

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
September 16, 2010

MEETING HELD IN THE GRACE GOUVEIA BUILDING

Members Present: Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts.

Members Absent: Amy Germain (excused).

Others Present: Russ Braun (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

PENDING DECISIONS:

FY11-18 **260 Commercial Street (Town Commercial Center Zone), Town Manager of the Board of Selectmen for the Town of Provincetown -** Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Anne Howard read the decision. *David Nicolau moved to approve the language as amended, Robert Littlefield seconded and it was so voted, 4-0.*

FY11-19 **225 Commercial Street (Town Commercial Center Zone), Paige Mansfield on behalf of ESP Realty Trust –** Anne Howard, Robert Littlefield, Amy Germain and Tom Roberts sat on the case. Robert Littlefield read the decision. *Tom Roberts moved to approve the language as written, Anne Howard seconded and it was so voted, 3-0.* The applicant has not yet submitted a revised seating plan.

MINUTES: August 26, 2010 – *Robert Littlefield moved to approve the language as written, Tom Roberts seconded and it was so voted, 4-0.*

Chair Anne Howard adjourned the Work Session at 6:55 P.M.

PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 7:00 P.M.

POSTPONED CASES:

FY11-20 **284B Commercial Street (Town Commercial Center Zone), Fred Ambrose of Ambrose Homes, Inc. on behalf of Ralph Santora** –
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the construction of two dormers up and along pre-existing, non-conforming lot lines. The Board will hear the two applications together.

FY11-21 **284B Commercial Street (Town Commercial Center Zone), Fred Ambrose of Ambrose Homes, Inc. on behalf of Ralph Santora** –
The applicant seeks a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for a deviation in building scale for the construction of two dormers, the smaller of which will allow adequate headroom at the top of a stairway. Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on both cases.

Presentation: Ralph Santora and Tom Fitzgerald appeared to present the application. The structure on the property was damaged by fire during the winter. The applicant seeks to rebuild the structure and add two dormers. One of the dormers will allow for more headroom at the top of a stairway. The applicant seeks to add 4 scale units to a building that is already large for the neighborhood.

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

Board Discussion: The Board questioned Mr. Santora and Mr. Fitzgerald, inquiring as to the applicant's justification for requesting a deviation in scale. The Board decided to continue the cases to give the applicant time to conduct some research regarding the Local Comprehensive Plan.

Robert Littlefield moved to continue Cases FY11-20 and FY11-21 until the October 7, 2010 Public Hearing, Elisabeth Verde seconded and it was so voted, 5-0.

NEW CASES:

FY11-22 **238 Bradford Street (Residential 3 Zone), The Provincetown Theater Foundation** –
The applicant seeks a Special Permit under Article 2, Section 2440, D1 of the Zoning By-Laws for an amendment to the 2001-003 Special Permit to allow the educational components of a performing arts theater including, but not limited to, classes in acting, movement, voice and theater technology. Anne Howard disclosed that she is an abutter to the property, however she stated that she could render an unbiased decision and has no financial stake in the outcome of the case. Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case.

Presentation: Joy McNulty and Patrick Lamerson appeared to present the application. The Theater seeks to expand the use of the theater by offering educational classes in theater arts both for public outreach purposes and in order to generate revenue.

Public Comment: Rick Wrigley, an abutter, spoke of his concern about the potential for an increase in noise, which already exists as the result of periodic, exterior set building. There was 1 letter in the file, signed by 5 neighbors, including Mr. Wrigley, expressing the same concern. There were also 5 letters in the file in support of the application.

Board Discussion: The Board questioned Ms. McNulty and Mr. Lamerson. Ms. McNulty explained that the Theater's policy is to conduct exterior set building activities in the front of the structure. She believes that it might have been one of the groups who rented the Theater this past summer that could have been at fault for the afore-mentioned noise.

David Nicolau moved to grant a Special Permit under Article 2, Section 2440, D1 of the Zoning By-Laws for an amendment to the 2001-003 Special Permit to allow the educational components of a performing arts theater including, but not limited to, classes in acting, movement, voice and theater technology at the property located at 238 Bradford Street (Res 3), with the conditions that the doors be closed during class hours and that the Special Permit be exercised within the next 24 months, Tom Roberts seconded and it was so voted, 5-0. Anne Howard will write the decision.

FY11-23

142 Commercial Street (Town Commercial Center Zone), Chris Beasley on behalf of Karen Edlund –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a roof-top deck up and along pre-existing, non-conforming front setbacks by adding a railing system. Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case.

Presentation: Chris Beasley and John Corcoran appeared to present the application. The applicant seeks to extend a roof-top deck railing to the edge of the roofline that abuts the Commercial Street sidewalk.

Public Comment: Attorney Chris Snow, who owns the house across the street, stated that he thought the extension of the deck was a further intensification of the non-conformity and not in the best interest of the neighborhood.

Board Discussion: The Board questioned Mr. Beasley and Mr. Corcoran. *Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a roof-top deck up and along pre-existing, non-conforming front setbacks by adding a railing system at the property located at 142 Commercial Street (TCC) with the condition that the Special Permit be exercised within 24 months, Tom Roberts seconded and it was so voted, 5-0.* Tom Roberts will write the decision.

FY11-24 8 Fishburn Court (Residential 3 Zone), Deborah Paine, Inc. on behalf of Russell Friedman and Wayne Briggs –

The applicants seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to partially demolish, reconstruct and extend a pre-existing, non-conforming setback by adding a second story. Anne Howard recused herself because of a conflict of interest. Vice Chair Robert Littlefield explained to the applicants' agent that since there were only four members of the Board seated that a unanimous decision would be needed for granting a Special Permit. The applicants have the choice of proceeding with four members or postponing until a full, five-member Board can be seated. The applicants chose to proceed. Elisabeth Verde, David Nicolau and Tom Roberts also sat on the case.

Presentation: Deborah Paine appeared to present the application. The applicants seek to restore the main section of the existing, deteriorated structure on the premises and put on an addition in the rear. The addition will incorporate an existing accessory structure on the property. Ms. Paine cited several sections of the LCP, including Section 1, Goals 2 and 3, Section 4, Policy A and B, to support the request and requested that the Board hear the case under the *Goldhirsh v. McNear* ruling.

David Nicolau moved to hear Case No. FY11-24 under the Goldhirsh v. McNear ruling, Elisabeth Verde seconded and it was so voted, 4-0.

Public Comment: Donna Flax, Kelly Kelman, Jackie Sperry, Nancy Ross, Tom Thompson and Catherine Russo, all abutters, spoke in opposition to the application. There were 15 form letters and 1 additional letter in support of the application.

Board Discussion: The Board questioned Ms. Paine. Because of the volume of information received by the Board, the case will be continued and several of the Board members will conduct site visits. The Board requested that Ms. Paine submit a site plan showing parking for the premises.

David Nicolau moved to continue Case #FY11-24 until the October 7, 2010 Public Hearing, Elisabeth Verde seconded and it was so voted, 4-0.

FY11-25 14 Howland Street (Residential 3 Zone), Peter F. Fine –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to add a half-gabled addition to an existing one-story footprint and add a small dormer on an existing roof. Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case.

Presentation: Peter F. Fine and Joe Wheeler appeared to present the application. The applicant seeks to add a half-story to an existing one-story flat-roofed section of the structure.

Public Comment: None. There were 2 letters in the file in favor of the application.

Board Discussion: The Board questioned Mr. Fine and Mr. Wheeler.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to add a half-gabled addition to an existing one-story footprint and add a small dormer on an existing roof at the property located at 14 Howland Street (Res 3) with the condition that the Special Permit be exercised within the next 24 months, Tom Roberts seconded and it was so voted, 5-0. Elisabeth Verde will write the decision.

FY11-26

335 Commercial Street (Town Commercial Center Zone), Robert Valois on behalf of Diarmuid O’Neill –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend the ridge height by 4.16 feet; add two shed-style dormers on the east and west elevations; add an open porch roof on the existing second floor deck and to extend the kitchen area under the existing deck on the south elevation up and along a pre-existing, non-conforming front and side setback dimensions. David Nicolau recused himself because of a conflict of interest. Chair Anne Howard explained to the applicant’s agent that since there were only four members of the Board seated that a unanimous decision would be required in order to grant a Special Permit. The applicants have the choice of proceeding with four members or postponing until a full, five-member Board can be seated. The applicant chose to proceed. Elisabeth Verde, Robert Littlefield and Tom Roberts also sat on the case.

Presentation: Robert Valois appeared to present the application. The applicant seeks to modify the roof pitch, add two dormers that do not constitute more than 50% of the roof area and to add a second floor rear deck over an existing portion of the building. The pre-existing, non-conformity is the front yard setback.

Public Comment: Craig Russell, an abutter, spoke against the application. There were no letters in the file.

Board Discussion: The Board questioned Mr. Valois.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend the ridge height by 4.16 feet; add two shed-style dormers on the east and west elevations; add an open porch roof on the existing second floor deck and to extend the kitchen area under the existing deck on the south elevation up and along a pre-existing, non-conforming front and side setback dimensions with the condition that the Special Permit be exercised within the next 24 months, Elisabeth Verde seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

FY11-27

124 Commercial Street (Town Commercial Center Zone), James Martin –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the construction of two dormers up and along a pre-existing, non-conforming front and side setbacks and for the extension of a

pre-existing, non-conforming lot coverage for the construction of a covered walkway within the conforming setback area.

FY11-28

124 Commercial Street (Town Commercial Center Zone), James Martin –

The applicant seeks a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for a deviation in building scale for the construction of two dormers and a covered walkway. The Board will hear the two cases together. Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on both cases.

Presentation: Attorney Lester J. Murphy, Kaye McFadden and James Martin appeared to present the application. The applicant seeks to build two dormers, one on the east and one on the west side, and to install a deck and a deck access on the second floor in the rear of the structure. The latter will serve as a second floor means of egress. The proposed work will increase the lot coverage, from which the applicant is seeking relief as well. The increase in height is due to the addition of the two dormers and the elevated deck. The existing building scale is 91.97 scale units, the neighborhood average scale is 79.62 s.u., the proposed addition of scale is 13.59 s.u. for a total proposed scale of 105.56 s.u. or a 14.7% increase. Attorney Murphy alleged that the changes in structure and height will be in keeping with the character of the neighborhood and will enhance the building on the premises, citing sections of the LCP to support his contention, including Goal B, Policy 1, Goal 2 and 3, Policy A, Goal 2 and 3, Policy B and Section 4, Goal 1.

Public Comment: Tom Fielding, Scott O'Connor and Arthur Pickard, abutters, spoke in favor of the applications. There were 5 letters in the file in support of the applications.

Board Discussion: The Board questioned Attorney Murphy, Ms. McFadden and Mr. Martin.

FY11-27

Elisabeth Verde moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the construction of two dormers up and along a pre-existing, non-conforming front and side setbacks and for the extension of a pre-existing, non-conforming lot coverage for the construction of a covered walkway within the conforming setback area at the property located at 124 Commercial Street (TCC) with the condition that the Special Permit be exercised within the next 24 months, Robert Littlefield seconded and it was so voted, 5-0. David Nicolau will write the decision.

FY11-28

Elisabeth Verde moved to grant a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for a deviation in building scale for the construction of two dormers and a covered walkway at the property located at 124 Commercial Street (TCC) with the condition that the Special Permit be exercised within the next 24 months, Robert Littlefield seconded and it was so voted, 5-0. David Nicolau will write the decision.

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

ADJOURNMENT: *Elisabeth Verde 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 October 7, 2010.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2010
Anne Howard, Chair