

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
December 3, 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: 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 DECISIONS:

2009-56 **359 Commercial Street, Units #G and H (Town Commercial Center Zone), 3 Old Dogs, LLC, Meg A. Stewart, Manager –**
Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Patrick Eeley read the decision. *Robert Littlefield moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 3-0.*

2009-57 **359 Commercial Street (Town Commercial Center Zone), 3 Old Dogs, LLC –**
Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Patrick Eeley read the decision. *Elisabeth Verde moved to approve the language as written, Robert Littlefield seconded and it was so voted, 5-0.*

2009-58 **359 Commercial Street (Town Commercial Center Zone), 3 Old Dogs, LLC –**
Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat the case. Anne Howard read the decision. *Patrick Eeley moved to approve the language as written, Robert Littlefield seconded and it was so voted, 5-0.*

The Board briefly reviewed the ZBA meeting schedule for 2010. The Board decided to cancel the meeting scheduled for September 2, 2010, and added a meeting on August 26, 2010.

MINUTES: October 15, 2009 – Patrick Eeley moved to approve the language as written, Anne Howard seconded and it was so voted, 4-0-1 (Elisabeth Verde abstaining).

Chair Patrick Eeley adjourned the Work Session at 7:00 P.M.

PUBLIC HEARING

Chair Patrick Eeley called the Public Hearing to order at 7:00 P.M. There were five members of the Zoning Board of Appeals present and none absent.

CONTINUED CASES:

2009-51 **157 Commercial Street (Town Commercial Center Zone), Neal Kimball and Kevin J. Redmond,**

Esq. on behalf of the Martin Family Realty Trust, Virginia Martin, Trustee –

The applicant seeks a Special Permit under Article 2, Section 2440-B5, Permitted Principal Uses, and Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to re-establish the use of the property as a restaurant/bar allowing outdoor seating for not more than 22 persons with full service between the hours of 9:00 A.M. and 11:00 P.M. and to re-establish the full alcohol license.

2009-52 157 Commercial Street (Town Commercial Center Zone), Neal Kimball and Kevin J. Redmond, Esq. on behalf of the Martin Family Realty Trust, Virginia Martin, Trustee –

The applicant seeks a Special Permit under Article 4, Section 4170 of the Zoning By-Laws to request conversion of the second floor restaurant dining area to a one-bedroom residential dwelling unit to serve as owner housing.

2009-53 157 Commercial Street (Town Commercial Center Zone), Neal Kimball and Kevin J. Redmond, Esq. on behalf of the Martin Family Realty Trust, Virginia Martin, Trustee –

The applicant seeks a Special Permit under Article 3, Section 3110, Non-Conformancy, and Article 3, Section 3340, Building Scale, of the Zoning By-Laws to extend the front right portion of the structure into the footprint of the non-conforming shed additions (side yard setbacks), with the sheds to be removed, and to request a deviation from the maximum allowed scale units with the addition of two shed dormers and a covered porch.

2009-55 157 Commercial Street (Town Commercial Center Zone), Neal Kimball and Kevin J. Redmond, Esq. on behalf of the Martin Family Realty Trust, Virginia Martin, Trustee –

The applicant seeks a Parking Variance under Article 2, Section 2471 of the Zoning By-Laws to provide off-street parking for the addition of a residential unit. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on all of the continued cases.

The applicant has made a request to withdraw Cases #2009-51, 52, 53, and 55 without prejudice. *Anne Howard moved to grant the request to withdraw Cases #2009-51, 52, 53 and 55 without prejudice, Amy Germain seconded and it was so voted, 5-0.*

NEW CASES:

2009-59 16 Kimberly Lane (Residential 1 Zone), Deborah Paine on behalf of Brian Reardon –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the addition of a portico to an existing entry deck along a pre-existing, non-conforming front yard setback. Anne Howard recused herself because of a conflict of interest. Patrick Eeley explained to the applicant's agent that he had a choice whether to have the application heard by a four-member Board, in which case the decision to grant would have to be unanimous, or whether he would rather wait to have a five-member Board seated. The applicant's agent chose to proceed with the four members. Patrick Eeley, Elisabeth Verde, Robert Littlefield and Amy Germain sat on the case.

Presentation: David Rowell appeared to present the application. The proposed portico would serve as protection against the weather and is only a minor intrusion, of 5' on one side and 1' on the other, into the existing deck and into the sideyard setback.

Public Comment: None. There was one letter in the file stating no objection to the project.

Board Discussion: The Board questioned Mr. Rowell.

Patrick Eeley moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the addition of a portico to an existing entry deck along a pre-existing, non-conforming front yard setback at the property located at 16 Kimberly Lane (Res 1), Amy Germain seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

2009-60 24 Franklin Street (Residential 3 Zone), Robert P. Tosner –

The applicant seeks a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for a deviation from building scale requirements to construct dormers and egress stairs. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Rob Tosner and Pavel Fiodarau appeared to present the application. The applicant seeks to raise the structure by 2' and add window wells, add two dormers, one on the east side and one on the west side, to the third floor to increase living space and add a second means of egress via a deck and two stairways exiting off that deck. The increase in scale units is as a result of the proposed deck and the stairways. The neighborhood average scale is 71.72 scale units, the existing scale is 96.34 s.u., the proposed increase is 13.38 s.u., for a total of 109.72 s.u.

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

Board Discussion: The Board questioned Mr. Tosner and Mr. Fiodarau about the proposed project, including how the applicant justified the increase in scale under the provisions of the Local Comprehensive Plan.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for a deviation from building scale requirements to construct dormers and egress stairs at the property located at 24 Franklin Street (Res 3), Patrick Eeley seconded and it was so voted, 5-0. Patrick Eeley will write the decision.

2009-61 277 Commercial Street (Town Commercial Center Zone), Lester J. Murphy, Esq. on behalf of Provincetown St. Peter's Club –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the alteration and expansion along a pre-existing, non-conforming sideline to enclose a portion of a second floor deck.

2009-62 277 Commercial Street (Town Commercial Center Zone), Lester J. Murphy, Esq. on behalf of Provincetown St. Peter's Club –

The applicant seeks a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for a deviation from building scale requirements for the enclosure of a portion of a second floor deck. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on both cases.

Presentation: Attorney Lester J. Murphy, Dan Silva and Michael Meads appeared to present the application. The applicant seeks to increase the usable space inside the structure to better suit the size of the Club's expanding membership. The proposed addition is set 4-5' back from the property line and includes the enclosure of a 25' by 29' second floor exterior deck. The existing scale is 285 scale units, the proposed scale is 318.56 s.u., for an increase of 33.56 s.u. The neighborhood average is 217.65 s.u., with a maximum allowable scale of 250.20 s.u. Attorney Murphy argued that this proposed enclosure will not be substantially more detrimental than the existing nonconformancy to the neighborhood and that the social, economic and other benefits of the proposal for the neighborhood and the Town outweigh any adverse effects such as hazard, congestion or environmental degradation. The proposed enclosure will also be in keeping with the character of the neighborhood. He also argued that the increase in scale is justified under the provisions of the LCP.

Public Comment: Fran Coco, Robert Cabral, an abutter, and Father Dahl spoke in favor of the project. There were no letters in the file.

Board Discussion: The Board questioned Attorney Murphy, Mr. Silva and Mr. Meads.

2009-61 Patrick Eeley moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the alteration and expansion along a pre-existing, non-conforming sideline to enclose a portion of a second floor deck at the property located at 277 Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 4-0-1 (Amy Germain abstaining). Patrick Eeley will write the decision.

2009-62 Patrick Eeley moved to grant a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for the alteration and expansion along a pre-existing, non-conforming sideline to enclose a portion of a second floor deck at the property located at 277 Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 4-0-1 (Amy Germain abstaining). Patrick Eeley will write the decision.

The Board briefly discussed the recently submitted application for an alternate seat on the Board and the rules governing conflicts of interest.

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

ADJOURNMENT: *Amy Germain moved to adjourn at 8:30 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 January 7, 2010.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2010

Patrick Eeley, Chair