

**TOWN OF PROVINCETOWN**  
**ZONING BOARD OF APPEALS**

**MEETING MINUTES OF**  
**September 20, 2007**

**MEETING HELD IN TOWN HALL**

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

**Members Absent:** None.

**Others Present:** Matt Mulvey (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Chair Patrick Eeley called the Work Session to order at 6:33 P.M.

**PENDING CASES:**

**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 Eeley, Peter Page, Elisabeth Verde, Robert Littlefield and Amy Germain sat on the case. Those Board members who were unfamiliar with the property made site visits. Chair Patrick Eeley briefly reiterated the issues involved in the case. The Board received some additional information concerning these issues, including a copy of a memo from the Building Commissioner to the Assessor's office and a copy of a letter from Town Counsel concerning the project.

**Presentation:** Attorney Brian J. Wall made a request to be heard by the Board in order to answer some of the questions that had been raised at the previous hearing and to rebut arguments voiced by the proponents of the project. He discussed the issues involved in the case, including whether his clients have standing in this appeal, repetitive petitions and the statute of limitations, and the scale of the structure on site, specifically what data was relied on to make that scale determination. He concluded by reiterating that his client's seek to have the building permit issued for the structure on site annulled.

**Board Discussion:** The Board questioned Attorney Wall and discussed the case.

Chair Patrick Eeley postponed the Work Session at 7:07 P.M.

**PUBLIC HEARING**

Chair Patrick Eeley called the Public Hearing to order at 7:07 P.M.

**NEW CASES:**

**2007-5315 Conant Street, Unit #3 (*Residential 3 Zone*), Jerome Carlson -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend up and along the pre-existing, non-conforming east (rear) and south (side) setbacks. The applicant wrote to request a continuance to the October 18, 2007 hearing and submitted a waiver of time constraints.

*Amy Germain moved to accept the request for a continuance for Case #2007-53 to October 18, 2007, Elisabeth Verde seconded and it was so voted, 6-0.*

**2007-46      1 Tremont Street (*Town Commercial Center Zone*), Robin B. Reid, Esq. on behalf of Tremont**

## Nominee Trust -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for an extension of a pre-existing, non-conforming structure up and along non-conforming dimensions. Patrick Eleey, Peter Page, Elisabeth Verde, Robert Littlefield and Amy Germain sat on the case.

**Presentation:** Attorney Robin B. Reid, Tom Fielding and Scott O'Connor appeared to present the application. The applicants seek to construct a single family unit above a commercial unit at the premises. They propose to add a story and a half to the structure. Attorney Reid argued that the Board only needs to make a 'finding' at a Public Hearing, according to Article 3, Section 3110, that the project is not substantially more detrimental to the neighborhood than the non-conformancy that presently exists. This is a less onerous standard than what is required for the granting of a Special Permit, which standard can be found in Article 5, Section 5330. And, since it is only a 'finding' and not a Special Permit, which requires a four vote minimum to be approved, only a majority vote is needed from the Board. She also noted that the project is in conformance with the Local Comprehensive Plan.

**Public Comment:** Russ Sanderson, an abutter, spoke of his concerns regarding the project, which included the proximity of the structure to his property and the future use of the property. Rhoda Rossmore, Neil Toule, Steve Fletcher, Trevor Pinker, John Dowd, Jennifer Crooks, Steve Mascillo, Laura Demolino, Steve Berkowski and Sheila LaMontagne all spoke in favor of the application. Cilla Lyon and Robert Pastor spoke against the application. There were 2 letters in favor and 1 in opposition to the project.

**Board Discussion:** The Board questioned Attorney Reid, Mr. Fielding and Mr. O'Connor. The Board discussed, and Matt Mulvey, the Building Inspector, also affirmed, that another staircase was needed for a second means of egress from the building for safety reasons. The Board suggested that the applicants submit revised plans showing an additional means of egress from the building in order to comply with the State Building Code. The applicants requested a continuance until the October 4, 2007 hearing, contingent upon the revised plans being ready by that date.

*Amy Germain moved to grant the request for a continuance for Case #2007-46, Robert Littlefield seconded and it was so voted, 5-0.*

## 2007-51

### 175 Bradford Street Extension (*Residential 3 Zone*), Robin B. Reid, Esq. on behalf of Victor DePoalo -

The applicant seeks a Variance under Article 2, Section 2471 of the Zoning By-Laws to amend Case 2007-04 to delete Addendum A. Patrick Eleey, Peter Page, Elisabeth Verde, Robert Littlefield and Amy Germain sat on the case.

**Presentation:** Attorney Robin B. Reid and Victor DePoalo appeared to present the application. Case #2007-04 involved a request by the applicant for a parking Variance at the property. The Variance was granted to the applicant. Addendum A was a settlement agreement reached between the applicant and abutters who had appealed three Special Permits previously granted by the Board. The Board decided to include Addendum A in their written decision in Case #2007-04. Attorney Reid argued that Addendum A should not be part of that decision. The conditions in the Addendum, one of which includes a restriction on the height of the structures on the site, refer to matters that were the subject of the three appealed Special Permits and have nothing to do with the issue of parking on the site. Neither do the conditions included in Addendum A have any relation to the other findings of fact that the Board made to support its decision to grant a parking Variance in Case #2007-04. Addendum A is a private agreement between two parties and should not be part of the Board's decision. The applicant, therefore, seeks its removal from the decision.

**Public Comment:** Attorney E. James Veara, representing the Galeforce Village Condominium Trust, an abutter to the project, spoke against the application. The Addendum was a settlement agreement reached between his clients and the applicant, subsequently made part of the Board's decision in Case #2007-04 and should be enforced as such. Lynne Davies, speaking as a private citizen and not as the former Chairman of the Zoning Board of Appeals nor as a member of the Board of Selectmen, spoke about the findings of fact that were part of the decision in Case # 2007-04. Alan Galant, representing the Safe Harbor Condominium Trust, spoke against the application as did Carol Carlson and David Leonard. There were 6 letters in opposition and none in support of the application.

**Board Discussion:** The Board questioned Attorney Reid and Mr. DePoalo.

*Peter Page moved to deny the application, Amy Germain seconded and it was so voted 4-0-1 (Patrick Eleey abstaining). Patrick Eleey will write the decision.*

Chair Patrick Eleey postponed the Public Hearing at 9:05 P.M.

Chair Patrick Eleey reconvened the Public Hearing at 9:17 P.M.

- 2007-52**      **175 Bradford Street Extension (*Residential 3 Zone*), E. James Veara, Esq. on behalf of Galeforce Village Condominium Trust -**  
The applicant seeks an appeal of the Building Commissioner's decision under Article 5, Section 5330 of the Zoning By-Laws. Patrick Eleey, Peter Page, Elisabeth Verde, Robert Littlefield and Amy Germain sat on the case.  
**Presentation:** Attorney E. James Veara appeared to present the application. This is an appeal from the Building Commissioner's refusal to enforce the Board's decision, specifically Addendum A, in Case #2007-04. Attorney Veara contends that the height of the buildings on the site exceeds the 29' restriction that is part of Addendum A and his clients seek enforcement of that restriction.  
**Public Comment:** Attorney Robin B. Reid, representing Victor DePoalo, spoke against the application. She indicated that there were no plans stamped by the Board to indicate grade and her client contends that what he has built on the property conforms to the plans he submitted to the Board at the time the application was discussed. There were no letters in the file.  
**Board Discussion:** The Board questioned Attorney Veara and discussed the issue of 'finished' grade versus 'natural' grade. They also discussed establishing a method of measuring height from 6" below the clapboards of a structure in order to determine finished grade at the property. The Board will need to determine the height of the buildings in order to render a decision in this case. Victor DePoalo will have his engineer calibrate the heights according to this formula.  
*Patrick Eleey moved to continue Case #2007-52 until the Board receives height measurements for the structures located at 175 Bradford Street Extension using the formula of calibrating that distance from 6" below the clapboards to ridge height, Amy Germain seconded and it was so voted, 5-0.*
- 2007-54**      **206-208 Commercial Street (*Town Commercial Center Zone*), Hal Winard -**  
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the placement of eleven (11) "fast food" seats. The applicant requested a continuance until the October 4, 2007 hearing.  
*Peter Page moved to accept the request for a continuance of Case #2007-54 to the October 4, 2007 hearing, Robert Littlefield seconded and it was so voted 5-0.*
- 2007-55**      **149A Commercial Street (*Residential 3 Zone*), Robert Valois on behalf of Laura Rood -**  
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend up and along a pre-existing, non-conforming east side setback by adding the required egress door onto a new deck to replace an existing second floor roof. Patrick Eleey recused himself because of a conflict of interest. Peter Page, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case.  
**Presentation:** Robert Valois and Laura Rood appeared to present the application. The applicant seeks to replace a second floor roof with a deck area where a second means of egress will exit the structure at the premises.  
**Public Comment:** None. There were 4 letters in favor and none opposed.  
**Board Discussion:** The Board questioned Mr. Valois and Ms. Rood.  
*Keith Amato moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend up and along a pre-existing, non-conforming east side setback by adding the required egress door onto a new deck to replace an existing second floor roof at the property located at 149A Commercial Street (Res 3), Elisabeth Verde seconded and it was so voted, 5-0. Keith Amato will write the decision.*

Chair Patrick Eleey announced that the discussion of Case #2007-45 would not be continued this evening. Co-Chair Peter Page then continued the hearing.

- 2007-56**      **10 Commercial Street, Unit #11 (*Residential 1 Zone*), Mario Russo and Frank Gilligan -**  
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, nonconforming dimension up and along the west elevation of a single family dwelling.

Peter Page, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case.

**Presentation:** John DeSouza, Tom Thompson, Mario Russo and Frank Gilligan appeared to present the application. The applicants seek to construct a small dormer on the west side of the structure.

**Public Comment:** None. There were 5 letters in the file in favor and none opposed.

**Board Discussion:** The Board questioned Mr. DeSouza and Mr. Thompson.

**Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, nonconforming dimension up and along the west elevation of a single family dwelling at the property located at 10 Commercial Street, Unit #11 (Res 1), Keith Amato seconded and it was so voted, 5-0.** Elisabeth Verde will write the decision.

Co-Chair Peter Page adjourned the Public Hearing at 11:00 P.M.

## WORK SESSION

Co-Chair Peter Page reconvened the Work Session at 11:00 P.M.

### ADMINISTRATIVE AMENDMENT:

Ted Malone – Modification to Comprehensive Permit for 122 Bradford Street Extension.

Elisabeth Verde recused herself because of a conflict of interest. Peter Page, Robert Littlefield, Amy Germain and Keith Amato sat on the request.

**Presentation:** Ted Malone appeared to discuss the request. The unit and bedroom mix at the property has been altered since the Comprehensive Permit was granted by the ZBA in February of 2007. Mr. Malone needs to present a modified Comprehensive Permit to the Board of Selectmen for their approval. He is requesting a modified Comprehensive Permit from the Board in a form sufficient to record at the Barnstable County Registry of Deeds.

**Board Discussion:** Several of the Board members were not familiar with the Comprehensive Permit that was granted and feel that they could not render an informed decision until they had more information. The request will be re-presented at the October 4, 2007 hearing.

### PENDING DECISIONS:

**2007-49**      **6 Gosnold Street (Residential 3 Zone), Scott William Brady on behalf of Nick Calabrese -**  
Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case.  
Robert Littlefield read the decision. **Elisabeth Verde moved to accept the language as written, Keith Amato seconded and it was so voted, 4-0-1 (Amy Germain abstaining).**

**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 -**  
Patrick Eleey, Peter Page, Elisabeth Verde, Robert Littlefield and Amy Germain sat on the case. Robert Littlefield read the decision. **Keith Amato moved to accept the language as written, Robert Littlefield seconded and it was so voted, 3-1 (Amy Germain opposed).**

### NEXT MEETING:

The next meeting will be on October 4, 2007 and will be held in the Judge Welsh Hearing Room. It will consist of a Work Session at 6:00 P.M. and a Public Hearing at 7:00 P.M.

### ADJOURNMENT:

**Keith Amato moved to adjourn at 11:30 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 October 4, 2007.

Respectfully submitted,

Ellen C. Battaglini

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Zoning Board of Appeals Signature