

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
February 7, 2008

MEETING HELD IN TOWN HALL

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

Members Absent: Keith Amato (excused).

Others Present: Russ Braun (Acting Building Commissioner), Maxine Notaro (Permit Coordinator), David Gardiner (Assistant Town Manager) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair Patrick Eeley called the Work Session to order at 6:38 P.M.

PENDING DECISIONS:

2007-62 **27 Pleasant Street (*Residential 3 Zone*), Richard Salvador on behalf of Mark Waldrop and Jeffrey Libby –**

Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Robert Littlefield read the decision. *Anne Howard moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 4-0-1 (Patrick Eeley abstaining).*

2007-6989 Franklin Street (*Residential 3 Zone*), Doug Dolezal and Greg Welch –

Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Patrick Eeley read the decision. *Anne Howard moved to approve the language as written, Robert Littlefield seconded and it was so voted, 5-0.*

2008-03 **17 Kimberly Lane (*Residential 1 Zone*), Attorney Lester J. Murphy on behalf of David Hurvitz and Ronald Farrer -**

Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Elisabeth Verde read the decision. *Robert Littlefield moved to approve the language as written, Anne Howard seconded and it was so voted, 5-0.*

MINUTES: January 17, 2007 – Patrick Eeley moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 5-0.

PENDING CASES:

2008-02 **9 Carnes Lane (*Residential 3 Zone*), Yuriy Litvinov and Pavel Fiodarau (*continued from January 17, 2008*) -**

The applicant seeks a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to extend a pre-existing, non-conforming two-family dwelling up and along pre-existing non-conforming setbacks and for a deviation in building scale. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Yuriy Litvinov and Pavel Fiodarau appeared to discuss the application. The applicants had submitted a new plan, as requested by the Board, showing the existing north and west side elevations for the project. The applicants also submitted a new plan showing the project with a reduced roof height. This plan, referred to as Option 2 by the applicants, was submitted as a result of their previous discussions about the project with the Board. The applicants informed the Board that they

would prefer the Board approve their original plan with the higher roof height, referred to as Option 1.

Board Discussion: The Board questioned Mr. Litvinov and Mr. Fiodarau.

Patrick Eley moved to grant a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to extend a pre-existing, non-conforming two-family dwelling up and along pre-existing non-conforming setbacks and for a deviation in building scale at the property located at 9 Carnes Avenue (Res 3) for Option 2, showing a lower roof height for the applicant's project, Robert Littlefield seconded and it was so voted, 5-0. Anne Howard will write the decision.

Chair Patrick Eley adjourned the Work Session at 7:26 P.M.

PUBLIC HEARING

Chair Patrick Eley called the Public Hearing to order at 7:30 P.M. There were 5 members of the Zoning Board of Appeals present and 1 absent.

NEW CASES:

- 2008-06** **579 Commercial Street (Residential 3 Zone), Joseph T. Realmuto, Jr. –**
The applicant seeks a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to extend a pre-existing, non-conforming dimension up and along sideline setbacks and to request a deviation from the neighborhood average in building scale. The applicant requested a withdrawal without prejudice.
Amy Germain moved to accept the withdrawal without prejudice of Case #2008-06, Anne Howard seconded and it was so voted, 5-0.
- 2007-73** **781 Commercial Street (Residential 1 Zone), Long Point Condominium Association -**
The applicant seeks an appeal of the Building Commissioner's decision of October 31, 2007 under Article 5, Section 5223. The applicant requested a withdrawal without prejudice.
Anne Howard moved to accept the withdrawal without prejudice of Case #2007-73, Elisabeth Verde seconded and it was so voted, 5-0.
- 2008-04** **781 Commercial Street (Residential 1 Zone), E. James Veara, Esq. on behalf of Michael Winstanley –**
The applicant sees a Variance under Article 2, Section 2560 of the Zoning By-Laws from height for a single family dwelling under construction. Anne Howard disclosed that as a former member of the Planning Board, she had signed an Approval Not Required for the subject property, but according to the State Ethics Commission, she would have no conflict of interest in being seated on this case. Patrick Eley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Presentation: Attorney E. James Veara and Michael Winstanley appeared to present the application. The applicant is seeking a variance from the height requirements in this district. Its location on a coastal dune, and the attendant soil condition, warrants the structure's elevation on pilings above grade. Issues around the height of the proposed structure had been raised by abutters who wished to preserve their views of the bay and the applicant is seeking a compromise based on those concerns. The applicant thus proposes to change the roof pitch and the style of the roof, from a pitched to a flat roof. This change will make the structure 4' lower than the structure could be as of right, if the applicant built it according to his Building Permit. One of the requirements of granting a Variance is the applicant must show that a hardship is created, owing to the soil condition or shape of topography of the land, and also prove that, in the granting of this Variance, there will be no detriment to the public good or derogation or nullification of the purpose of the by-law. Attorney Veara argued that a hardship for the applicant has been created due to the soil condition at this property.
Public Comment: Therese Nelson had questions concerning the material that will be used in the construction of the roof and the applicant's future intentions in regard to the roof, such as installing a deck on the roof. There was 1 letter in the file from the Longpoint Condominium Association, a direct abutter, in favor of the application.

Board Discussion: The Board questioned Attorney Veara and Mr. Winstanley.

Anne Howard moved to grant a Variance under Article 2, Section 2560 of the Zoning By-Laws from height for a single family dwelling under construction for the property located at 781 Commercial Street (Res 1), Robert Littlefield seconded and it was so voted, 4-1 (Elisabeth Verde opposed). Patrick Eeley will write the decision.

2008-05 30 Alden Street, Unit #2 (Residential 2 Zone), Hal Winard of Winard Construction on behalf of Robert Doherty -

The applicant seeks a Special Permit under Article 2, Section 2550, Article 3, Section 3110 and Section 3340E of the Zoning By-Laws to convert an existing 15' by 8'1 ½" deck into a three season sun porch and to request a deviation in building scale. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Hal Winard appeared to present the application. The applicant seeks to convert an existing deck on the structure to a sun porch with a deck above it. Currently, due to the layout of the structure, the deck can only be accessed through the master bedroom. To alleviate that awkwardness, the applicant wishes to convert the deck into a sun porch. The proposed deck above the sun porch would then be off the kitchen.

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

Board Discussion: The Board questioned Mr. Winard. After questioning by the Board, Mr. Winard requested a withdrawal without prejudice.

Amy Germain moved to grant the request for a withdrawal without prejudice of Case #2008-05, Patrick Eeley seconded and it was so voted, 5-0.

Chair Patrick Eeley postponed the Public Hearing at 8:25 P.M.

Chair Patrick Eeley reconvened the Public Hearing at 8:35 P.M.

2008-07 19 Race Point Road, a part of 23 Race Point Road (Residential 3 Zone), Edward Malone -

The applicant seeks a Special Permit under Article 2, Section 2440A, footnote 8 and Article 3, Section 3340E of the Zoning By-Laws to construct 20 rental units in 6 buildings on a 1.62 acre lot, and to request a deviation from the neighborhood average in building scale for 2 of the 6 buildings.

2008-08 35 Race Point Road, a part of 23 Race Point Road (Residential 3 Zone), Edward Malone -

The applicant seeks a Special Permit under Article 2, Section 2440A, footnote 8 and Article 3, Section 3340E of the Zoning By-Laws to construct 15 rental units in 5 buildings on a 1.05 acre lot, and to request a deviation from the neighborhood average in building scale for 2 of the 5 buildings.

The two cases will be heard together. Anne Howard disclosed that as a former member of the Planning Board, she had signed off on a Site Plan Review for the subject property, but according to the State Ethics Commission, she would have no conflict of interest in being seated on this case. Elisabeth Verde recused herself because of a conflict of interest. Patrick Eeley explained the implications of having only 4 members of the Board seated. There must be a unanimous decision in order for the Special Permits to be granted. If he chooses, the applicant has the option of waiting until a 5 member Board is seated. The Board informed the applicant that since the proceedings were being recorded, another member of the Zoning Board could theoretically be seated on the case at the next hearing if that member listened to the recording. But that member could only miss one hearing where the case was being heard. It is not yet clear whether there will be 5 members seated at the next hearing. The applicant chose to proceed with 4 members seated and stated that he hoped the application would be successful on its merits. Patrick Eeley, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Ted Malone appeared to present the application. Mr. Malone gave the Board a general overview of the two projects. The property at 19 Race Point Road will include 20 permanently, deed-restricted affordable rental units in 6 buildings. The property at 35 Race Point Road will be a home ownership development which will be comprised of 15 units and will be 33% affordable ownership and 66% market rate, although that ratio could change. He argued that the increase in traffic on Race Point Road due to this development would not be a prohibitive factor, as the road is already designed to handle large amounts of cars traveling to the Transfer Station, Race Point Beach and the condominium developments in the neighborhood. The only entrance to these developments will be off of Race Point

Road. He stated that there will not be cross- traffic through the development to Nelson Avenue. Although he is hoping to give emergency vehicles the option of exiting onto Nelson Avenue, if necessary, in the event of an emergency.

Mr. Malone seeks relief from the density requirement in order to construct more than 6 units on a lot. The development at 19 Race Point Road has the lot area required for the 20 dwelling units as 23 Race Point Road has the lot area required for 15 dwelling units. He argued that the social and economic benefits of adding these affordable rental and affordable home ownership units to the community stock outweigh any hazard, congestion or environmental degradation that may occur as a result of the project. He submitted a developmental impact statement to the Board in order to support this argument as well. Mr. Malone also seeks to deviate from the building scale requirement for the neighborhood. There are 2 buildings on each lot that deviate from the neighborhood building scale and do so because each is connected to adjacent buildings by a stairway, making each, in essence, one large structure. In order to put the development in perspective with the rest of the neighborhood, Mr. Malone stated that the average density of this development is less than the average density of the existing neighborhood in land area and the amount of land that is not being used.

Public Comment: Larry Meads, James Roderick, Jude Maria, Carl Osowski, Gordon Spengler, Jane MacDonald and Miriam Collinson, all abutters to the property, spoke against the application. Marcene Marcoux and Clarence Walker also spoke against the application. There was 1 letter in favor of the application in the file.

Board Discussion: The Board questioned Mr. Malone. After a lengthy discussion about all aspects of the project, the Board decided, due to the complexity of the project and the many concerns of the Nelson Avenue neighborhood, to continue the matter to the next hearing.

Patrick Eleey moved to continue Cases #2008-07 and #2008-08, Robert Littlefield seconded and it was so voted, 5-0.

NEXT MEETING:

The next meeting will be on February 21, 2008 and will be held in the Judge Welsh Hearing Room. It will consist of a Work Session at 6:45 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT:

Amy Germain moved to adjourn at 11:00 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 February 21, 2008.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini