

TOWN OF PROVINCETOWN

ZONING BOARD OF APPEALS

MEETING MINUTES OF September 6, 2007

MEETING HELD IN TOWN HALL

Members Present: Patrick Eleey, Peter Page, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato.

Members Absent: None.

Others Present: Matt Mulvey (Building Commissioner), Maxine Notaro (Permit Coordinator), Ellen C. Battaglini (Recording Secretary) and Peter Bez (Advisor to the Zoning Board of Appeals).

PUBLIC HEARING

Chair Patrick Eleey called the Public Hearing to order at 7:03 P.M.

NEW CASES:

2007-47 175 Bradford Street Extension (Residential 3 Zone), Victor DePoalo

(Request to withdraw – to be reheard on September 20, 2007) -

The applicant seeks a Special Permit under Article 2, Section 2471 of the Zoning By-Laws to amend Case 2007-004 to delete Addendum A. Attorney Robin B. Reid, representing the applicant, appeared to request a withdrawal and to request that the case be re-heard on September 20, 2007.

Peter Page moved to accept the withdrawal and a request to be re-heard on September 20, 2007, of Case 2007-47, Elisabeth Verde seconded and it was so voted, 5-0.

2007-45 2 Harbour Drive, Lot 9 (Residential 1 Zone), Attorney Brian J. Wall on behalf of The Applicants (27 abutters) -

The applicants seek an appeal of the Building Commissioner's decision under Article 5, Section 5223 of the Zoning By-Laws at the property located at 2 Harbour Drive, Lot 9. Patrick Eleey, Peter Page, Elisabeth Verde, Robert Littlefield and Amy Germain sat on the case.

Presentation: Attorney Brian J. Wall appeared to present the application. The applicants are aggrieved by the decision of the Building Commissioner in regard to the scale of the house under construction on Lot 9 at 2 Harbour Drive. Some of the issues raised by Attorney Wall include the validity of the Building Permit issued for the structure based on the plans submitted by the owner and the derivation and accuracy of the scale, as determined by the Building Department, of that structure. The applicants request that the Building Permit granted for the structure be annulled.

Public Comment: Attorney E. James Veara and Ed Patten, representing David Milliken, the owner of Lot 9 and John Medeiros and William Gordon, the developers of the subdivision, spoke against the appeal. Attorney Veara raised the issue of the validity of the appeal of the applicants, arguing that they did not exercise their right to appeal throughout the process of the development of the subdivision and the permitting process of the structure on Lot 9. Attorney Patten questioned the legal standing of all but one of the 27 applicants to bring an appeal. In addition, Attorney Patten contended that this one particular applicant has not met the legal burden of proving that she has actually been aggrieved by the decision of the Building Commissioner. Craig Lyon had a question concerning who was allowed to attend ZBA hearings. There was a memorandum in opposition to the appeal from Attorney Veara in the file.

Board Discussion: The Board questioned Attorneys Wall, Veara and Patten. The Board also heard from the Building Commissioner, Matt Mulvey, who explained the process that was used to determine the building scale of the structure on Lot 9. After much deliberation, the Board decided that they would schedule a site visit.

Amy Germain moved to continue the case, Robert Littlefield seconded and it was so voted, 5-0.

Chairman Patrick Eeley postponed the Public Hearing 9:05 P.M.

Chairman Patrick Eeley reconvened the Public Hearing at 9:15 P.M.

NEW CASES (continued):

- 2007-48** **11 Central Street (Residential 3 Zone), Meg A. Stewart and Maureen Wilson -**
The applicants seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to find that the proposed change in roof construction of a pre-existing, non-conforming structure does not intrude further into an existing setback area. Patrick Eeley, Peter Page, Elisabeth Verde, Robert Littlefield and Amy Germain sat on the case.
Presentation: Robert Valois, Meg A. Stewart and Maureen Wilson appeared to present the application. The applicants seek to add a dormer onto the northwest side of the house in order to accommodate the addition of headroom to a stairway that serves as an egress from the second floor. They also seek to extend the roofline of the attached cottage to cover an existing outdoor shower area. This will bring the structure into conformity with the State Building Code. There will be no change in the footprint of the structure.
Public Comment: Nancy Whiteside, an abutter, spoke in favor of the application. There were 3 letters in favor of the application in the file.
Board Discussion: The Board questioned Mr. Valois.
Patrick Eeley moved to consider as a ruling under the Goldhirsh v. McNear ruling, Robert Littlefield seconded and it was so voted, 5-0.
Patrick Eeley moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to find that the proposed change in roof construction of a pre-existing, non-conforming structure does not intrude further into an existing setback area at the property located at 11 Central Street (Res 3) as a finding under the Goldhirsh v. McNear ruling, Elisabeth Verde seconded and it was so voted, 5-0.
- 2007-49** **6 Gosnold Street (Residential 3 Zone), Scott William Brady on behalf of Nick Calabrese -**
The applicant seeks a Special Permit under Article 2, Section 2450 G12 of the Zoning By-Laws for the installation of an in-ground swimming pool. Peter Page recused himself because of a conflict of interest. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case.
Presentation: Scott William Grady and Chris Ross appeared to present the application.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board questioned Mr. Grady and Mr. Ross.
Robert Littlefield moved to grant a Special Permit under Article 2, Section 2450 G12 of the Zoning By-Laws for the installation of an in-ground swimming pool at the property located at 6 Gosnold Street (Res 3), Elisabeth Verde seconded and it was so voted, 4-0-1 (Amy Germain abstaining). Patrick Eeley will write the decision.
- 2007-50** **162 Commercial Street (Town Commercial Center Zone), William N. Rogers II, P.E., P.L.S. on behalf of the 162 Commercial Street Realty Trust -**
The applicant seeks a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for a deviation in the building scale for the renovation of an existing building. Patrick Eeley, Peter Page, Elisabeth Verde, Robert Littlefield and Amy Germain sat on the case.
Presentation: Gary Locke appeared to present the application. The applicant seeks to increase the scale of the existing historic structure by 32.68 scale units. The foundation will be replaced and the roof on the rear portion of the structure will be raised.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board questioned Mr. Locke.
FINDINGS OF FACT:
- The existing scale is 159.26 scale units;
 - The proposed scale is 191.94 s.u.;
 - The allowed scale is 109.47 s.u.;
 - The neighborhood average is 93.16 s.u.;
 - The increase in scale has no visual impact from Commercial Street in keeping with the large

structures in the neighborhood;

- The addition of a handicap ramp will make the building more accessible to the public and be a benefit to the community; and
- The structure will be harmonious and compatible with its site and the surrounding structures and thus in keeping with the intent of the Local Comprehensive Plan.

Peter Page moved to grant a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for a deviation in the building scale for the renovation of an existing building at the property located at 162 Commercial Street (TCC), Patrick Eeley seconded and it was so voted, 4-1-0 (Amy Germain opposed). Elisabeth Verde will write the decision.

Chair Patrick Eeley adjourned the Public Hearing at 10:00 P.M.

WORK SESSION

Chair Patrick Eeley called the Work Session to order at 10:00 P.M.

MINUTES: August 2, 2007 – *Robert Littlefield moved to approve the language as amended, Amy Germain seconded and it was so voted, 5-0-1 (Keith Amato abstaining).*

NEXT MEETING:

The next meeting will be on September 20, 2007 and will be held in the Judge Welsh Hearing Room. It will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

Patrick Eeley made a motion to go into Executive Session to discuss pending litigation at 10:07 P.M. Each Board member, when polled separately, agreed.

ADJOURNMENT:

Keith Amato 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 September 20, 2007.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini