 2009) –

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.

Presentation: Joe Longo, from Horsley and Witten, Jan Brodie, of TCB, and Attorney Kate Mitchell appeared to discuss the draft decision dated June 16, 2009. The applicant had submitted three examples of parking and other management rules and regulations, as well as a lease, from other TCB projects. A letter from the Board of Fire Engineers approving of the revised plan was also sent to the Board. An e-mail from Tom Cambareri, of the Cape Cod Commission, was received by the Board stating that he had reviewed the Stormwater Management Plan and found it consistent with the excellent stormwater management plan that incorporates Low Impact Development components into its design. He also noted that the Plan indicated an estimated annual maintenance budget of \$5,400.00, which he thought should be considered in conditions for the project.

Board Discussion: Attorney Quirk and the Board discussed the revised draft of the draft decision, dated June 16, 2009, with the applicant. The discussions and/or revisions under the heading, FINDINGS OF FACT AND CONDITIONS OF APPROVAL, involved the topics of Parking, Affordability, Fire Safety, Plan Revisions, Plan Endorsements, Water and Energy Conservation, Stormwater Control, Future Maintenance, Surety, Play Area, Lighting, Pre-Construction Meeting, Erosion and Sedimentation Control, Construction Debris, Utilities, Monitoring of the Geosynthetic and Sand Remedial Caps, Access Ways and Responsibilities.

The Board discussed the commercial space issue again and the suggested uses, as submitted by TCB. The uses that the Board agreed upon included: use of the commercial space as an artistic/cultural, retail space, a gallery and/or studio space, a community function and activity space, all non-profit commercial uses, educational uses, municipal uses, recreational space or use and use for children's play space and classes. The applicant may return for a modification to request permission to add another type of use to that list.

Public Comment: Chuck Silva spoke against the proposed commercial parking plan, stating that it was not adequate, and again alleged that the commercial aspect of the development was never a part of the Town Meeting warrant article approval.

Patrick Eleey moved to close the public portion of the application, Amy Germain seconded and it was so voted, 5-0.

Board Discussion: The Board discussed Exhibit C – Waivers and voted on the following remaining waivers that had not been voted on at a previous hearing:

ZBL §§4000, 4050-3: Elisabeth Verde moved to grant relief from the requirements of Article 4, Sections 4400, 4050-3 of the Zoning By-Laws regarding site plan review by the Planning Board and the requirement for a 10-foot wide continuous landscape buffer adjacent to any public road and separate of parking and other uses from the road, Robert Littlefield seconded and it was so voted, 5-0.

ZBL §§4100, 4120 and 4160: Amy Germain moved to grant relief from the Lot Area requirements of Article 4, Sections 4100, 4120 and 4160 of the Zoning By-Laws which require 193,500 square feet of lot area for the 50 dwelling units and 1,000 square feet of lot area for the three proposed commercial suites for a total of 196,500 square feet; however, the Property has an area of only 112,244 square feet, Anne Howard seconded and it was so voted, 5-0.

ZBL §6300: Patrick Eleey moved to grant relief from the procedural requirements of Article 6, Section 6300 of the Zoning By-Laws regarding Growth Management Procedure, including the requirement to obtain Affordable Housing Permits from the Local Housing Partnership, and the corresponding requirements for obtaining Growth Management Allocation Permits and that the Comprehensive Permit be issued in lieu thereof, Robert Littlefield seconded and it was so voted, 5-0.

ZBL §6600: Elisabeth Verde moved to grant relief from Article 6, Section 6600 of the Zoning By-Laws to requiring the Project to obtain Affordable/Community Housing Permits, Anne Howard seconded.

After Board discussion, Elisabeth Verde withdrew her Motion.

Amy Germain moved to deny relief from Article 6, Section 6600 of the Zoning By-Laws to requiring the Project to obtain Affordable/Community Housing Permits, Patrick Eleey seconded and it was so

voted 4-0-1 (Robert Littlefield abstaining).

Patrick Eeley moved to revisit the vote on the waiver concerning Use Regulations, Anne Howard seconded and it was so voted, 5-0.

ZBL §2440 and 5300: Anne Howard moved to grant relief from the Special Permit requirement under Article 2, Section 2440 and Article 5, Section 5300 of the Zoning By-Laws to allow more than six dwelling units to be built on the Property without a Special Permit under Section 2440 and Section 5300 and to allow municipal uses without a Special Permit.

Fees: Amy Germain moved to grant relief from all fees, Robert Littlefield seconded and it was so voted, 5-0.

Amy Germain moved to grant only the waivers detailed above and furthermore, that any waiver not expressly granted in said decision shall be and is hereby expressly denied, Robert Littlefield seconded and it was so voted, 5-0.

The Board then voted on the Findings and Conditions:

Elisabeth Verde moved to adopt the Findings and Conditions set forth above, Anne Howard seconded and it was so voted, 5-0.

Amy Germain moved to find that the potential impacts that the Project would cause, if subjected to the conditions required hereunder, would not endanger the health and safety of the occupants or the public and would be consistent with local needs, Anne Howard seconded and it was so voted, 5-0.

Robert Littlefield moved to find that the Project as conditioned and with the waivers set forth above, meets the requirements for a Comprehensive Permit under G.L. c. 40B, Elisabeth Verde seconded and it was so voted, 5-0.

Patrick Eeley moved to grant, as conditioned and waived above and herein, the requested Comprehensive Permit, but only in full compliance with all of the conditions set forth herein, Robert Littlefield seconded and it was so voted, 5-0.

Chair Patrick Eeley adjourned the Work Session at 9:20 P.M.

PUBLIC HEARING

Chair Patrick Eeley called the Public Hearing to order at 9:25 P.M. There were five members of the Zoning Board of Appeals present and none absent.

CONTINUED CASES:

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. The public portion of this hearing was closed at the May 21, 2009 hearing.

2009-37 **50 Bradford Street (General Commercial Zone), Evangelos Lambrou –**

The applicant seeks a Parking Variance under Article 2, Section 2471 of the Zoning By-Laws to for an increase in 90 addition outdoor seats without providing on-site parking. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the cases. The Board heard Case #2009-37 first.

Presentation: Attorney Lester J. Murphy appeared to discuss the application. A revised plan, showing 8 picnic-style tables for a total of 48 additional seats, was submitted with this application. The existing property has 10 parking spaces already. According to Attorney Murphy, the applicant would be willing to designate those existing spaces as exclusively for take-out or pick-up, if the Board were to make that a condition of the Variance. The applicant is seeking to increase his walk-in traffic, which comprises approximately 60% of his business. There is private and municipal parking in the vicinity of the premises to handle more vehicles. The proposed area for the additional seating is directly in front of a bay window, affording a significant ability to monitor those seats. Attorney Murphy argued that the benefits to the community and the visitors to the Town outweigh any significant detrimental impact on the neighborhood and further, that his client is willing to prove himself a good neighbor if the Board would grant the Parking Variance.

Public Comment: Attorney Gwen Hughes, representing the 11 unit owners of the Summer Winds

Condominium Association, spoke against the application, citing the applicant's failure to meet the requirements for a Parking Variance. Ardith Wieworka, Stephanie Deitzer, both unit owners at the Summer Winds Condominium, spoke against the applicant. Nancy Whiteside and Tom Powers, both abutters, also spoke against the application. There were 12 letters in opposition to and none in support of the application in the file.

Board Discussion: The Board questioned Attorney Murphy.

Patrick Eeley moved to deny a Parking Variance under Article 2, Section 2471 of the Zoning By-Laws to for an increase in 90 addition outdoor seats without providing on-site parking at the property located at 50 Bradford Street (GC Zone), Amy Germain seconded and it was so voted, 3-2 (Elisabeth Verde and Robert Littlefield opposed). The request is denied. Patrick Eeley will write the decision. Attorney Murphy requested to withdraw Case #2009-30 without prejudice. *Elisabeth Verde moved to grant the request to withdraw Case #2009-30 without prejudice, Robert Littlefield seconded and it was so voted, 5-0.*

NEW CASES:

- 2009-33** **1 MacMillan Pier (Town Commercial Center), Provincetown Public Pier Corp. -**
The applicant seeks a Variance under Article 3, Section 3200, Sign Regulations, of the Zoning By-Laws concerning Directory Signs. Amy Germain recused herself because of a conflict of interest. Patrick Eeley, Elisabeth Verde, Robert Littlefield and Anne Howard sat on the case. Patrick Eeley asked the applicant's representative if he would agree to proceed with a four-member Board and he agreed.
Presentation: David Gardner, Assistant Town Manager, representing Rex McKinsey, Harbormaster, appeared to present the application. A sign was erected above the Pier identifying businesses located on the Pier in order to entice tourists to visit those businesses. Mention of the Whydah Museum was omitted from that sign, as they are technically not a tenant of the Pier Corp. However, after the Museum complained to the Town about the situation, the Pier Corp. agreed to add the Museum to the sign. Because the original sign was constructed to the specifications of the Town's sign by-law, any change to it requires a Variance.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board briefly questioned Mr. Gardner.
Elisabeth Verde moved to grant a Variance under Article 3, Section 3200, Sign Regulations, of the Zoning By-Laws concerning Directory Signs with the condition that if the sign were to be re-designed or re-built in the future, that it shall conform with the Town's sign Zoning By-law regarding signs, Patrick Eeley seconded and it was so voted, 4-0. Anne Howard will write the decision.
- 2009-34** **315 Commercial Street (The Coffee Pot) (Town Commercial Center), Linda and Nelson Vital –**
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for outdoor seating to consist of 6 tables with 12 chairs. The property has Economic Development approval for 40 seats of which 28 indoor seats currently exist. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Presentation: Linda and Nelson Vital appeared to present the application.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board briefly questioned Mr. and Ms. Vital.
Patrick Eeley moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for outdoor seating to consist of 6 tables with 12 chairs at the property located at 315 Commercial Street (TCC Zone), Anne Howard seconded and it was so voted, 5-0. Elisabeth Verde will write the decision.
- 2009-35** **636 Commercial Street (Residential 2 Zone), Paul Colburn on behalf of Charles Merrill –**
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a bedroom addition up and along a pre-existing, non-conforming dimension using the existing deck footprint. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Presentation: Paul Colburn and Charles Merrill appeared to present the application. The applicant seeks to put an addition on the rear of the structure
Public Comment: None. There were no letters in the file.
Board Discussion: The Board questioned Mr. Colburn and Mr. Merrill. The Board requested that the

applicant submit new proposed and existing plans drawn to the same scale and suggested submitting plans showing the proposed and existing elevations for each side of the structure on one page.

Patrick Eeley moved to continue the application and request that the applicant provide plans drawn to the same scale and plans showing the proposed and existing elevations for each side of the structure, Anne Howard seconded and it was so voted, 5-0.

2009-36 963 Commercial Street, Unit #23 (Residential 1 Zone), Lester J. Murphy on behalf of Jerome A. Goedken and Nancy K. Goedken –

The applicants seek a Special Permit under Article 3, Sections 3110 of the Zoning By-Laws for the alteration of a pre-existing, non-conforming structure up and along a non-conforming rear setback line for the construction of a second story and installation of a ground floor deck. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Attorney Lester J. Murphy appeared to present the application. The applicant seeks to widen the structure by 2', add a crawl space below the structure, add a second floor and increase the size of the ground floor deck. The unit area would increase from 252 square feet to 480 sq. ft. There will be no increase in the cooking facilities. Attorney Murphy argued that the proposed change will not be substantially more detrimental to the neighborhood than the existing non-conforming structure.

Public Comment: Judy Edsal, an abutter, spoke against the application. There were 7 letters from unit owners of the Beach Point Club Condominiums in support of the application. There was 1 letter from abutters in opposition to the application and 1 letter from abutters with concerns about the project.

Board Discussion: The Board questioned Attorney Murphy. The Board requested that the applicant submit plans, showing existing and proposed plans drawn to the same scale.

Elisabeth Verde moved to continue Case #2009-36, leaving the public portion of the hearing open until the Board receives the requested plans, Patrick Eeley seconded and it was so voted, 5-0.

The Board postponed the remainder of the agenda until the July 2, 2009 Work Session.

NEXT MEETING: The next meeting will take place on July 2, 2009. It will consist of a Work Session at 6:45 P.M.

ADJOURNMENT: *Amy Germain moved to adjourn at 11:20 and it was so voted unanimously.*

These minutes were approved by a vote of the Zoning Board of Appeals at their meeting on July 2, 2009.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2009

Patrick Eeley, Chair